

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 05-O-04611-DFM
))
ROBERT LEE EHRLICH) 07-O-13727 (07-O-14854;
)) 07-O-14868) (Cons.)
) DECISION INCLUDING DISBARMENT
Member No. 61028) RECOMMENDATION AND
) INVOLUNTARY INACTIVE
A Member of the State Bar.) ENROLLMENT ORDER
)
_____)

I. INTRODUCTION

In this disciplinary matter, Suzan J. Anderson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Robert Lee Ehrlich participated only sporadically, frequently missed court-ordered conferences and obligations and, ultimately, did not appear at trial. Accordingly, his default was entered by the court at that time.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

A. Case No. 05-O-04611

The Notice of Disciplinary Charges (NDC) was filed on July 17, 2007. Respondent filed an answer on December 12, 2007.

On August 8, 2007, respondent was properly served at his official address with a notice

advising him, among other things, that a status conference would be held on September 4, 2007.

Respondent did not appear at the September 4 status conference. On September 11, 2007, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. This order notified him that a status conference was scheduled for November 13, 2007, among other things.

Thereafter, respondent participated in the proceedings. He appeared at status conferences held on November 13 and December 13, 2007 and February 29, April 30, July 10 and August 4, 2008.

Respondent also filed a request for evaluation for the Alternative Discipline Program (ADP) on December 5, 2007. At a status conference held on July 10, 2008 in which respondent participated, he was given until July 31, 2008 to respond to the State Bar's motion to terminate his evaluation for the ADP. He did not respond to the motion. At a status conference held on August 4, 2008 at which respondent participated, the program court granted the motion to terminate his evaluation for ADP. A written order memorializing the order was filed and properly served on respondent at his official address on August 4, 2008. The case was then transferred to the hearing judge for further proceedings and trial.

B. Case Nos. 07-O-13727 (07-O-14854; 07-O-14868)

The NDC was filed on July 8, 2008, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) A copy of the NDC was also served on respondent at an alternate address in Woodland Hills, California, by certified mail, return receipt requested.

¹ Future references to section are to the Business and Professions Code.

On July 9 and 11, 2008, respondent was properly served at his official address with a notice of assignment and a notice scheduling a status conference on August 4, 2008, respectively. As previously noted, respondent participated in the August 4, 2008 status conference.

C. As to Both Cases

On August 7, 2008, the court filed and properly served on respondent at his official address a notice setting a status conference on September 3, 2008. Respondent did not appear at that status conference.

On September 9, 2008, the court filed and properly served on respondent at his official address an order memorializing the September 3 status conference and also scheduling the following dates: status conference on October 27, 2008; pretrial conference on December 16, 2008; and trial on January 5, 2009. Although he had proper notice of these events, respondent did not appear at any of them.

On December 4, 2008, the State Bar properly served respondent at his official address and at an alternate address in Woodland Hills, California, with a notice in lieu of subpoena to appear at the January 5, 2009 trial.

On December 8, 2008, the State Bar properly served respondent at his official address with a pretrial statement.

On December 18, 2008, the court filed an order memorializing the pretrial conference held on December 16. It was properly served on respondent at his official address. The order advised him that nonappearance at trial would result in the entry of his default.

When respondent did not appear at trial on January 5, 2009, the court entered his default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt

requested. The return receipt, executed by “Mike Ballas,” indicates delivery of the order on January 6, 2009.

On March 6, 2009, the State Bar filed and served its closing brief on respondent at his official address.

On March 17, 2009, the court filed and properly served on respondent at his official address its order consolidating the cases.

The State Bar’s and the court’s efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court’s findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar², rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution’s burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 20, 1974, and has been a member of the State Bar at all times since.

B. Case No. 05-O-04611 (The Waterstone Matters)

1. Background

² Future references to the Rules of Procedure are to this source.

On or about October 20, 2000, Michael L. Kinworthy, managing partner for Waterstone Environmental, Inc., employed respondent to represent Waterstone in five collection matters against several different companies and individuals. Kinworthy estimated that the total owed to Waterstone was \$53,599.74 at that time. The debtors that respondent was hired to collect from included: (1) Paul Thrash/Dilbeck Realtors; (2) Westway Development; (3) Robert Rechnitz/Bomel Management; (4) Panama Street Associates; and (5) Barry Kane/SDL, Inc. There was no written retainer agreement, although on or about October 20, 2000, Kinworthy sent respondent an engagement letter enclosing all the information regarding the five collection actions and check number 1704, drawn on Waterstone's bank account in the amount of \$5,360 as a retainer for respondent's services. Pursuant to the agreement between Kinworthy and respondent, any additional fees respondent would receive would be the statutory fees for collection actions that respondent would receive from the opposing parties. On or about October 27, 2000, the check was deposited into respondent's client trust account (CTA).

2. Facts

a. Dilbeck/Thrash

On or about April 24, 2001, respondent filed a civil complaint in Los Angeles Superior Court on behalf of Waterstone entitled *Waterstone Environmental, Inc. v. Paul Thrash, Dilbeck Realtors, and Does 1 through 10*, case number 01C01053 (*Thrash* action). The complaint was for monetary damages for breach of contract and common counts with a demand amount of \$8,580.

On or about October 29, 2001, the court amended the complaint in the *Thrash* action to add the Estate of William L. Mallum as Doe Defendant Number 1 and Suzanne Smith, Personal Representative of the Estate of W.L. Mallum as Doe Defendant Number 2 in response to respondent's filed requests.

In or about February 2002, with the consent of Waterstone, respondent partially settled the matter with two defendants, Thrash and Dilbeck Realtors (Dilbeck defendants) in the amount of \$4,250.

On or about February 28, 2002, the Dilbeck defendants forwarded a check to respondent in the amount of \$4,250 made payable to Waterstone and respondent. On or about February 28, 2002, respondent deposited this check into his CTA. Respondent failed to inform Waterstone of the receipt of the settlement funds from the Dilbeck defendants.

At no time has respondent paid Waterstone any amount from the settlement funds he received from the Dilbeck defendants in the *Thrash* action. Pursuant to the agreement between Kinworthy and respondent, respondent was required to maintain the amount of \$4,250 in his CTA from the Dilbeck defendants' settlement funds. On or about March 21, 2002, prior to any payment to Waterstone, the balance in respondent's CTA fell to \$19.53. Respondent dishonestly misappropriated at least \$4,230.47 of the settlement funds he received from the Dilbeck defendants in the *Thrash* action on behalf of Waterstone.

On or about March 7, 2002, respondent filed a request for dismissal of the Dilbeck defendants only in the *Thrash* action.

On or about April 9, 2002, respondent and the remaining defendants appeared for a regularly-scheduled status conference in the *Thrash* action and the court set a bench trial for July 25, 2002. The court ordered one of the defendants to give notice which was accomplished by properly sending a notice of ruling to respondent at his address of record in the action.

On or about April 24, 2002, respondent informed Waterstone of the trial date in the *Thrash* action by facsimile.

Thereafter, respondent undertook no further action with respect to the *Thrash* action.

On or about July 25, 2002, respondent failed to appear for trial in the *Thrash* action. The court set an order to show cause (OSC) hearing on August 26, 2002. The following day, the court clerk gave proper notice of the court's order to all parties, including respondent.

On or about August 26, 2002, respondent failed to appear at the OSC hearing and the court dismissed the *Thrash* action without prejudice. The court clerk gave proper notice to all parties of the dismissal, including respondent.

By failing to take any action to collect any funds from the remaining defendants in the *Thrash* action and by failing to appear for trial and the OSC in the action, respondent effectively withdrew from representation of Waterstone.

At no time did respondent inform Kinworthy that he was withdrawing from employment on Waterstone's behalf in the *Thrash* action. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

At no time did respondent inform Kinworthy that he received the settlement check from the Dilbeck defendants; that he did not intend to appear for trial in the *Thrash* action; that the court had scheduled an OSC hearing that he did not intend to respond to; or, later, that the *Thrash* action had been dismissed by the court.

b. Westway

On or about February 17, 2001, respondent filed a civil complaint in Los Angeles Superior Court on behalf of Waterstone entitled *Waterstone Environmental, Inc. v. Mark Webber, Westway Development and Does 1 through 10* (*Westway* action). The complaint was for monetary damages for breach of contract and common counts with a demand amount of \$8,613.44.

Prior to on or about May 30, 2001, with Kinworthy's consent, respondent settled the *Westway* action for \$2,700.

On or about May 30, 2001, respondent forwarded a facsimile to Kinworthy informing him that he received the \$2,700 settlement check from Westway Development, that he would deposit it into his CTA, and that he would distribute the proceeds as soon as the check had been honored by the bank.

At no time has respondent paid to Waterstone any amount from the settlement funds he received from Westway Development on behalf of Waterstone.

c. Kane

On or about April 16, 2002, respondent, on behalf of Waterstone, filed in the Santa Clara Superior Court a civil complaint entitled *Waterstone Environmental, Inc. v. Barry Kane, SDL, Inc. and Does 1 through 10*, case number 7-01-CV-406417 (*Kane* action). The complaint was for monetary damages for breach of contract and common counts with a demand amount of \$23,372.76.

On or about May 9, 2002, respondent received a settlement offer in the *Kane* action for \$11,686.38, 50 percent of the amount claimed by Waterstone. Respondent forwarded a facsimile to Kinworthy informing him of this offer, and Kinworthy consented to the settlement.

On or about May 15, 2002, respondent forwarded another facsimile to Kinworthy informing him that he was able to settle the *Kane* action for \$12,300 and enclosing the Settlement Agreement and Mutual General Release of All Claims (settlement agreement) for Kinworthy's signature. Kinworthy signed the settlement agreement and forwarded the signed copy back to respondent that same day.

Thereafter, respondent performed no further action with respect to the *Kane* action.

On or about November 8, 2002, the court ordered the case dismissed.

By failing to take any action to prosecute the *Kane* action after May 15, 2002; failing to collect any funds from the settlement agreement in the *Kane* action; and allowing the court to dismiss the *Kane* action, respondent effectively withdrew from representation of Waterstone.

At no time did respondent inform Kinworthy that he was withdrawing from employment on Waterstone's behalf in the *Kane* action. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

d. Rechnitz

On or about April 25, 2001, respondent, on behalf of Waterstone, filed in the Los Angeles Superior Court a civil complaint entitled *Waterstone Environmental, Inc. v. Robert Rechnitz, Bomel Management and Does 1 through 10*, case number 01C00533 (*Rechnitz* action). The complaint was for monetary damages for breach of contract and common counts with a demand amount of \$13,032.74.

On or about September 24, 2001, the court entered defaults against Rechnitz and Bomel Management (*Rechnitz* defendants) in the *Rechnitz* action.

On or about June 11, 2002, the court entered a default judgment against the Rechnitz defendants in the amount of \$19,193.14, which included \$13,032.74 for principal, \$660 for attorney fees; \$5,321.40 for interest and \$179 in costs. On or about July 8, 2002, respondent sent a facsimile to Kinworthy informing him of the default judgment and that respondent would advise him regarding his efforts to collect the judgment.

The Rechnitz defendants delivered several cashier's checks to respondent as partial payment to Waterstone regarding the judgment entered against the Rechnitz defendants. The checks were payable to Waterstone unless otherwise specified. The amounts, delivery dates and other relevant information regarding the payments are set forth in the following chart and are discussed below.

Delivery Date	Amount Received & Required to be Kept in CTA	Date Deposited in CTA	CTA Balance Prior to Any Payment to Waterstone/ Date	Amount Misappropriated
8/21/02 *	\$1,600	8/23/02	-\$3,988.22/ 10/1/02	\$1,600
10/16/02 *	\$1,500	10/18/02	\$112.12/ 11/12/02	\$1,387.88
11/27/02 *	\$2,000 \$ 500**	11/27/02	Combined – see 1/8/03	Combined – see 1/8/03
12/19/02 *	\$1,500	12/19/02	Combined – see 1/8/03	Combined – see 1/8/03
1/8/03	\$1,000	1/17/03	\$87.05/ 1/27/03	\$4,412.95
1/22/03 *	\$4,375	1/28/03	\$162.05/ 1/30/03	\$4,212.95
1/27/03 *	\$3,000	2/26/03	\$121.57/ 10/22/03	\$2,878.43
	Total Received for Waterstone \$14,975			Total Misappropriated \$14,492.21

* Respondent did not inform Kinworthy that he had received the funds delivered on these dates from the Rechnitz defendants. He only informed Kinworthy of the receipt of the \$1,000 payment delivered on January 8, 2003 and, at that time, detailed his further efforts to secure more payments by the Rechnitz defendants. This was done by a facsimile sent on January 9, 2003.

** This check was made payable to respondent and, therefore, is not included in the total amount received for Waterstone or in the total amount misappropriated.

Respondent received a total of \$14,975 from the Rechnitz defendants on behalf of Waterstone in partial payment of the judgment in the *Rechnitz* action and deposited the entire amount into respondent's CTA. At no time has respondent paid Waterstone any amount from the funds he received in partial satisfaction of the judgment against the Rechnitz defendants. As

set forth in the chart above, he did not maintain the funds received on Waterstone's behalf in the CTA until the funds were paid to Waterstone. Respondent dishonestly misappropriated at least \$14,492.21 from the funds received from the Rechnitz defendants in the *Rechnitz* action on behalf of Waterstone.

After on or about January 27, 2003, respondent took no further action on behalf of Waterstone in the *Rechnitz* action.

On or about February 5, 2003, respondent failed to appear at the judgment debtor examination he had scheduled in the *Rechnitz* action on behalf of Waterstone.

By failing to appear at the judgment debtor examination respondent had scheduled in the *Rechnitz* action, failing to collect the remainder of the judgment in the *Rechnitz* action, and failing to take any further action in the *Rechnitz* action, respondent effectively withdrew from the representation of Waterstone in the action.

At no time did respondent inform Kinworthy that he was withdrawing from employment in Waterstone's case against the Rechnitz defendants. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

At no time did respondent inform Kinworthy that he had scheduled a judgment debtor's examination for the Rechnitz defendants on or about February 5, 2003. At no time did respondent inform Kinworthy that he did not intend to appear for the judgment debtor's examination he had scheduled for February 5, 2003.

e. Panama

On or about June 3, 2002, respondent filed a civil complaint in Los Angeles Superior Court on behalf of Waterstone entitled *Waterstone Environmental, Inc. v. Panama Street Associates, Dina B. Chernick and Does 1 through 10*, case number 02C00342 (*Panama* action).

The complaint was for monetary damages for breach of contract and common counts with a demand amount of \$12,877.85.

On or about July 26, 2002, Panama Street Associates and Dina B. Chernick (Panama defendants) served and filed a demurrer to the complaint. Respondent received the demurrer.

After several stipulations to continue the demurrer hearing, on or about May 28, 2003, respondent filed a first amended complaint and served it on the Panama defendants.

On or about June 30, 2003, the Panama defendants filed and served their demurrer to the first amended complaint. The demurrer hearing was scheduled for August 7, 2003. Respondent received the demurrer.

On or about August 7, 2003, respondent failed to appear at the hearing on the demurrer in the *Panama* action. The court continued the hearing to August 14, 2003, and gave proper notice to all parties in the *Panama* action.

On or about August 14, 2003, neither respondent nor the Panama defendants appeared at the continued hearing on the demurrer in the *Panama* action. The court took the demurrer off calendar and the court clerk gave proper notice to all parties in the *Panama* action of the notice of ruling. Respondent received the court's order.

On or about March 11, 2004, the court set an OSC hearing regarding the failure to prosecute the *Panama* action for June 1, 2004. The court clerk gave proper notice to all parties in the *Panama* action of the court's order. Respondent received the court's order.

At no time did respondent file a response to the court's OSC.

On or about June 1, 2004, respondent failed to appear at the court-ordered OSC and the court dismissed the *Panama* action without prejudice. The court clerk gave proper notice to all parties in the *Panama* action. Respondent received the court's order.

At no time did respondent take any steps to vacate the dismissal of the *Panama* action.

By failing to appear at the demurrer hearing in the *Panama* action, failing to respond to the court's OSC, failing to appear at the court-ordered OSC hearing (thereby causing the dismissal of the *Panama* action), and failing to take any steps to vacate the dismissal, respondent effectively withdrew from representation of Waterstone in the action.

At no time did respondent inform Kinworthy that he was withdrawing from employment in Waterstone's case against the Panama defendants. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

f. Communication in Waterstone Matters

Between in or about February 2003 and June 2004, Kinworthy telephoned respondent numerous times inquiring about the status of the five collection matters for which respondent had been employed. Each time Kinworthy called, he left detailed messages requesting a status report on his legal matters and requesting a return telephone call from respondent.

On or about November 13, 2003, Kinworthy sent a letter to respondent at his then-membership/office address in Beverly Hills, California. He advised that he believed respondent had resolved several of the collection cases. He noted that he had tried to contact respondent by e-mail and by telephone numerous times for several months. He requested that respondent call him. The letter was not returned. There was no response.

On or about January 8, 2004, Kinworthy sent another letter to respondent at the same address in Beverly Hills inquiring about his case, advising that he had not received funds related to the settlements and that he had left numerous telephone and e-mail messages without response. He requested that respondent contact him and provide him with the funds collected. The letter was not returned. There was no response.

On or about June 9, 2004, Kinworthy sent another letter to respondent to the same address in Beverly Hills making the same requests as in his letter of January 2004. The letter was not returned. There was no response.

On or about June 23, 2004, Kinworthy sent another letter to respondent to the same address in Beverly Hills. He advised that he believed that respondent came to resolution on three matters pertaining to Panama Street, Dilbeck Real Estate/Thrash and Rechnitz and that he believed that respondent might have resolved SDL, Kane. He again noted that he had “tried to contact you via telephone, written correspondence and email many times over the last year. You have never returned our calls or responded in any other manner.” Kinworthy advised respondent that if he did not hear from respondent within 10 days he would file a complaint with the State Bar. The letter was sent by facsimile and certified U.S. Mail. The letter was not returned.

Kinworthy sent another letter to the Beverly Hills address on or about July 29, 2004, both by e-mail and U.S. Mail advising in part that he was preparing a complaint for the State Bar, asking respondent to respond and provide the funds. There was no response.

Despite his receipt of the messages, letters and e-mail from Kinworthy, respondent did not respond to Kinworthy and did not provide a status report on any of the matters for which he had been retained by Waterstone.

g. Cooperation in State Bar Investigation

On or about October 21, 2005, the State Bar opened an investigation, case no. 05-O-04611, pursuant to a complaint filed by Michael L. Kinworthy with Waterstone Environmental, Inc. (Waterstone matter).

On or about November 9, 2005, and November 29, 2005, a State Bar investigator wrote to respondent regarding the Waterstone matter. The investigator’s letters were placed in sealed envelopes correctly addressed to respondent at his State Bar membership records address. The

letters were properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason. There was no response.

On or about March 22, 2006, a State Bar investigator faxed the letters to respondent at the fax number listed on his State Bar membership record. The facsimile was received by the respondent.

On or about March 27, 2006, respondent sent a fax to the investigator advising that he had received the State Bar's March 22, 2006 communication, that he certainly would respond to it, but it would take some time for him to retrieve the file and get the information. He advised that "it would be my hope to have this done within a few weeks or a month." He requested to know if this was acceptable or if there was a need to work out another alternative.

On or about March 28, 2006, the investigator faxed a letter to respondent at the fax number listed on his State Bar membership records. The fax was successfully delivered to respondent's fax machine. The investigator denied the request for an open-ended extension noting that the Bar had been requesting a response to the investigation since November 2005.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Waterstone matter. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator or participate or cooperate in the investigation of the Waterstone matter.

On or about April 26, 2006, an attorney for the State Bar of California, Office of the Chief Trial Counsel, sent a letter to respondent addressed to his membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal

Service did not return the attorney's letter as undeliverable or for any other reason. The letter advised respondent of the intent to file an NDC. There was no response.

On or about June 18, 2007, another attorney for the State Bar of California, Office of the Chief Trial Counsel, sent another letter to respondent addressed to his membership records address. The letter was properly mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the attorney's letter as undeliverable or for any other reason. The letter again advised respondent of the intent to file a NDC. There was no response.

2. Charges of Misconduct

a. Counts 1, 8, 10 and 20 - Rule of Professional Conduct³, Rule 3-110(A) (Competence)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

Respondent intentionally, recklessly or repeatedly did not perform legal services competently as follows:

(1) By not taking any further action in the Thrash action after April 24, 2002 and not appearing for trial on July 25, 2002 and the OSC hearing on August 26, 2002 (count 1);

(2) By not taking any further action after May 15, 2002 on the *Kane* action and allowing it to be dismissed by the court without receiving any settlement funds (count 8);

(3) By not taking any further action after January 27, 2003 in the *Rechnitz* action not appearing at the judgment debtor examination; and not collecting the remainder of the judgment in the *Rechnitz* action (count 10); and

³ Future references to rule are to this source.

(4) By not appearing at the demurrer hearing in the *Panama* action on August 14, 2003; not responding to the court's OSC; not appearing at the court-ordered OSC hearing thereby causing the *Panama* action to be dismissed; and not taking any steps to vacate the dismissal (count 20).

Accordingly, he wilfully violated of rule 3-110(A).

b. Counts 2, 4, 7, 13 and 19 - Section 6106 (Moral Turpitude-Misappropriation)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 as follows:

(1) By collecting settlement funds from the Dilbeck defendants in the *Thrash* action on behalf of Waterstone; not notifying Waterstone of the receipt of those funds; and, as of September 12, 2007, not paying those funds to Waterstone (count 2);

(2) By misappropriating at least \$4,230.47 of the settlement funds received on behalf of Waterstone in the *Thrash* action (count 4);

(3) By collecting settlement funds from Westway Development in the *Westway* action on behalf of Waterstone; and, as of September 12, 2007, not paying those funds to Waterstone (count 7);

(4) By receiving funds in partial satisfaction of the judgment in the *Rechnitz* action on behalf of Waterstone; not notifying Waterstone of the receipt of \$13,975 of those funds; and, as of September 12, 2007, misappropriating and not paying those funds to Waterstone (count 13); and

(5) By misappropriating at least \$14,492.21 from the funds received from the Rechnitz defendants in the *Rechnitz* action on behalf of Waterstone (count 19).

Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

c. Counts 3 and 14 through 18 - Rule 4-100(A) (Maintaining Client Funds in Trust Account)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) as follows:

(1) By not maintaining in the CTA at least \$4,230.47 of the settlement funds Waterstone received from the Dilbeck defendants in the *Thrash* action (count 3); and

(2) By not maintaining in the CTA each of the payments made to respondent on Waterstone's behalf as partial payment on the judgment in the *Rechnitz* action until payment was made to Waterstone (counts 14 through 18).

d. Counts 5, 9, 11, and 21 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, and complying with rule 3-700(D) and with other applicable laws and rules.

Respondent effectively withdrew from employment as follows:

(1) By not taking any action to collect any funds from the remaining defendants in the *Thrash* action; not appearing for trial and the OSC in the *Thrash* action; not informing Kinworthy of his intent to withdraw from employment; and not taking any other steps to avoid prejudice to his client (count 5);

(2) By not taking any action to prosecute the *Kane* action after May 15, 2002; not collecting any funds from its settlement; allowing the court to dismiss the case; not informing Kinworthy of his intent to withdraw from employment; and not taking any other steps to avoid prejudice to his client (count 9);

(3) By not appearing at the judgment debtor examination; not collecting the remainder of the judgment in the *Rechnitz* action; not taking any further action; and not informing Kinworthy of his intent to withdraw from employment (count 11); and

(4) By not appearing at the demurrer hearing in the *Panama* action on August 14, 2003; not responding to the court's OSC; not appearing at the court-ordered OSC hearing (thereby causing the *Panama* action to be dismissed); not taking any steps to vacate the dismissal; not informing Kinworthy of his intent to withdraw from employment; and not taking any other steps to avoid prejudice to his client (count 21).

By not informing the clients of his intent to withdraw from employment as set forth above, and otherwise failing to take reasonable steps to avoid reasonably foreseeable prejudice to them, he wilfully violated rule 3-700(A)(2).

e. Counts 6, 12 and 22 - Section 6068, subd. (m) (Communication)

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Respondent wilfully failed to keep his client reasonably informed of significant developments in a matter in which he had agreed to provide legal services as follows:

(1) By failing to inform Kinworthy of the following: that he received the settlement check from the Dilbeck defendants; that he did not intend to appear for trial in the *Thrash* action;

that the court had scheduled an OSC hearing that he did not intend to respond to; and that the *Thrash* action had been dismissed by the court (count 6);

(2) By not informing Kinworthy about six of the payments made by the Rechnitz defendants in partial satisfaction of the judgment and not informing Kinworthy of the judgment debtor's examination and that he did not intend to appear at the examination; and

(3) By not responding to any of Kinworthy's telephone messages, letters or e-mails requesting status reports on the legal matters for which he was retained by Waterstone (count 22),

Accordingly, respondent did not keep clients reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

f. Count 23 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

Section 6068, subdivision (i), requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against that attorney.

By not providing a written response to the State Bar's letters, respondent wilfully violated section 6068, subdivision (i).

B. Case No. 07-O-14854 (The Guerrero Matter)

1. Facts

Demesio Guerrero was sued by Springville Properties relating to a brush-clearing job he did on a federally-protected habitat.

At the time that Guerrero was first sued, he was in propria persona. He did not respond to the complaint. Default (but not judgment) was entered in or about July 2005.

Guerrero first hired attorney Russell Shields to move to set aside the default. Shields filed a motion in or about September 2005, but in October 2005, it was denied with prejudice.

On or about November 28, 2005, Guerrero employed respondent to represent him “in all aspects of the pending litigation”, referring to *Springville v. Demesio Guerrero*, BC 330379 in the Los Angeles Superior Court, “and for all such other matters as Client shall request of the Firm from time to time with regard to the pending litigation and/or any other matter.” There was a written retainer agreement.

On or about November 29, 2005, Guerrero paid respondent \$10,000.00 by check no. 001019 from his account at Wescom Credit Union. Respondent acknowledged its receipt. The check specifically designated the money as “Defense Atty Advance for Springville Prpty Lawsue” (sic). On or about the same date, November 29, 2005, the court continued a previously-scheduled OSC set for November 30, 2005 to December 28, 2005. On or about December 1, 2005, respondent sent a facsimile to Guerrero advising, in part, that he had appeared, and that the court had continued the OSC until December 28, 2005. Respondent was not yet attorney of record in the case as he had not yet filed a substitution of attorney with the court.

On or about December 15, 2005, the court continued the OSC to January 13, 2006. Counsel representing Springville Properties, Rodney Lewin, notified Guerrero’s former counsel, Russell Shields, by mail of the continued date.

On or about December 21, 2005, respondent filed a substitution of attorney making him attorney of record for Guerrero.

On or about January 17, 2006, Lewin’s office notified respondent by mail of the court’s continuance of the OSC until February 6, 2006. The notice was sent on that date by Lewin’s office to respondent’s office address as provided in his substitution of attorney, which was also his membership records address. The notice was placed in a sealed envelope, postage prepaid. It was not returned as undeliverable or for any other reason.

Lewin's office thereafter filed a request for judgment. On or about February 6, 2006, Chandler Owen Bartlett of Lewin's office appeared. Respondent did not. The court pointed out problems in the submitted request, as exceeding the demand of the complaint and lacking any statement of damages, and continued the OSC to March 20, 2006 to allow Lewin's office to resubmit corrected documents.

On or about February 14, 2006, Lewin's office served a Request for Court Judgment on respondent at the address he provided in his substitution of attorney. The letter was sent by first-class mail, postage prepaid. On or about the same date, February 14, 2006, Lewin served a copy of the proposed judgment on respondent at the same address by first-class mail, postage prepaid.

Respondent took no action on behalf of his client Guerrero to seek to set aside the previously-entered default or in any way to protect or pursue Guerrero's interests in the litigation for which he had been retained and for which he had been paid \$10,000.00.

On or about March 6, 2006, judgment was entered and the OSC set for March 20, 2006 was discharged.

On or about March 14, 2006, Lewin's office caused to be served the signed judgment against Guerrero in the sum of \$300,373.33 at respondent's office address.

Other than to file a substitution of attorney, respondent took no action on behalf of Guerrero.

On or about November 12, 2007, Guerrero wrote to respondent at his office address. The letter was sent by certified mail, return receipt requested. The letter was signed for by an "F.Coe." The letter requested a refund of unearned fees and referred to at least one prior request.

As of July 8, 2008, respondent has not made any refund to Guerrero.

On or about March 4, 2008, an investigator for the State Bar wrote a letter to respondent regarding the Guerrero matter. The letter was placed in a sealed envelope correctly addressed to

respondent at his State Bar membership records. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

On or about April 3, 2008, an investigator for the State Bar wrote a second letter to respondent regarding the Guerrero matter. This letter enclosed a copy of the letter of March 4, 2008. The letters were placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. The letters were properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letters were not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

2. Allegations of Misconduct

a. Count 1 - Rule 3-110(A) (Competence)

At the State Bar's request, this count is dismissed with prejudice.

b. Count 2 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not taking any action on Guerrero's behalf after substituting into the case and after accepting \$10,000 to handle the Springville Properties case, respondent failed, upon termination of his employment, to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

c. Count 3 - Rule 3-700(D)(2) (Unearned Fees)

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. Although Guerrero requested it, respondent did not return any portion of the advanced fee Guerrero paid him which was unearned, a wilful violation of rule 3-700(D)(2).

d. Count 4 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated March 4 and April 3, 2008, respondent did not participate in the investigation of the allegations of misconduct regarding the Guerrero case in wilful violation of 6068, subdivision (i).

C. Case No. 07-O-14868 (The Wheat Matter)

1. Facts

On or about January 2006, Lawrence Wheat employed respondent to represent him to recover money loaned by the late Robert Clayman to Wheat's daughter and to make a claim against Clayman's estate. Wheat paid respondent the sum of \$2,000 between in or about January 2006 and in or about October 2006. Concurrently, he represented Leonard Penner in a companion lawsuit against the estate. Respondent properly filed claims in both cases. (*Wheat v. Howard Clayman, Administrator*, Riverside Superior Court, case no. 056688 and *Penner v. Howard Clayman, Administrator*, Riverside Superior Court, case no. 056690.)

On or about September 12, 2006, defendants' demurrer to the first amended complaint was sustained. Respondent was present. He was ordered to prepare and file the order and he was given twenty (20) days' leave to amend. On or about September 18, 2006, the defendants' counsel, Michael Kahn, sent a letter to respondent by facsimile reminding him of the order to be prepared and filed and the time frame of twenty (20) days from the date of the September 12th hearing. Respondent failed to prepare the required order.

However, on or about October 2, 2006, respondent sent a second amended complaint in both the *Wheat* and *Penner* matters for filing. Respondent served it on Kahn representing the defendants. The *Penner* filing was rejected for filing by the court because it had the wrong case number.

On or about October 9, 2006, Kahn, rather than respondent, prepared and filed the order which respondent had been ordered to prepare at the September 12, 2006 hearing. Kahn forwarded this to the court on or about October 16, 2006. It was signed and filed on or about November 12, 2006.

Respondent sent the *Penner* complaint for filing again on or about November 15, 2006, advising that he had corrected the case number. There is no record that this second amended complaint was ever filed or rejected by the court. Thereafter, however, the court rejected the *Wheat* filing based upon a misunderstanding that Wheat was required to obtain court approval to file. Respondent sent the *Wheat* complaint for filing again on or about December 20, 2006. This was filed, although after the twenty (20) days ordered by the court on or about September 12, 2006.

On or about January 12, 2007, Kahn filed a motion to dismiss the entire action. Respondent filed his opposition, advising in part that he had a family emergency, the death of his mother, on or about October 14, that the second amended complaint was filed and that Kahn could have resolved the entire matter by simply filing a timely response.

On or about February 23, 2007, there was a hearing at which respondent was present by telephone. The court took the motion to dismiss the entire action off calendar and ordered Kahn to file a motion to strike the second amended complaint in the *Wheat* matter.

On or about February 27, 2007, Wheat wrote an email to respondent asking “how did we do in court in Indio?”

On or about the same date, respondent replied by email, “Larry, we won in court the other day but the other lawyer is now going to file another motion. Let’s do lunch one day and we can talk. Let me know your schedule. By the by, I think we should have friendly wagers on the PAC-10 and the NCAA????”

On or about March 19, 2007, Kahn renewed his motions to dismiss both actions: *Wheat*, because it had been filed after the leave to amend of 20 days; and *Penner*, because there was no indication it had ever been filed. Kahn advised further that he had requested by letter that respondent forward a conformed copy of the *Penner* second amended complaint, but it had not been provided to him. He also filed a motion to strike both complaints, although he could find no record that the *Penner* second amended complaint had actually been filed. The motions were set for May 3, 2007. The motions were properly served on respondent by Kahn at his office address.

On or about April 20, 2007, Wheat sent an email to respondent, directed to two e-mail addresses. He said, "I'm still trying to connect with you and would like to get an update on the case. Please call me. If I should call Michaels (sic) Kahn or the Indio Court please let me know. I have Michael's number but would need the contact for the court. Something should be happening." Respondent received the e-mail but provided no response.

On or about May 3, 2007, respondent did not appear at the hearing on the motions. The cases were dismissed. Wheat reviewed the website and saw that respondent failed to appear. On or about that date he wrote to respondent at the two email addresses. He concluded that "it is imperative that your (sic) reply to this email. I do not know what my options are, however I need to seek them out. This behavior of yours is not only un-professional it is also negligent."

Respondent took no action to seek reconsideration or to vacate the dismissals.

On or about August 7, 2007, Wheat e-mailed respondent again as follows, sent to both e-mail addresses. He confirmed that he had caught respondent at home by telephone and that respondent promised to call him back, but had not done so. He added, "as you have not replied to any of my e-mails or calls. I feel as though my only option now is a complaint to the California Bar. Your advice?"

Respondent then replied by e-mail: “Larry, please do not proceed. I will contact you shortly. I am still fairly sick and just trying to maintain myself. Please be patient for a short while.”

On or about August 21, 2007, Wheat wrote to respondent by e-mail: “I suppose we have different interpretations of ‘shortly’. It has been two weeks, and I am certain you would not tolerate this type of treatment. I intend to move forward with this process and the case. Two more weeks (Sept. 4th) will be time enough to hear from you.” He did not hear from the respondent.

On or about November 29, 2007, Wheat filed his complaint with the State Bar.

From and after August 2007, respondent failed to respond to Wheat’s efforts to contact him.

On or about February 19, 2008, an investigator for the State Bar of California wrote a letter to respondent regarding Wheat’s matter. The letter was placed in a sealed envelope addressed to respondent at his State Bar membership records. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

On or about March 17, 2008, an investigator for the State Bar again wrote a letter to respondent regarding Wheat’s matter. He enclosed a copy of his letter of February 19, 2008. The letter was placed in a sealed envelope addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

2. Allegations of Misconduct

a. Count 5 - Rule 3-110(A) (Competence)

By not opposing Kahn's March 19, 2007 motions and not seeking reconsideration or vacation of the May 3, 2007 dismissals, respondent intentionally, recklessly and repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count 6 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

At the State Bar's request, this charge is dismissed with prejudice.

c. Count 7 - Section 6068, subd. (m) (Communication)

By not responding to Wheat's contacts after August 2007, respondent did not respond promptly to Wheat's reasonable status inquiries, in wilful violation of section 6068, subdivision (m).

d. Count 8 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated February 19 and March 17, 2008, respondent did not participate in the investigation of the allegations of misconduct regarding the *Wheat* case in wilful violation of 6068, subdivision (i).

D. Case No. 07-O-13727 (The Gentino/Becker Matter)

1. Facts

Robert Gentino represented Sylvia Becker, a court reporter, against respondent in case to collect payment on a judgment in the sum of \$6,700.47 related to services provided by Becker to respondent.

On or about June 21, 2007 and again on August 21, 2007, respondent was sanctioned for failure to respond to discovery. The sanction on June 21, 2007 was for \$1,000. The sanction on August 21, 2007 was for \$1,040.

Respondent was properly served with the minute order of both sanctions. Gentino also served respondent with a copy of the June 21, 2007⁴ order on or about July 18, 2007.

Respondent appeared at the hearing on August 21. Gentino also sent to respondent a notice of ruling regarding the August 21, 2007 hearing directed to his membership records address. The services were not returned as undeliverable or for any other reason. Respondent received notice of the orders.

Respondent neither paid the sanctions nor responded to the discovery.

On or about August 24, 2007, Gentino contacted respondent by telephone. Respondent “hung up the phone on (Gentino) when (he) requested that (respondent) obey the two Court orders in this case.”

On or about November 1, 2007, Gentino sent a letter to respondent by facsimile. He advised respondent in part that he would be appearing on November 5, 2007 at 9:15, in Department 77 of the Superior Court in Los Angeles, for an OSC why respondent should not be held in contempt of court for violation of the two orders. He also attempted to contact respondent at his office telephone number, but it was disconnected.

Thereafter, and on or about November 5, 2007, the court entered an OSC why respondent should not be held in contempt of court for wilful refusal to obey the orders of June 21 and August 21, 2007.

However, Gentino was unable to personally serve respondent at his membership records address because it is a mailbox at the UPS store. Service was also repeatedly attempted at respondent’s residence address. The matter was continued to June 4, 2008 and then again to June 13, 2008.

⁴ In this instance, the NDC contained a typographical error which referenced this order as having been issued on July 21, 2007. All other references were to June 21, 2007.

On or about October 26, 2007, an investigator for the State Bar of California wrote a letter to respondent regarding the Gentino/Becker matter. The letter was placed in a sealed envelope addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

On or about December 4, 2007, an investigator for the State Bar again wrote a letter to respondent regarding the Gentino matter. He enclosed a copy of the letter of October 26, 2007. The letter was placed in a sealed envelope addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned as undeliverable or for any other reason. Respondent received the letter but provided no response.

2. Allegations of Misconduct

a. Count 9 - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear.

Respondent did not comply with the superior court's June 21 and August 21, 2007 orders. His conduct was a wilful violation of section 6103.

b. Count 10 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not responding to the State Bar investigator's letters dated October 26 and December 4, 2007, respondent did not participate in the investigation of the allegations of misconduct regarding the Gentino/Becker matter, in wilful violation of section 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁵ std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. As to the following charges, the court finds that respondent's misconduct evidences a pattern of misconduct: rules 4-100(A) (six counts); 3-110(A) (five counts); and 3-700(A)(2) (five counts); and section 6106 (five counts). (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients and the administration of justice. (Std. 1.2(b)(iv).) Courts had to hold additional proceedings in the Waterstone/Thrash, Panama and Gentino matters. The Waterstone/Thrash, Penner and Wheat cases were dismissed. Judgment was entered against Guerrero.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors except for his blemish-free record for nearly 26-1/2 years prior to the commencement of the misconduct herein, a significant mitigating

⁵ Future references to standard or std. are to this source.

factor.

C. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Prior discipline is not a requisite for disbarment. (Std. 1.7(c).)

Standards 2.2(a), 2.3, 2.4(a) and (b), 2.6(a) and (b) and 2.10 apply in this matter. The most severe sanction is found at standards 2.2(a) and 2.4(a). Standard 2.2(a) recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension. Standard 2.4(a) suggests disbarment for culpability of a pattern of wilfully failing to perform services demonstrating the attorney's abandonment of the causes for which he or she was retained.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State*

Bar (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable, in eight matters, of the following violations: rules 3-110(A) (five counts); 3-700(A)(2) (five counts); 3-700(D)(2) (one count); and 4-100(A) (six counts); as well as sections 6068, subdivisions (i) and (m) (four counts each); 6103 (one count); and 6106 (five counts).

The State Bar recommends disbarment. The court agrees. The amounts misappropriated are not insignificantly small and the most compelling mitigating circumstances do not clearly predominate. Further, respondent has been found culpable of a pattern of abandonment of clients and of trust account violations, including misappropriation. Under these circumstances, the standards suggest disbarment.

Cases involving a pattern of misconduct similar to respondent's, where the attorney has no prior record of discipline, generally result in the attorney's disbarment. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 [“panoply” of misconduct affecting more than 20 clients over a 10-year period; disbarment]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not imposed for such a pattern of misconduct, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar* (1989) 49 Cal.3d 753 [Although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself and his concurrent family

problems]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [Ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, attorney was experiencing severe financial and emotional problems during period of misconduct, and attorney thereafter substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [Disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].) Other than a lengthy period of discipline-free practice, which merits great weight in mitigation, respondent's matter is devoid of any mitigation which could justify a discipline recommendation short of disbarment.

The court also finds instructive *Kaplan v. State Bar* (1991) 52 Cal.3d 1067. In *Kaplan*, the Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his law firm during an eight-month period. Kaplan had no prior discipline in 12 years of practice. He presented substantial mitigation in the form of 16 character witnesses and psychiatric evidence regarding his emotional state and family pressures. The Supreme Court found his behavior to show a level of dishonesty warranting the highest level of public protection especially in light of inadequate evidence showing that he was rehabilitated from the conditions that led to the misappropriation. Like respondent herein, Kaplan engaged in substantial misconduct, including misappropriation of funds. Unlike respondent, Kaplan participated in the disciplinary proceedings and presented substantial mitigation which was, nonetheless, found inadequate to avoid disbarment.

The court also recommends that respondent be ordered to make restitution as set forth below for the amounts that he misappropriated or did not return as unearned fees.⁶ “Restitution is fundamental to the goal of rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in concrete terms. (*Id.* at p. 1093.)

Lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case; the amount misappropriated is not insignificantly small; respondent has been found to have engaged in a pattern of abandonment of clients and of trust account violations, including misappropriation. (Stds. 2.2(a); 2.4(a).) The serious and unexplained nature of the misconduct and the lack of participation in these proceedings suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent ROBERT LEE EHRlich be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

⁶ Under rule 291 of the Rules of Procedure, effective January 1, 2007, (1) respondent must reimburse the Client Security Fund (CSF) to the extent that the misconduct found in the proceeding results in the payment of funds pursuant to section 6140.5; and (2) unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Waterstone Environmental, Inc. (for the Thrash matter) in the amount of \$4,250 plus 10% interest per annum from March 21, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Waterstone Environmental, Inc., plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Waterstone Environmental, Inc. (for the Westway matter) in the amount of \$2,700 plus 10% interest per annum from May 30, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Waterstone Environmental, Inc., plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Waterstone Environmental, Inc. (for the Rechnitz matter) in the amount of \$14,975 plus 10% interest per annum from February 26, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Waterstone Environmental, Inc., plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
4. to Demesio Guerrero in the amount of \$10,000 plus 10% interest per annum from November 29, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Demesio Guerrero, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June _____, 2009

DONALD F. MILES
Judge of the State Bar Court