FILED SEPTEMBER 6, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **BRENT WILLIAM SCHINDLER, Member No. 186703,** A Member of the State Bar.	)	Case No.: **06-J-13922-RAP; 06-J-15114-RAP (Consolidated.)** **DECISION & ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. INTRODUCTION

This consolidated proceeding, which proceeded by default, arises out of two instances in which the Attorney Discipline Board of the State of Michigan recently imposed discipline on respondent **BRENT WILLIAM SCHINDLER** for professional misconduct he committed while practicing law in Michigan.[1] Based on those two Michigan disciplinary orders, the Office of the Chief Trial Counsel of the State Bar of California (hereafter California Bar) initiated two streamlined disciplinary proceedings against respondent under California Business and Professions Code section 6049.1[2] and Rules of Procedure of the State Bar of California, rule 620 et seq. Thereafter, this court consolidated those two streamlined proceedings for all purposes.

The California State Bar was represented by Deputy Trial Counsel Alan B. Gordon. Respondent did not appear in person or by counsel.

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[1] Respondent was admitted to the practice of law in the State of Michigan in 1986.

[2] Unless otherwise indicated, all references to California sections are to the provisions of the California Business and Professions Code.

The issues in this consolidated streamlined proceeding are limited to: (1) the degree of discipline to be imposed on respondent in California; (2) whether, as a matter of law, respondent's culpability in the Michigan proceedings would not warrant the imposition of discipline in California under the applicable California laws and rules; and (3) whether any of the Michigan proceedings lacked fundamental constitutional protection. (Cal. § 6049.1, subd. (b).) In that regard, unless respondent establishes that the conduct for which he was disciplined in Michigan would not warrant discipline in California or that the Michigan proceedings lacked fundamental constitutional protection, his two formal records of discipline in Michigan are conclusive evidence that he is culpable of misconduct in California. (Cal. § 6049.1, subds. (a) & (b).)

The California Bar contends that the appropriate level of discipline in California is disbarment, which was also the discipline imposed on respondent in Michigan. For the reasons discussed *post*, the court agrees.

II. SIGNIFICANT PROCEDURAL HISTORY

A. California Case Number 06-J-13922-RAP

On October 3, 2006, the California Bar filed the notice of disciplinary charges (hereafter NDC) in case number 06-J-13922-RAP and served a copy of it on respondent at his latest address shown on the official membership records of the State Bar of California (hereafter official address) by certified mail, return receipt requested in accordance with California section 6002.1, subdivision (c). That service was deemed complete when mailed even if respondent did not receive it. (Cal. § 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (Apr. 26, 2006) 547 U.S. ____, 126 S.Ct. 1708, 1713-1714, 1717.) Nonetheless, as a courtesy to respondent, on October 3, 2006, the California Bar mailed another copy of the NDC to respondent, by first class mail, at an alternative address that it had on respondent in its files, which address is on North Walnut, Bay City, Michigan.

Even though on October 16, 2006, the California Bar received, from the Postal Service, a return receipt (i.e., green card) for that copy of the NDC served on respondent at his official address that was signed by Nicole Croft, the court cannot find that respondent received that copy of the NDC because the United States Postal Service (hereafter Postal Service) had previously returned as undeliverable mail that the California Bar sent to respondent at his official address.[3] However, the courtesy copy of the NDC that the California mailed to respondent at the alternative address on North Walnut was not returned by the Postal Service as undeliverable (or otherwise). Accordingly, the court finds that respondent received that courtesy copy of the NDC (Cal. Evid. Code, § 641 [mailbox rule]) and that the California Bar provided respondent with adequate notice of this disciplinary proceeding (*Jones v. Flowers, supra*, 547 U.S. at p. ___, 126 S.Ct. at p. 1720).

Respondent's response to the NDC was due no later than October 28, 2006. (Rules Proc. of Cal. State Bar, rules 63(a), 103(a).) Respondent, however, failed to timely file a response.

On October 30, 2006, the California Bar filed a motion for entry of respondent's default and served a copy of it on respondent at his official address by certified mail, return receipt requested. Also, on October 30, 2006, the California Bar mailed a courtesy copy of its motion for entry of default to respondent at the alternative address on North Walnut.

Respondent failed to file a response to the NDC within 10 days after service of the California Bar's motion for entry of default. (Rules Proc. of Cal. State Bar, rule 200(c).) Accordingly, because all of the statutory and rule prerequisites were met and because respondent had adequate notice of the proceeding, this court filed an order on November 21, 2006, entering respondent's default and, as mandated in California section 6007, subdivision (e)(1), ordering that respondent be involuntarily enrolled as an inactive member of the State Bar of California.

[3] The returned mail was stamped: "Return to Sender, Address Unknown."

B. California Case Number 06-J-15114-RAP

On January 10, 2007, the California Bar filed the NDC in case number 06-J-15114-RAP. The day before, January 9, 2007, the California Bar served a copy of that NDC on respondent at his official address by certified mail, return receipt requested. (Cal. § 6002.1, subd. (c); *Bowles v. State Bar*, *supra*, 48 Cal.3d at pp. 107-108.) In addition, on January 9, 2007, the California Bar mailed a courtesy copy of that NDC to respondent at the alternative address on North Walnut.

Even though on January 16, 2007, the California Bar received a return receipt for the copy of the NDC in case number 06-J-15114-RAP that was served on him at his official address, the signature and printed name on it are illegible and are plainly not respondent's. Moreover, Postal Service had previously returned as undeliverable two letters that the California Bar recently sent to respondent at his official address.[4] Accordingly, the court cannot find that respondent received the copy of the NDC that was mailed to him at his official address. However, the courtesy copy of the NDC that the California mailed to respondent at the alternative address on North Walnut was not returned by the Postal Service as undeliverable (or otherwise). Accordingly, the court finds that respondent received that courtesy copy of the NDC (Cal. Evid. Code, § 641) and that the California Bar provided respondent with adequate notice of this disciplinary proceeding (*Jones v. Flowers*, *supra*, 547 U.S. at p. ___, 126 S.Ct. at p. 1720).

Respondent's response to the NDC was due no later than February 5, 2007. (Rules Proc. of Cal. State Bar, rules 63(a), 103(a).) Respondent, however, did not file a response. Thus, on April 16, 2007, the California Bar filed a motion for entry of respondent's default and properly served a copy of it on respondent at his official address.

[4] The returned mail was again stamped: "Return to Sender, Address Unknown."

The declaration of DTC Gordon that is attached to the California Bar's April 16, 2007, motion for entry of default establishes that the California Bar admirably undertook substantial efforts to provide respondent with actual notice of case number 06-J-15114-RAP (and to obtain his participation in that proceeding). (*Jones v. Flowers, supra*, 547 U.S. at p. ___, 126 S.Ct. at p. 1720.) Those admirable efforts included DTC Gordon: (1) locating respondent's former Michigan law partner and obtaining respondent's current home telephone number and address; (2) telephoning respondent at his current home telephone number on April 4, 2007, and leaving a message with respondent's son asking that respondent call Gordon about an important matter concerning his California law license; and (3) mailing, to respondent at his current home address on Renshar Drive, Auburn, Michigan, a courtesy copy of the California Bar's April 16, 2007, motion for entry of default.

Respondent never returned DTC Gordon's April 4, 2007, telephone call. Nor did respondent file a response to the NDC within 10 days after service of the California Bar's April 16, 2007, motion for entry of default. (Rules Proc. of Cal. State Bar, rule 200(c).) Accordingly, because all of the statutory and rule prerequisites were met and because respondent had adequate notice of the proceeding,[5] this court filed an order on May 17, 2007, entering respondent's default in case number 06-J-15114-RAP and, as mandated in California section 6007, subdivision (e)(1), ordering that respondent again be involuntarily enrolled as an inactive member of the State Bar of California. In that May 17, 2007, order, the court also consolidated case numbers 06-J-13922-RAP and 06-J-15114-RAP for all purposes.

[5] The conclusion that respondent has been given adequate notice of this proceeding is not only consistent with *Jones v. Flowers, supra*, 547 U.S. ____, 126 S.Ct. 1708, but is also consistent with the long standing principle that one cannot willfully avoid receiving notice and then claim that he or she had none. (*Simmons Creek Coal Co. v. Doran* (1892) 142 U.S. 417, 437 [" '[one] has no right to shut his eyes or his ears to the inlet of information, and then say he is . . . without notice' "].)

C. Briefs & Submission

On December 11, 2006, the California Bar filed a brief regarding culpability and discipline in case number 06-J-13922-RAP (hereafter the California Bar's December 2006 brief). Thereafter, on June 7, 2007, the California Bar filed a request for waiver of default hearing and brief on culpability and discipline in the consolidate proceeding (hereafter the California Bar's June 2007 brief).[6] And, on June 7, 2007, this court took the consolidated proceeding under submission without a hearing.

III. JURISDICTION

Respondent was admitted to the practice of law in California on December 19, 1996, and has been a member of the California State Bar since that time.

IV. FINDINGS OF FACT AND CONCLUSIONS

A. Streamlined State Bar Court Proceedings under California Section 6049.1

California section 6049.1, subdivision (a) provides, in pertinent part, that a certified copy of a sister state's final order imposing discipline on a California attorney for professional misconduct that the attorney committed in the state is conclusive evidence that the attorney is also culpable of professional misconduct in California. Thus, under California section 6049.1, this court must accept a Michigan's findings of professional misconduct against respondent as conclusive evidence of misconduct in this state even though the Michigan findings were made under the "preponderance of the evidence" evidentiary standard (Mich. Court Rules of 1985, rule 9.115(J)(3)&(4)), which is obviously lower than the "clear and convincing" evidentiary standard

[6] As the State Bar aptly notes in its June 2007 brief, the factual allegations in the NDC's in case numbers 06-J-13922-RAP and 06-J-15114-RAP are deemed admitted by the entry of respondent's default in each of those cases. (Cal. § 6088, Rules Proc. of Cal. State Bar, rule 200(d)(1)(A).) However, there are no factual allegations (as opposed to charges or conclusions) in either of the NDC's other than that respondent was disciplined in Michigan. Accordingly, the allegations deemed admitted establish only that respondent was disciplined in Michigan twice. And the certified copies of the Michigan disciplinary proceedings, which the court admits into

applied in California. (Cal. § 6049.1, subd. (a); cf. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 357 & fn. 8, 359; see also *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206 ["Only final judgments and orders have preclusive effect. [Citation.]"].) But nothing in California section 6049.1 purports to abrogate the requirement, under principles of collateral estoppel that the issues in the prior sister state disciplinary proceeding be substantially identical to the issues in a California proceeding. (Cf. *In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 357 & fn. 8; see also *In the Matter of Kittrell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 205 [listing five basic requirements to apply collateral estoppel].) Thus, even in a streamlined proceeding under California section 6049.1, the issues in both proceedings must be substantially identical.

Therefore, in this proceeding, the Michigan disciplinary orders are *conclusive evidence* that respondent is culpable of misconduct in California to the extent that they contain a determination that respondent is culpable of violating a Michigan Rule of Professional Conduct that is substantially identical to a California rule or statute. (*In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 361; cf. *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 217 [attorney disciplined because there was "a clear ground for imposing lawyer discipline in California"].) Concomitantly, the Michigan disciplinary orders do not establish any culpability in this proceeding to the extent that it contains a determination that respondent is culpable of violating a Michigan rule for which there is no substantially identical (i.e., equivalent) California rule or statute. To conclude otherwise would lead to questionable, if not absurd, results. For example, it would require that the California Supreme Court discipline respondent for engaging in conduct in Michigan even though it would not have disciplined him

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evidence *post*, independently establish that fact.

if he had engaged in that conduct in California.[7] Clearly, such a result would be inconsistent with the intent of statute. (Cf. Cal. § 6049.1, subd. (b)(2).)

What is more, while Michigan's findings of misconduct may conclusively establish respondent's culpability of misconduct in California under section 6049.1, the Michigan findings do not establish the appropriate degree of discipline in California. Instead, this court must independently determine and recommend the appropriate level of discipline under California law as in original disciplinary proceedings. (*In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 358; *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163-164.)

Unlike culpability, California section 6049.1 does not alter the California requirement that mitigating and aggravating circumstances be established by clear and convincing evidence. Therefore, except when an aggravating or mitigating circumstance is established on the face of the record in the Michigan disciplinary proceeding (e.g., aggravation for multiple acts of misconduct under standard 1.2(b)(ii) of the California Standards for Attorney Sanctions for Professional Misconduct[8]), this court may not properly rely on Michigan's findings of aggravation or mitigation because they were not made under the clear and convincing evidentiary standard. (*In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 358; cf. *In the Matter of Kittrell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 206.)

B. Case Number 06-J-13922-RAP

The certified copy of the record in *In the Matter of Brent W. Schindler, P 39709, a Member of the State Bar of Michigan*, before the Michigan Attorney Disciplinary Board, case

[7]This, in turn, would also pose significant problems with respect to how this court would independently determine the appropriate level of discipline to recommend under California law.

[8] The California standards are found in title IV of the Rule of Procedure of the State Bar of California. All further references to California standards are to this source.

numbers 05-119-GA and 05-131-FA (consolidated) (hereafter referred to as *Schindler* I), which is attached as exhibit 1 to the NDC in case number 06-J-13922-RAP, is admitted into evidence in this proceeding. (Cf. Cal. § 6049.1, subd. (d); Rules Proc. of Cal. State Bar, rule 624.) In addition, this court admits into evidence the copies of various rules of the Michigan Rules of Professional Conduct and of the Michigan Court Rules of 1985 that are attached as exhibit 2 to the NDC in case number 06-J-13922-RAP. (*Ibid*.)

Respondent defaulted in *Schindler* I, and the factual allegations in the Michigan formal complaints in that matter were deemed admitted against respondent (Mich. Court Rules of 1985, rule 9.115(D)(2); *Wood v. Detroit Auto. Inter-Insurance Exchange* (1982) 413 Mich. 573, 578). Nevertheless, he was permitted to and did, in fact, testify at the January 23, 2006, formal hearing in Michigan. In *Schindler* I, respondent was found culpable of violating 10 different rules of the Michigan Rules of Professional Conduct[9] and Michigan Court Rules of 1985 and was placed on nine months' actual suspension (in Michigan).

In the present proceeding, the California Bar contends that respondent's violations of those ten Michigan rules establish that respondent is culpable of violating seven different California statutory provisions and rules of Rules of Professional Conduct of the State Bar of California.[10] The court, however, finds that respondent's Michigan violations establish that respondent is culpable of violating only three California provisions and rules as set forth *post*. Specifically, the court finds that respondent's Michigan violations establish that respondent is culpable of violating California section 6068, subdivision (b); California section 6106; and California rule 1-300(B). Accordingly, the court dismisses with prejudice the "charged

[9] Unless otherwise indicated, all further references to Michigan Rules are to these Michigan Rules of Professional Conduct.

[10] Unless otherwise indicated, all further references to California rules are to these Rules of Professional Conduct of the State Bar of California.

violations" of California section 6068, subdivision (a); California sections 6125 and 6126; and California rule 1-120 in the NDC in case number 06-J-13922-RAP.

1. Facts

Thereafter, on February 15, 2005, respondent was suspended from the practice of law in Michigan because he failed to pay his Michigan Bar dues for the fiscal year 2004-2005.

On February 24, 2005, and while he was on actual suspension in Michigan, respondent appeared at a hearing in District Court of the State of Michigan (hereafter Michigan court) on behalf of a client. Respondent falsely told the Michigan court that he was not on suspension and that he had timely paid his Michigan Bar dues. Because respondent had previously appeared in court while on suspension for not paying his bar dues, the Michigan court continued the hearing and ordered respondent to provide it with copies of his dues receipt and of a letter from the Michigan Bar showing that he was licensed to practice law on February 24, 2005. Respondent was ordered to provide the copies no later than 5:00 p.m. the next day (i.e., February 25, 2005). Respondent, however, did not do so. Respondent did not pay his Michigan Bar dues until February 28, 2005.

On July 21, 2005, respondent sent a letter to the Michigan Attorney Grievance Commission in which respondent falsely stated that he called the Michigan court on the afternoon of February 25, 2005, to let it "know what had happened" (i.e., that he could provide it with copies of his dues receipt or of a letter of good standing as ordered because he had, in fact, not yet paid his bar dues).

2. Conclusions

Michigan rule 3.3(a) & California section 6068, subdivision (b)

Respondent's violation of Michigan rule 3.3(a) conclusively establishes that respondent is culpable of willfully violating California section 6068, subdivision (b), which mandates that attorneys "maintain the respect due the court's of justice and judicial officers." Specifically, respondent violated California section 6068, subdivision (b) by falsely telling the Michigan court that he had paid his Michigan Bar dues and by failing to obey the Michigan court's order to provide it with copies of his dues receipt and letter of good standing without first notifying the court of his inability to do so.

Michigan rule 8.4(b) & California section 6106

Respondent's violation of Michigan rule 8.4(b) conclusively establishes that respondent willfully violated California section 6106, which proscribes acts involving moral turpitude and dishonesty. Specifically, respondent violated California section 6106 because, on February 24, 2005, he deliberately lied to the Michigan court when he told it that he had paid his Michigan Bar dues. Furthermore, even if respondent did not deliberately lie, he made the false statement thorough recklessness and gross negligence. Creating a false impression through gross negligence involves moral turpitude in violation of section 6106. (*In the Matter of Moriarty* (Review Dept.1999) 4 Cal. State Bar Ct. Rptr. 9, 15.)

In addition, respondent violated California section 6106 because, on July 21, 2005, he deliberately lied to the Michigan Attorney Grievance Commission when he falsely stated that he called Judge Kelly's office on the afternoon of February 25, 2005.

Michigan rule 5.5(a) & California rule 1-300(B)

In addition, respondent's violation of Michigan rule 5.5(a) conclusively establishes that respondent is culpable of willfully violating California rule 1-300(B), which prohibits an attorney from practicing law in a jurisdiction where to do so would violate the jurisdiction's regulations of the practice of law. Specifically, respondent violated California rule 1-300(B)

when he appeared in the Michigan court on behalf of a client on February 24, 2005, while he was on actual suspension in Michigan.

C. Case Number 06-J-15114-RAP

The certified copies of the records in *In the Matter of Brent W. Schindler, P 39709, a Member of the State Bar of Michigan*, before the Michigan Attorney Disciplinary Board, case numbers 06-69-GA and 06-78-FA (consolidated) (hereafter referred to as *Schindler* II), which are attached as exhibits 1 and 2 to the NDC in case number 06-J-15114-RAP, are admitted into evidence in this proceeding. (Cf. Cal. § 6049.1, subd. (d); Rules Proc. of Cal. State Bar, rule 624.) In addition, this court admits into evidence the copies of the Michigan Rules of Professional Conduct and Chapter 9 of the Michigan Court Rules of 1985 that are attached as exhibit 3 to the NDC in case number 06-J-15114-RAP. (*Ibid*.)

Respondent defaulted in *Schindler* II. Accordingly, the factual allegations in the Michigan complaints in that matter were deemed admitted against respondent. Respondent failed to appear at the August 15, 2006, hearing in *Schindler* II. In *Schindler* II, respondent was found culpable of violating 10 different rules of the Michigan Rules of Professional Conduct[11] and the Michigan Court Rules of 1985 and was placed on nine months' actual suspension (in Michigan).

In the present proceeding, the California Bar contends that respondent's Michigan violations establish that respondent is culpable of violating a total of seven different California statutory provisions and rules of Rules of Professional Conduct of the State Bar of California.[12] The court, however, finds that respondent's Michigan violations establish only that respondent is culpable of violating California section 6068, subdivision (b); California section 6106; and

[11] Unless otherwise indicated, all further references to Michigan Rules are to these Michigan Rules of Professional Conduct.

[12] Unless otherwise indicated, all further references to California rules are to these Rules

California rule 1-300(B) as set forth *post*. Accordingly, the court dismisses with prejudice the alleged violations of California section 6068, subdivision (a) (obey all laws); California sections 6125 and 6126 (unauthorized practice of law in California); and California rule 1-120 (assisting, soliciting or inducing disciplinary violations).

1. Count 1

In September 2004, respondent entered into a partnership with Michigan Attorney Eldor Herrmann and created partnership letterhead with the name "Schindler & Herrmann, LLP" printed at the top. Schindler & Herrmann was never registered as a limited liability partnership or otherwise incorporated in Michigan.

Michigan rules 7.1(a) and 7.5(a) & California rule 1-400(D)(1)

Respondent's violations of Michigan rules 7.1(a) and 7.5(a) conclusively establish that respondent is culpable of willfully violating California rule 1-400(D)(1), which provides, inter alia, that an attorney must not use a firm name that contains "any untrue statement." Respondent's letterhead falsely stated that Schindler & Herrmann was a LLP.

Dismissed allegations

Contrary to the allegations in the NDC in case number 06-J-15114-RAP, respondent's Michigan violations do not establish that respondent willfully violated California section 6106 (moral turpitude) or California section 6068, subdivision (b) (maintain respect for courts). Accordingly, those allegations, under count 1, are dismissed with prejudice.

2. Count 2

Respondent failed to timely answer the Michigan's request for investigation with respect to his improper use of the LLP designation on his firm letterhead. Respondent submitted a late letter answer on July 21, 2005. In that letter, respondent stated that "After opening my law

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of Professional Conduct of the State Bar of California.

office, the of the entity was incorporated and a tax id number was obtained. I will submit these documents under separate cover by mail." But respondent failed to provide those documents. Thus, the Michigan Grievance Administrator subpoenaed them from respondent. Respondent failed to obey the subpoena. Moreover, respondent could not have obeyed the subpoena because he never incorporated Schindler & Herrmann or registered it as a limited liability partnership.

Michigan rule 8.1(a)(1) and California section 6106

Respondent's violation of Michigan rule 8.1(a)(1) conclusively establishes that respondent willfully violated California section 6106. Specifically, respondent engaged in acts involving moral turpitude and dishonesty on July 21, 2005, when he knowingly misrepresented, to the Michigan Grievance Administrator, that Schindler & Herrmann was incorporated.

Michigan rule 8.1(a)(2) and California section 6068, subdivision (i)

Respondent's violation of Michigan rule 8.1(a)(2) conclusively establishes that respondent willfully violated California section 6068, subdivision (i), which mandates that attorneys participate in disciplinary investigations. Specifically, respondent violated California section 6068, subdivision (i) when he failed to voluntarily produce the incorporation documents for Schindler & Herrmann and when he failed to produce those documents in accordance with the Michigan Grievance Administrator's subpoena.

Dismissed allegations

Respondent's Michigan violations either fail to establish that respondent willfully violated California section 6068, subdivision (b) (maintain respect due courts) and California rule 1-120 (assisting, soliciting or inducing disciplinary violations) or they fail to establish a violation of California section 6068, subdivision (b) or California rule 1-120 that is not duplicative of the found violations of California sections 6106 or 6068, subdivision (i).

Accordingly, the allegations that, under count 2, respondent violated California section 6068, subdivision (b) and California rule 1-120 are dismissed with prejudice.

3. Count 3

In September 2004, Alexander McKee retained respondent to file a collection lawsuit against a man and paid respondent a retainer of $500. Respondent, however, did not file the lawsuit. Accordingly, on March 24, 2005, McKee sent respondent a letter asking respondent to either file the collection lawsuit or refund the $500 retainer. Respondent never filed the lawsuit or refunded the $500 retainer.

Michigan rules 1.1(c) and 1.16(d) & California rule 3-700(A)(2)

Because respondent failed to either file the collection lawsuit or refund the $500 retainer to McKee in response to McKee's March 24, 2005, letter, respondent's violation of Michigan rules 1.1(c) and 1.16(d) establish that respondent effectively withdrew from representation and failed to return an unearned fees in willful violation of California rule 3-700(A)(2), which provides that an attorney must not withdraw from employment until he or she "has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules."

Dismissed allegations

Contrary to the allegations in the NDC in case number 06-J-15114-RAP, respondent's Michigan violations under count 3 either: (1) do not establish that respondent willfully violated California section 6106 (moral turpitude);[13] California section 6068, subdivision (m) (respond to

[13] The failure to refund an unearned fee does not ordinarily rise to the level of a willful

client status inquires); California rule 3-110(A) (competently perform legal services);[14] California rule 4-100(A) (deposit client funds into client trust account); California rule 3-700(D)(1) (return client file); or California rule 3-700(D)(2) (return unearned fee);[15] or (2) do not establish a California violation that is not duplicative of another found California violation. Accordingly, the allegations, under count 3, that respondent willfully violated those California sections and rules are dismissed with prejudice.

4. Count 4

On May 12, 2005, the Michigan Grievance administrator served, on respondent, a Request for Investigation with respect to the complaints filed against him by McKee. Respondent submitted his response to that request 49 days late on July 21, 2005.

Michigan rule 8.1(a)(2) and California section 6068, subdivision (i)

Respondent's violation of Michigan rule 8.1(a)(2) conclusively establishes that respondent willfully violated California section 6068, subdivision (i). Specifically, respondent violated California section 6068, subdivision (i) when he submitted his answer to the Michigan request 49 days late.

Dismissed allegations

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misappropriation of client funds or otherwise involve moral turpitude. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 692.) In California, advanced fees are not client funds that are required to be placed in a client trust account under California rule 4-100(A). (*Read v. State Bar* (1991) 34 Cal.3d 394, 414, 420.) Nonetheless, in this state, the failure to refund an unearned fee long after failing to perform any services is an aggravating circumstance because it approaches a practical appropriation of client funds. (*In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 465.)

[14] Moreover, it would be duplicative to find respondent culpable of violating California rules 3-110(A) and 3-700(A)(2). (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 879.)

[15] Respondent's violation of California rule 3-700(D)(2) (failure to refund unearned fee) is encompassed in the found violation of California rule 3-700(A)(2) (improper withdrawal). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280-281.)

Contrary to the allegations in the NDC in case number 06-J-15114-RAP, respondent's Michigan violations under count 4 do not establish that respondent willfully violated California section 6068, subdivision (c) (counsel only actions that are just) or California rule 1-120 (assisting, soliciting or inducing disciplinary violations). Accordingly, the allegations, under count 4, that respondent willfully violated that California section and rule are dismissed with prejudice.

5. Count 5

In February 2005, respondent represented Adele and Arnie Branch in foreclosure action that was filed against them. Respondent's secretary asked her neighbor Nora Buchner to loan money to through respondent for the Branches so they would not lose their home. Buchner agreed, and on February 26, 2005, she gave respondent $15,930 in cash. Of that sum, respondent was to have given $15,000 to the Branches as a loan from Buchner to save their home from foreclosure, and respondent was to have used the remaining $930 to pay his and Attorney Herrmann's (i.e., his law partner) Michigan Bar dues. Respondent gave the Branches only $2,500 and misappropriated the remaining $12,500, which he used to pay personal office expenses. Further, respondent told the Branches that he sent the remaining $12,500 to Fannie Mae to stop the foreclosure on their home, which he never did. Because respondent misappropriated the $12,500, the Branches lost their home in foreclosure. By the end of July 2005, respondent made restitutions payments totaling $12,500 to Buchner. Since that time, respondent returned the remaining $3,430 ($930 plus $2,500) to Buchner.

Michigan rules 1.15(d) and 8.4(b) & California rule 4-100(A) and section 6106

Respondent's violations of Michigan rules 1.15(d) and 8.4(b) conclusively establishes that respondent willfully violated California rule 4-100(A) and section 6106. Specifically, respondent violated California rule 4-100(A), which requires that all client funds be deposited into a client trust account, when he failed to deposit at least the $15,000 he received from

Buchner for the Branches into a client trust account and when he used $12,500 of that $15,000 for his personal office expenses. In addition, respondent engaged in acts of moral turpitude and dishonesty when he misappropriated the $12,500 from the Branches (his clients) and when he lied to the Branches by telling them that he sent the $12,500 to Fannie Mae.

Dismissed allegations

The allegations in the NDC case number 06-J-15114-RAP that respondent's Michigan violations under count 5 establish respondent's culpability for willfully violating California rules 4-100(B)(1), 4-100(B)(4), and 1-120 and California section 6068, subdivision (b) are dismissed with prejudice.

6. Count 6

In February 2005, Juanita White retained respondent to probate decedent Betty Bailey's will and paid respondent $75 for filing fees and $175 in advanced attorney's fees. After numerous attempts trying to call him, respondent eventually talked to White and told her that he needed to file an action to quiet title instead of probating Bailey's will. Then, in May 2005, respondent lied to White by telling her that he had filed such an action when he had not. Respondent has never refunded any portion of the $250 ($75 plus $175) to White.

Michigan rules 1.16(d) and 8.4(b) & California rule 3-700(A)(2) & section 6106

Respondent's violations of Michigan rules 1.16(d) and 8.4(b) conclusively establishes that respondent willfully violated California rule 3-700(A)(2) and California section 6106. Specifically, respondent violated California rule 3-700(A)(2) because he effectively withdrew from employment without taking steps to avoid prejudice to White and without refunding the $175 unearned fee to her as required under California rule 3-700(D)(2). Respondent effectively withdrew from employment when he failed to perform any legal services for White and failed to properly communicate with White. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar

Ct. Rptr. 631, 641; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680.)

Respondent violated section 6106 because he lied to White and because he failed to return the $75 that White gave him for expenses, which are clearly client funds under California rule 4-100(A).

Dismissed allegations

The allegations in the NDC case number 06-J-15114-RAP that respondent's Michigan violations under count 6 establish respondent's culpability for willfully violating California rules 3-110(A), 3-700(D)(1), and 3-700(D)(2) and California section 6068, subdivisions (b), (c), and (m) are dismissed with prejudice because they are all duplicative of the found California rule 3-700(A)(2) violation. (E.g., *In the Matter of Doran, supra,* 3 Cal. State Bar Ct. Rptr. at p. 879.)

7. Count 7

In May 2004, Curtis Cook retained respondent to represent him in a probate matter. Respondent was to bill and be paid by the UAW Prepaid Legal Services Plan. Respondent's agreement with the UAW Plan expressly prohibited respondent from asking Cook to pay any portion of his legal fees and from asking Cook to pay any fees in addition to that the plan had agreed to pay. Nevertheless, respondent repeatedly asked Cook to advance money to him (i.e., loan respondent money), which respondent would repay when he received his fee from the UAW Plan.

Between November 2004 and June 2005, Cook advanced (i.e., loaned) a total of $10,000 to respondent. Respondent never billed the UAW Plan for any work he did on Cook's matter. Moreover, respondent falsely stated in his July 21, 2005, letter answer to Michigan Grievance Commission that "The Curtis Cook matter was undertaken with a commitment from UAW that they would cover my legal costs. While Mr. Bauchan has received funds from the UAW, I have

not received any funds. The money received from Mr. Cook had been earned at the time it was received."[16]

Respondent never repaid the $10,000 to Cook. And, on January 19, 2006, Cook obtained a default judgment against respondent in the amount of $10,288.06. Respondent, however, has never paid any portion of that judgment.

Michigan rule 1.8(a) & California rule 3-300

Respondent's violations of Michigan rule 1.8(a) conclusively establishes that respondent willfully violated California rule 3-300, which prohibits attorneys from acquiring interests adverse to their clients. Specifically, respondent violated California rule 3-300 because he entered into a an unfair business transaction with his client Curtis Cook (i.e. obtained interest free personal loans from Cook) without even disclosing the terms to Cook in writing (in a manner that could reasonably have been understood by Cook), without advising Cook in writing of his right to seek advice from an independent lawyer and then giving Cook a reasonable opportunity to seek that advice; and without obtaining Cooks written consent to the loans.

Dismissed allegations

The allegations in the NDC case number 06-J-15114-RAP that respondent's Michigan violations under count 7 establish respondent's culpability for willfully violating California rule 4-200(A) and California section 6068, subdivision (b) are dismissed with prejudice. The alleged violation of California rule 4-200(A) is inconsistent with the found violation of California rule 3-300. And no Michigan violation establishes a violation of California section 6068, subdivision (b).

[16] The court cannot find respondent culpable of violating California section 6106 based on these misrepresentations to the Michigan Commission because they were not charged in the Michigan proceeding. Nor can the court rely on them for purposes of aggravation because this is a default proceeding. (*In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602, 606.)

8. Count 8

On November 2, 2005, Patti Christmas retained respondent to represent her in a child support matter then pending in a Michigan court. On that same day, Christmas paid respondent $500 in advanced attorney's fees.

Respondent filed an appearance in that matter for Christmas, but thereafter failed to file any motions in the matter even though Christmas was facing jail time because of a prior motion and order to show cause regarding contempt. Respondent stopped communicating with Christmas after December 9, 2005. Thus, on December 21, 2005, Christmas retained new counsel.

Michigan rules 1.1(c) and 1.16(d) & California rule 3-700(A)(2)

Because respondent failed to perform any legal service of value and because respondent ceased communicating with Christmas after December 9, 2005, respondent's violation of Michigan rules 1.1(c) and 1.16(d) establish that respondent effectively withdrew from representation and failed to return an unearned fee in willful violation of California rule 3-700(A)(2).

Dismissed allegations

Contrary to the allegations in the NDC in case number 06-J-15114-RAP, respondent's Michigan violations under count 8 either: (1) do not establish that respondent willfully violated California section 6106;[17] California section 6068, subdivision (m); California rule 3-110(A);[18] California rule 4-100(A); California rule 3-700(D)(1); or California rule 3-700(D)(2);[19] or (2) do not establish a California violation that is not duplicative of another found California violation.

[17] See discussion in footnote 12 *ante*.
[18] See discussion in footnote 13 *ante*.
[19] See discussion in footnote 14 *ante*.

Accordingly, the allegations, under count 3, that respondent willfully violated those California sections and rules are dismissed with prejudice.

9. Count 9

On November 11, 2005, the Michigan Grievance Administrator served, on respondent, a Request for Investigation with respect to various complaints that a Julie Church had made against him. Then on January 18, 2006, the Michigan Grievance administrator served two additional Requests for Investigation on respondent. One dealt with the complaints that Curtis Cook made against respondent (see count 7 *ante*), and the other one dealt with the complaints that Patti Christmas made against respondent (see count 8 *ante*). Respondent was required to submit a response to each of those three requests within 21 days after service. Respondent, however, never submitted a response to any of the requests.

Michigan rule 8.1(a)(2) and California section 6068, subdivision (i)

Respondent's violations of rule 9.113 of the Michigan Court Rules conclusively establishes that respondent willfully violated California section 6068, subdivision (i). Specifically, respondent violated California section 6068, subdivision (i) he failed to submit a response to each of the three foregoing Michigan requests.

Dismissed allegations

Contrary to the allegations in the NDC in case number 06-J-15114-RAP, respondent's Michigan violations under count 9 fail to establish that respondent willfully violated California section 6068, subdivision (c) (counsel and maintain only those actions that are legal or just). Accordingly, the allegations that, under count 9, respondent violated California section 6068, subdivision (c) is dismissed with prejudice.

V. AGGRAVATING AND MITIGATING CIRCUMSTANCES

A. Prior Record of Discipline Aggravation

The record establishes, by clear and convincing evidence, that the Michigan Attorney Grievance Commission has twice admonished respondent: once on August 30, 2004, and again on October 31, 2005. However, admonitions are not discipline in California. (Cal. std. 1.2(a).) Accordingly, the court declines to find that respondent's two Michigan admonitions are aggravating circumstances as prior records of discipline under California standard 1.2(b)(i).

B. Multiple Acts Aggravation

Respondent's misconduct in this consolidated proceeding clearly evidences multiple acts of misconduct. (Cal. std. 1.2(b)(ii).)

C. Indifference Aggravation

As noted above, respondent's failure to return the $500 unearned fee to Alexander McKee (count 3); the $175 unearned fee to Juanita White (count 6); or the $500 unearned fee to Patti Christmas (count 8) are aggravating circumstances. (See footnote 12 *ante*.) Furthermore, respondent's failure to pay any portion of the $10,288.06 judgment to Curtis Cook (count 7) is also an aggravating circumstance. (Cal. std. 1.2(b)(v).)

D. Failure to Cooperate Aggravation

Respondent's failures to file a response to the NDC in both case numbers 06-J-13922-RAP and 06-J-15114-RAP, which allowed his defaults to be entered in each of those two proceedings before they were consolidated, are aggravating circumstances. (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, his failures to file responses establish that he fails to appreciate the seriousness of the charges against him. (*Ibid*.) And, second, they establish that he does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508.)

E. Harm Aggravation

Respondent's misconduct clearly harmed Alexander McKee ($500 in unearned fees); Juanita White ($175 in unearned fees and $75 in misappropriated advanced costs); Curtis Cook ($10,000 unearned fees), and Patti Christmas ($500 unearned fees). (Cal. std. 1.2(b)(iv).) In addition, even though respondent's misappropriation of the $12,500 in count 5 was only temporary, it caused the Branches to lose their home in foreclosure.

F. Mitigation

No mitigating circumstances have been established by clear and convincing evidence.

VI. DISCIPLINE DISCUSSION

California Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (See also *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the California standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

California standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In this case, the most severe sanction for respondent's misconduct is found in California standard 2.2(a), which applies to respondent's misappropriations totaling $12,575 ($75 in advanced costs from White plus the $12,500 from the Branches) and involved moral turpitude in violation of section 6106. Standard 2.2(a) provides: "Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is

insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

Respondent's misconduct cannot be viewed as aberrational under any standard. In addition, respondent's misconduct includes both misappropriation of client funds and multiple other instances of misconduct involving moral turpitude and dishonesty. These acts alone establish "a significant threat of misconduct in the future." (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

Respondent deliberately lied to a Michigan court in February 2005 when he told Judge Kelly that he had paid his Michigan Bar dues. Then in July 2005, respondent lied to the Michigan Attorney Grievance Commission by falsely stating that he had called Judge Kelly's office on the afternoon of February 25, 2005. In July 2005, respondent also knowingly misrepresented, to the Michigan Attorney Grievance Commission, that his law partnership (i.e., Schindler & Hermann) was incorporated. The California Supreme Court has repeatedly held that fraudulent and contrived misrepresentations in attorney disciplinary proceedings might well constitute a greater offense than misappropriation, which itself ordinarily warrants disbarment. (*Middleton v. State Bar* (1990) 51 Cal.3d 548, 560.)

What is more, in early 2005, respondent also lied to the Branches (his clients) and engaged in deceit when he told them that he had sent $12,500 to Fannie Mae to stop the foreclosure on their home (as noted, respondent instead used the $12,500 to pay his personal office expenses). In May 2005, respondent lied to White (his client) when he told her that he had filed an action to quite title.

There are no mitigating circumstances. There is nothing in the record to suggest, much less establish, a compelling reason for this court to depart from recommending respondent's disbarment as provided for in California standard 2.2(a), particularly in light of the multiple

aggravating circumstances present. (*In re* Silverton (2005) 49 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

When the findings of misconduct and aggravation in the present consolidated proceeding are viewed in aggregate, they clearly support disbarment. (Cal. std. 2.2(a); see also Cal. std. 2.3) This court concludes that only disbarment will adequately further the goals of attorney discipline in California. (Cf. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 164.)

VII. DISCIPLINE RECOMMENDATION

The court recommends that respondent **BRENT WILLIAM SCHINDLER** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state and that he be ordered to make restitution to Alexander McKee in the amount of $500 plus 10 percent interest per annum from March 24, 2005, until paid; to Juanita White in the amount of $250 plus 10 percent interest per annum from May 31, 2005, until paid; to Curtis Cook in the amount of $10,288.06 plus 10 percent interest per annum from January 19, 2006, until paid; and to Patti Christmas in the amount of $500 plus 10 percent interest per annum from December 31, 2005, until paid; or to the Client Security Fund to the extent of any payment from the fund to Alexander McKee, Juanita White, Curtis Cook, or Patti Christmas plus interest and costs, in accordance with California Business and Professions Code section 6140.5. In addition, the court recommends that any restitution to the Client Security Fund be enforceable as provided in California Business and Professions Code section 6140.5, subdivision (c) and (d).

VIII. CALIFORNIA RULE 9.20 & COSTS

The court further recommends that SCHINDLER be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule

within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[20]

The court further recommends that costs be awarded to the State Bar of California in accordance with California Business and Professions Code section 6086.10 and are enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER OF INACTIVE ENROLLMENT

In accordance with California Business and Professions Code section 6007, subdivision (c)(4), it is ordered that BRENT WILLIAM SCHINDLER be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar of Cal., rule 220(c)).[21]

Dated: September 5, 2007.

RICHARD A. PLATEL
Judge of the State Bar Court

[20] Respondent is required to file a California rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with California rule 9.20 is also, inter alia, a ground for denying his or her petition for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

[21] California section 6007, subdivision (c)(4) mandates that Schindler be involuntary enrolled inactive regardless of his membership status at this time. Only active members of the State Bar of California may lawfully practice law in California. (Cal. Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (Cal. Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive may not lawfully represent others before any state agency or in any administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)