

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-10336 (06-O-12859;
)	06-O-14340;06-O-14571;
RONALD NORTON GOTTSCHALK)	07-O-14732)
)	
Member No. 50625)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on April 2, 2010. Respondent **Ronald Norton Gottschalk** is charged with multiple acts of misconduct in four client matters. The charged misconduct includes (1) filing meritless/harassing claims; (2) presenting an unwarranted claim or defense; (3) failure to maintain respect for the court; (4) numerous acts of moral turpitude; (5) seeking to mislead a judge; (6) failure to maintain client funds in a trust account; (7) failure to render account of client funds; (8) failure to release client files; (9) failure to notify of receipt of client funds; (10) making misrepresentations to State Bar; and (11) charging an unconscionable fee.

At the time of submission, the State Bar of California (State Bar) was represented by Deputy Trial Counsel Paul T. O'Brien. Respondent represented himself, but failed to appear for trial.

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on November 20, 2008. On December 8, 2008, respondent filed a response to NDC.

By order filed on April 23, 2009, on the State Bar's motion, this case was abated pending resolution of another matter.

After the other matter was resolved, at a status conference held on January 26, 2010, the court reinstated this case to active status and scheduled a trial for February 23 through 26, 2010. Respondent was present by telephone during this status conference. He also was properly served at his State Bar membership records address with an order, filed January 26, 2010, memorializing those dates, among other things.

On February 23, 2010, respondent failed to appear for trial. Accordingly, on February 23, 2010, the court issued an order for entry of default and involuntary inactive enrollment.¹ A copy of said order was properly served on respondent at his State Bar membership records address. Following the filing of the State Bar's declarations of witnesses and disciplinary brief this matter was submitted for decision.

On April 29, 2010, the court denied respondent's motions seeking relief from default, among other things. The motion to reconsider the April 29 order was also denied.

II. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

¹ Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar of California at all times since that date.

B. Case No. 06-O-10336 (Mohr/Chaney)

General Background as to Case Nos. 06-O-10336 & 07-O-14732

In the mid-1990s, International Medical Research (IMR) produced an herbal supplement, known as PC-SPEC, intended to treat prostate cancer. IMR distributed the product through a Brea, California-based company called Botanic Lab, whose principals were Sophie Chen, John Chen, and Xuhui Wang. The supplement purportedly helped to prevent the spread of prostate cancer by countering the production of testosterone.

In 2002, Food and Drug Administration (FDA) investigators determined that PC-SPEC may cause or contribute to excessive bleeding, tachycardia, and hypertension in patients who exceeded the recommended dosage. A University of California researcher, who had been testing PC-SPEC in patients, ordered separate tests that confirmed DES adulteration. He halted a human study of PC-SPEC as a result. Soon afterward, the state announced that it also had found another drug, Warfarin, in certain lots of the herbal supplement. Warfarin is a powerful blood thinner that also interacts with many other drugs. The California Department of Health ultimately forced a recall of PC-SPEC and another product called SPEC. Ultimately, the state found adulteration with some pharmaceutical agent in every Botanic Lab product that it tested.

Sophie Chen, John Chen, and Xuhui Wang, and Botanic Lab were prosecuted in Orange County, California, accused of selling dangerous products to the public. The three individual defendants pled “no contest” to misdemeanor charges, and the company, by then a defunct shell, pled “no contest” to a felony. The defendants were barred from engaging in the dietary supplement business in California and ordered to pay roughly \$500,000 in penalties.

From June 13, 2005, to September 19, 2007, respondent maintained a client trust account at Cal National Bank (Cal National CTA).

From June 9, 2007, respondent has maintained a client trust account at Bank of America (Bank of America CTA).

At all relevant times, respondent maintained two personal accounts at Bank of America.

In February 2002, respondent, attorney Thomas V. Girardi and attorney John E. Tiedt filed a class action suit on behalf of the plaintiffs. (*Paul Meco, et al. v. International Medical Research dba Botaniclab Santa Monica Homeopathic Pharmacy, Novaspes Research Inc. and Novaspes, Inc. et al.*, Los Angeles Superior Court case no. BC267700 (lead matter).)

Respondent, Girardi and Tiedt also filed several personal injury matters in the Los Angeles Superior Court, including *Andy Campbell v. International Medical Research, Inc., et al.*, case no. BC295314 (the Campbell matter), and *Taras Wybaczynsky v. International Medical Research, Inc., et al.*, case no. BC290048 (the Wybaczynsky matter). [For ease of reference, the *Meco*, *Campbell*, *Wybaczynsky* and other matters, consolidated, will be referred to, collectively, as the IMR Plaintiffs matters.]

Respondent, Girardi and Tiedt brought the IMR Plaintiffs matters against more than 50 defendants. The matters were deemed complex under then-rule 1800, California Rules of Court, and assigned to Judge Anthony Mohr in the Los Angeles Superior Court.

In May 2002, Girardi and Tiedt had differences of opinion with respondent regarding litigation strategies, and thereafter withdrew as co-counsel. Girardi, however, continued to represent some of the plaintiffs who chose not to continue to employ respondent.

Thereafter, respondent filed a motion to be appointed as the lead counsel in the class action matter. Judge Mohr denied it.

On February 13, 2005, after Judge Mohr denied respondent's motion to be appointed lead counsel, respondent added Judge Mohr as a defendant in the *Campbell* and *Wybaczynsky* matters in order to delay the proceedings and to require that Judge Mohr recuse himself.

On February 14, 2005, respondent filed a challenge for cause against Judge Mohr in the *Campbell* and *Wybaczynsky* matters, seeking Judge Mohr's disqualification, after improperly naming Judge Mohr as a defendant in the matters. Respondent filed a declaration purportedly signed by his then client, Taras Wybaczynsky, in support of the challenge (the Wybaczynsky declaration). In the Wybaczynsky declaration, respondent alleged in bad faith, among other things, that Judge Mohr's relationships with Judge Victoria Chaney, his step-father, Stanley Dashew, and The Dashew Center, a private, non-profit foundation, provided the basis for including Judge Mohr as a defendant in the *Campbell* and *Wybaczynsky* matters.

In the confines of Wybaczynsky's declaration, respondent further accused Judge Mohr of improperly soliciting and/or receiving extrajudicial information about disputed facts in the underlying proceeding, including by means of improper communications with Judge Chaney, and others, before and while assigned to the *Campbell* and *Wybaczynsky* matters. Respondent further alleged in the Wybaczynsky declaration that Judge Mohr had a financial interest in the outcome of the *Campbell* and *Wybaczynsky* matters, and that Judge Chaney had served as counsel to one of the defendants in the underlying proceeding while sitting as a judge of the superior court. When he made these allegations, respondent knew that there was no reasonable cause to believe that Judge Mohr or the Dashew Center were liable in any way for the damages alleged in the *Campbell* and *Wybaczynsky* matters. When he filed the Wybaczynsky declaration, moreover, respondent knew, or would have known upon undertaking any reasonable investigation that the allegations set forth above were untrue.

On February 22, 2005, respondent filed another challenge for cause against Judge Mohr, this time with a "Corrected Verified Statement of Taras Wybaczynsky," as well as respondent's own declaration in support of the challenge. In these documents, respondent repeated the false allegations against Judge Mohr, Judge Chaney and others, that were contained in the challenge for cause and the Wybaczynsky declaration filed on February 14, 2005. In the "Corrected Verified Statement of Taras Wybaczynsky," as well as in his own declaration, respondent made further unfounded allegations regarding Judge Mohr and Judge Chaney, including, *inter alia*, that Judge Mohr knew of numerous conflicts of interest that he had in connection with the *Campbell* and *Wybaczynsky* matters, that Judge Mohr had attempted to have Judge Chaney act as a settlement judge in the case, despite her husband's inclusion as a defendant in the lawsuit. When he filed the amended challenge for cause, respondent knew these allegations were false, and made them in order to deceive the court, to frustrate justice, and delay the proceedings.

On February 23, 2005, Judge Mohr issued a recusal order, disqualifying himself from hearing the *Campbell* and *Wybaczynsky* matters, and staying the entire proceedings until respondent's challenge could be heard. Along with the recusal order, Judge Mohr filed his own declaration, as well as a declaration of Judge Chaney, outlining a number of respondent's misrepresentations and improper actions in the challenge for cause.

Consistent with the policy of the Los Angeles Superior Court, the entire bench was recused from hearing the IMR Plaintiff matters, including the individual personal injury matters, as Judge Mohr was a named defendant. In April 2005, the IMR Plaintiffs matters were reassigned by Chief Justice Ron George, acting on behalf of the Judicial Council, to the San Diego County Superior Court.

On October 31, 2005 and November 9, 2005, in the San Diego Superior Court, respondent filed a request for dismissal in the *Campbell* and *Wybaczynsky* matters, respectively, requesting the dismissal of Judge Mohr as a defendant in the matters.

In the San Diego Superior Court, the *Campbell* and *Wybaczynsky* matters were reassigned to Judge Charles R. Hayes, and, later, to several other San Diego Superior Court Judges.

On January 26, 2006, a case management conference was held in the San Diego Superior Court before Judge Hayes. Respondent immediately made allegations against the judges in the San Diego Superior Court similar to those he previously made against Judge Mohr and other Los Angeles Superior Court judges. In essence, respondent informed Judge Hayes that respondent would bring a motion before the Judicial Council to appoint a special prosecutor to determine if Judge Hayes and all other San Diego Superior Court judges should be disqualified from hearing the IMR Plaintiffs matters.

Count One: Filing Meritless/Harassing Claims (Rules of Prof. Conduct, Rule 3-200)²

Rule 3-200(A) prohibits an attorney from seeking, accepting or continuing employment if the attorney knows or should know that the objective of such employment is to bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person.

By naming Judge Mohr as a defendant in a lawsuit, based upon allegations he knew to be false; and by filing a challenge for cause, with supporting declarations that contained unsupported statements and accusations against Judges Mohr and Chaney, and others,

² Unless otherwise provided, reference to rule are to the Rules of Professional Conduct.

respondent brought an action and asserted a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring him.

Count Two: Presenting an Unwarranted Claim or Defense (Rule 3-200(B))

Rule 3-200(B) prohibits an attorney from seeking, accepting or continuing employment if the attorney knows or should know that the objective of such employment is to present a claim, or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification or reversal of such existing law.

By filing a challenge to disqualify Judge Mohr for cause as a judicial officer based on claims he knew to be false or unsupported; and by naming Judge Mohr as a defendant in the Campbell and Wybaczynsky matters, respondent knew or should have known that the objective of such representations was to present a claim or defense in litigation that was not warranted under existing law

However, as the same facts support the violation of rule 3-200(A) and (B), the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of rule 3-200(B). (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155.)

Count Three: Failure to Maintain Respect for the Court (Bus. & Prof. Code, §6068(b)³)

Section 6068(b) requires an attorney to maintain the respect due to the courts of justice and to judicial officers.

By threatening to have Judge Hayes disqualified in the Campbell and Wybaczynsky matters in the San Diego Superior Court based on groundless accusations of misconduct and

³ Future references to section are to the Business and Professions Code unless otherwise stated.

unsubstantiated conflicts of interest; by seeking the recusal of all of the Los Angeles Superior Court judges; and by threatening to seek the recusal of all the San Diego Superior Court judges, respondent failed to maintain respect due to the courts of justice and judicial officers

Count Four: Seeking to Mislead a Judge (Section 6068(d))

Section 6068(d) requires an attorney from employing, for the purpose of maintaining the causes confided to him, those means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

By filing the challenges for cause to disqualify Judge Mohr for cause as a judicial officer based on claims he knew to be false or unsupported; by naming Judge Mohr as a defendant in the Campbell and Wybaczynsky matters; by falsely alleging in pleadings that Judge Chaney represented a defendant in the Campbell and Wybaczynsky matters and that she did so while sitting as a superior court judge and that Judge Mohr and/or his family had a financial interest in the action; and by falsely alleging that Judge Mohr engaged in ex parte communications with attorneys Arias and Markham, and others, respondent sought to mislead a judge or judicial officer by an artifice or false statement of fact or law.

However, as the same facts support the violation of rule 3-200(A) and this charge, the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of section 6068(d).

Count Five: Moral Turpitude (Section 6106)

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 by filing the challenges for cause to disqualify Judge Mohr for cause as a judicial officer, based on claims he

knew to be false or unsupported; by naming Judge Mohr as a defendant in the Campbell and Wybaczynsky matters; by falsely alleging in pleadings that Judge Chaney represented a defendant in the Campbell and Wybaczynsky matters and that she did so while sitting as a superior court judge and that Judge Mohr and/or his family had a financial interest in the action; and by falsely alleging that Judge Mohr engaged in ex parte communications with attorneys Arias and Markham, and others. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

However, as the same facts support the violation of rule 3-200(A) and this charge, the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of section 6106.

C. Case No. 07-O-14732 (The IMR Plaintiffs Matter)

In mid-2006, respondent advised his clients in the IMR Plaintiffs matters that in order to effectively prosecute their cases and prepare for trial, they would have to advance him funds to be used for costs. Respondent threatened that he would withdraw from representation within months of the dates by which their cases would have to be tried (or face likely dismissal) and that he would "drop" them if they did not agree to advance costs. If they agreed to advance such funds, respondent represented that he would use his entire 40% contingency fee from any partial settlements (the first \$1,000,000) towards costs, as well.

At the time, respondent had associated with New York attorney Bradley Corsello, to prospectively co-counsel the IMR Plaintiffs matters. The clients relied in part on Corsello's prospective representation when they agreed to advance their 40% shares towards costs of future litigation. Respondent reduced the understanding to a writing in which it was agreed that the clients would advance 40% of the first \$1,000,000 collected in partial settlements from settling defendants to respondent as costs (Corsello Agreement).

By February 2007, Corsello, too, had advanced \$70,000 to respondent for costs of the Meco litigation. Also by February 2007, Corsello had withdrawn from any active role in the representation of the IMR Plaintiffs matters.

In May 2007, certain of the defendants in the IMR Plaintiffs matters, Bodywise International, Inc., and The Apothecary, Inc., settled their portion of the case with nine of respondent's clients: Paul Meco, Victor Comerchero, Bill Comerchero, Taras Wybaczynsky, Pam Schoonmaker, LaFaye Campbell, Bill Filowitz, Frank Mara, and Ken Corsetti. Bodywise agreed to pay \$50,000 and Apothecary agreed to pay \$350,000 to the nine plaintiffs.

In May 2007, respondent received \$400,000 from defendants Apothecary and Bodywise. Despite the fact that respondent did not have employment/fee agreements with each of the individual clients, each had agreed that respondent was entitled to a 40% contingency fee from the Meco case settlements.

Shortly after receipt of the settlement funds, notwithstanding Corsello's absence from any active role in the representation, respondent unilaterally imposed the Corsello Agreement upon his clients, ostensibly to properly pursue the remaining defendants with a "war chest" for costs that would be incurred. Ultimately, the nine clients advanced \$240,000 from the Bodywise and Apothecary settlements for costs of further litigation.

In May 2007, respondent deposited a check for \$50,000, representing the settlement from Bodywise into his Cal National CTA. On May 25, 2007, respondent deposited a check for \$350,000, representing the settlement from Apothecary into his Cal National CTA. After depositing the \$400,000 in settlements from Bodywise and Apothecary, the Cal National CTA had a balance of \$564,262.83.

From June 18, 2007, to June 25, 2007, respondent issued three checks totaling \$512,000 from his Cal National CTA: check no. 1076, dated June 18, 2007, for \$20,000, payable to "Bank

of America/Cash"; check no. 1077, dated June 22, 2007, for \$10,000, payable to himself; and check no. 1078, dated June 22, 2007, for \$482,000, payable to himself. Respondent deposited all three checks into his Bank of America CTA.

On June 29, 2007, respondent deposited a check for \$400,000 from his Bank of America CTA back into his Cal National CTA, leaving \$112,000 of the original \$512,000 transferred in the Bank of America CTA. Respondent transferred \$65,000 of the \$112,000 to his personal account. He used the \$65,000 to purchase a \$55,000 cashiers' check payable to himself and transferred \$10,000 to his sister.

In early-September 2007, several of respondent's clients among the IMR Plaintiffs formally created a Participating Plaintiffs Cooperative Association (Association) among themselves. On September 14, 2007, Victor Comerchero sent a letter to respondent on behalf of himself and the Association, expressing concern over what he and the other clients perceived as respondent's growing mental instability and his ability to further prosecute the lawsuit.

On that same day, respondent effectively closed his Cal National CTA by issuing check no. 1379, payable to himself, in the amount of \$404,095.74, leaving a zero balance. Respondent used the check to purchase four cashier's checks from Cal National Bank in varying amounts: \$100,000; \$44,045.38; \$100,000; and \$160,000. The four cashier's checks totaled \$404,045.74. Including the \$55,000 cashiers' check from his personal account at Bank of America, this brought the total to \$459,045.74 that respondent converted to cashiers' checks payable to himself.

Respondent did not thereafter deposit or maintain the Meco settlement funds in a client trust account nor did he disburse any portion of the Meco settlement funds to or on behalf of any of the following clients: Paul Meco, Victor Comerchero, Bill Comerchero, Taras Wybaczynsky, Ken Corsetti, LaFaye Campbell, Pamela Schoonmaker, Frank Mara, and Bill Filowitz.

Respondent should have maintained at least \$240,000 on behalf of these clients in his client trust account from May 2007 to present, and has failed to do so.

On September 17, 2007, Victor Comerchero, Taras Wybaczynsky, and Ken Corsetti, acting at the instance of the Association, sent respondent a letter by personal delivery, first-class mail, and by email, advising him of the formation of the Association, and instructing him that he was not to disburse, transfer or commit any of their funds in his possession without the prior written approval of the Participating Plaintiff's Case Management Committee.

On September 20, 2007, the Association, through Comerchero, sent respondent a letter requesting an accounting and the disbursement of the funds he was to have held in trust.

On October 10, 2007, Victor Comerchero, Bill Comerchero, Taras Wybaczynsky, Ken Corsetti, LaFaye Campbell, Pamela Schoonmaker, Frank (and Franscesca) Mara each sent respondent a letter demanding an accounting and the return of the funds he was to have held in trust on their behalf.

Thereafter, respondent did not respond to any of the clients' requests for accountings nor did he disburse any portion of the \$180,000 to these seven respective clients or on their behalf. Respondent no longer maintained the Cal National CTA after September 14, 2007, and by March 2008, respondent's Bank of America CTA had a balance of \$839.57.

In October 2007, respondent was relieved by the San Diego Superior Court as counsel for all IMR plaintiffs he represented. Seven of respondent's clients in the IMR cases employed new counsel, Michael Donovan, to assist them in pursuing their claims and in obtaining their funds from respondent. Individually, and through Donovan, the clients continued to request accountings from respondent, to no avail. Ultimately, the seven clients (Victor Comerchero, Bill Comerchero, Taras Wybaczynsky, Ken Corsetti, LaFaye Campbell, Pamela Schoonmaker, and

Frank Mara) were forced to file suit against respondent to obtain an accounting of the use of their funds.

Count Six: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

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) by removing all of the \$400,000 in settlement funds from the Bodywise and Apothecary settlements from his Cal National CTA; and by thereafter depositing the settlement funds into the Bank of America CTA, then re-depositing them in the Cal National CTA, and then closing the Cal National CTA by purchasing cashier's checks that were payable to himself; by making no disbursements to or on behalf of any of his clients in the IMR cases.

Count Seven: Moral Turpitude (Section 6106)

By not maintaining \$240,000 of his clients' funds in trust and not disbursing any portion of the \$240,000 to or on behalf of his clients, respondent misappropriated his clients' funds. By misappropriating his clients' funds, and by attempting to conceal his misappropriation through a series of withdrawals and deposits, including the purchase of four separate cashier's checks in varying amounts, respondent committed an act or acts involving moral turpitude, dishonesty and corruption.

Count Eight: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not responding to his clients' demands for an accounting on September 20 and October 10, 2007, and by not responding to Donovan's demands for an accounting on the clients' behalf, respondent wilfully violated rule 4-100(B)(3).

D. Case No. 06-O-12859 (The Brown Matter)

In August 2005, Kathryn Brown grew dissatisfied with the legal representation in her family law matters, which included two matters pending before the Court of Appeal, 4th District, and one trial matter in the San Diego Superior Court (collectively, the family law matters). Brown suspected the possibility of corruption in connection with her ex-husband, his attorneys, her counsel, and the legal process, generally, and identified respondent through internet research regarding alleged judicial corruption. When Brown met with respondent, he told her that he had contacts with the Federal Bureau of Investigation and would have them investigate the corruption she believed she had uncovered.

At their first meeting, respondent agreed, in principle, to represent Brown in her family law matters, but informed her that he would require an advanced fee of \$10,000, against which he would charge her on an hourly basis.

On August 4, 2005, Brown sent a letter to respondent, in which she outlined several of the immediate issues and concerns in her family law matters and posed questions she hoped respondent would address. In the letter, Brown advised respondent that she was attempting at that time to secure the funds to pay his quoted advanced fees. Respondent received the letter.

On August 7, 2005, Brown sent further correspondence to respondent, fashioned as a memorandum, in which she provided the then-scheduled trial dates, and posed additional topics of concern to her, as well as comments about the pending issues. Brown identified "Petitioner's [Brown's ex-husband's] claims for REIMBURSEMENT from settlement" as the primary subject of the memo. Respondent received Brown's memo.

On August 8, 2005, Brown sent another piece of correspondence, again fashioned as a memorandum, addressing further topics of concern about pending issues in the family law matters. Brown identified "RETROACTIVE ALIMONY and MODIFICATION OF ALIMONY for me" as the primary subject matter of the memo. Respondent received Brown's memo.

Finally, on August 15, 2005, Brown and respondent entered into a written employment agreement. Brown paid him \$15,000 at that time. He informed Brown that \$10,000 of that sum was for advanced fees, and \$5,000 was for advanced costs. In early August 2005, respondent contracted with attorney Phillip Stillman to provide substantial assistance in the Brown family law matters.

On August 15, 2005, respondent appeared on Brown's behalf in the San Diego County Superior Court, along with Stillman regarding a motion brought by Brown's prior attorney, Barbara Weiser, for attorney's fees. Weiser sent respondent a letter on August 18, 2005, which he received, in which she set forth certain information vital to Brown's case, including information concerning Brown's upcoming trial dates.

In late-August 2005, respondent told Brown for the first time that he required an additional \$50,000 in advanced fees in order to continue the representation. On September 8, 2005, he sent Brown an email, attaching a new employment agreement memorializing the requirement of the additional \$50,000 in advanced fees. The agreement that respondent sent to Brown was backdated August 11, 2005.

Between on September 8 and 19, 2005, respondent told Brown's elderly parents that, if they did not provide the financing for the demanded additional \$50,000 in advanced fees, they would face incarceration due to what he claimed was their potential exposure to criminal liability for filing false allegations of child abuse against Brown's ex-husband.

Also between September 8 and 19, 2005, respondent advised Brown to falsely claim that \$45,000 in fees that had been paid to attorney Richard Ducote, who had provided services concurrently with Weiser, and was supposed to have included the fees Weiser's services, as well. Brown told respondent that it would be a misrepresentation to make that claim, and refused. Thereafter, at respondent's urging, Linda Devore, a part-time employee of respondent, contacted Brown and also urged her to make the untrue claim about the \$45,000 fee. Again, Brown refused.

On September 11, 2005, respondent sent Brown an email in which he feigned ignorance of several issues germane to her representation in the family law matters. He contended in the email that Brown had never provided him with the information, which would have been crucial to identify the issues and allow the presentation of her case. In fact, however, Brown had provided the information to respondent by way of her letter and memos of early August 2005.

On September 15, 2005, respondent formally substituted in as counsel for Brown in her superior court family law matter. (San Diego Superior Court case no. D453601.) After becoming counsel for Brown, respondent misrepresented, in open court and in pleadings, to Judge William Howatt that Weiser was the subject of a State Bar disciplinary investigation that he had initiated, and that she was facing disbarment due to her conduct in the family law matters. In fact, respondent had not submitted a complaint to the State Bar against Weiser, and she was not the subject of a disciplinary investigation nor had Brown sued her for malpractice. Respondent knew the allegations were false when he made them to Judge Howatt.

On September 19, 2005, respondent sent an email to Stillman, purporting to "confirm" their conversations regarding the Brown representation. The email was not an accurate portrayal of the agreement between counsel, and Stillman so informed respondent on the same day.

Also on September 19, 2005, respondent sent an email to Brown in which he made numerous defamatory and dishonest accusations of misconduct and malfeasance by Stillman in connection with the Brown representation. Disturbed by what she believed to be the irrational tone and substance of respondent's email, Brown terminated respondent's services by return email on September 19, 2005. Brown requested that respondent send any documents pertaining to her representation to Stillman as soon as possible. Respondent received the email.

On September 20, 2005, Brown sent a letter to respondent by certified mail, confirming the contents of her September 19, 2005, email, terminating his services. Respondent received the letter.

On September 21, 2005, Stillman sent respondent a letter, requesting Brown's file and an accounting for the use of the \$15,000 she had advanced as costs and fees, and confirming respondent's termination. In the letter, Stillman told respondent that he was not to take any of Brown's files from Weiser's law offices. Respondent received Stillman's September 21, 2005, letter. Between September 21, 2005 and October 6, 2005, respondent went to Weiser's law office and took physical possession of Brown's files that Weiser had maintained in the family law matters.

On October 6, 2005, Stillman's paralegal informed respondent on Stillman's behalf that the Brown family law files must be returned to Brown. Respondent claimed that he was making a copy of the files because he was working on something on Brown's behalf. Stillman's paralegal reminded respondent at that time that he had been terminated by Brown.

On October 11, 2005, Stillman sent a letter to respondent in which he yet again demanded the return of the files pertaining to the Brown family law matters by no later than October 13, 2005.

Finally on October 26, 2005, Stillman sent another letter to respondent, again demanding that he provide Browns file, as well as a signed substitution of attorney.

On the morning of October 27, 2005, Stillman sent respondent a draft stipulation for respondent to withdraw as attorney for Brown in the family law matters.

Respondent replied to Stillman's October 27, 2005, email on or about October 27, 2005. In his email, respondent insisted that he still represented Brown, claimed that Brown lacked the mental capacity to act on her own behalf, and threatened to bring a motion to disqualify Stillman and his law firm from representing her interests.

Count Nine: Failure to Release Files (Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By not providing Brown's file to her or to Stillman, after termination, and after several requests, respondent wilfully violated rule 3-700(D)(1).

Count Ten: Moral Turpitude (Section 6106)

By backdating a September 8, 2005 fee agreement to August 11, 2005; by deceiving Brown's elderly parents into believing that they faced incarceration for filing a false report of child abuse unless they paid him \$50,000 as advanced fees; by soliciting Brown to misrepresent the true nature of the fees she had paid to her previous counsel; by urging his employee to solicit Brown to misrepresent the true nature of the fees she had paid to her previous counsel; by knowingly denying receipt of documents to successor counsel; by misrepresenting to Judge Howatt in court and in pleadings that Weiser was facing disciplinary action and a malpractice

case for her conduct in the family law matters; by asserting that he still represented Brown after she terminated his services; by retrieving portions of Brown's file from Weiser, in defiance of Brown's specific instructions made to respondent through Stillman and Stillman's office; and by refusing to cease representing Brown, purporting to base his refusal on false allegations that she lacked capacity to terminate his services, respondent committed acts involving moral turpitude, dishonesty and corruption.

E. Case No. 06-O-14340 (The Weemes Matter)

In March 2003, Annie Weemes suffered injuries in a nursing home in which she was residing. Her niece, Shirley Wilson was thereafter appointed guardian ad litem in a lawsuit brought against the nursing home. (*Annie Weemes v. Hardi Health Care, Inc, et al.*, Los Angeles County Superior Court case no. YC048319.) Weemes was represented by James Morgan of Wilkes & McHugh, a law firm.

On March 14, 2005, the case against the nursing home was settled for \$260,000.

In early 2005, Annie Weemes passed away, and Wilson filed a petition for probate. (*Estate of Annie Weemes*, Los Angeles County Superior Court case no. BP091806.) Wilson, as the personal representative of the estate, was represented by Catherine Grant Wieder. Although Annie Weemes had few assets, the probate was opened largely to distribute the settlement funds from the lawsuit against the nursing home.

On October 3, 2005, respondent sent Wieder a letter informing her that Wilson was terminating her services, and had retained respondent to represent the estate. On October 11, 2005, respondent faxed a letter to Morgan requesting Wilson's file and the Annie Weemes settlement funds.

On October 11, 2005, Wilkes & McHugh sent respondent a cashier's check, in the amount of \$112,335.65, payable to Shirley Wilson as administrator for the estate. Wilkes &

McHugh retained an additional \$5,102.96 as there were further potential disbursements that they believed might be required to lien holders.

On October 19, 2005, respondent met with Wilson at Cal National Bank, and opened an account in the name of Annie Weemes estate.

On November 2, 2005, respondent withdrew \$100,000 from the estate's account by signing Shirley Wilson's name to a withdrawal slip without her knowledge or consent. With the proceeds, respondent purchased a cashier's check in the amount of \$100,000, payable to himself, which he deposited into his Cal National CTA. He did so in order to prevent the California Department of Health and Human Services (DHHS), which held a lien for \$166,815.80 for Annie Weemes' medical bills paid by Medi-Cal, from attaching the funds.

DHHS attempted on several occasions to contact respondent in order to discuss the Medi-Cal lien, and its willingness to negotiate the amount of the claim. Its letters, sent to respondent at his official membership records address, were returned to DHHS, marked "return to sender."

On June 23, 2007, respondent received a check for \$5,102.96 from Wilkes & McHugh, representing the balance of the funds it held on behalf of Annie Weemes. Respondent signed Wilson's name to the check, without her knowledge or consent, and deposited the funds into his Cal National CTA. At no time did respondent inform Wilson that he had received the additional funds from Wilkes & McHugh.

On September 10, 2007, respondent appeared with Wilson in Department 5 of the Los Angeles Superior Court on an order to show cause as to why an accounting had not been filed for the estate. The matter was continued. After the hearing, respondent met with Wilson in one of the conference rooms and convinced her to endorse the \$5,102.96 check he received from Wilkes & McHugh. He told her it would be placed in the estate's bank account. Respondent did not inform Wilson that he actually had placed the funds into his Cal National CTA. He thereafter

closed his Cal National CTA, and converted the \$105,102.96 in estate funds along with the IMR Plaintiffs' funds into cashiers' checks payable to himself.

On December 10, 2007, respondent appeared with Wilson before the Los Angeles Superior Court, Judge Mitchell Beckloff, and informed the court that the Annie Weemes estate had no assets. He failed to inform the court of the personal injury proceeds received on behalf of the Annie Weemes estate.

Thereafter, respondent did not inform Wilson that he closed his Cal National CTA, that he had transferred the Annie Weemes estate funds, along with the IMR Plaintiffs' funds, briefly into his Bank of America CTA, or that he had disbursed \$105,102.96 of Annie Weemes estate's assets to himself.

On December 19, 2007, Wilson sent respondent a written request for an accounting of the Annie Weemes estate funds. Respondent did not reply to Wilson's request for the accounting.

By depositing \$105,102.96 of the Annie Weemes estate's assets into his CTA and disbursing all such funds to himself, without any right to payment, respondent misappropriated the funds.

Concurrently, attorney Andrea Van Leesten represented Stephen J. Weemes, the administrator of the estate of Albert B. Weemes. (Los Angeles Superior Court case no. BP085443.) Annie Weemes had been married to Albert Weemes for a short time, but had been divorced from him for approximately 30 years. Respondent convinced Wilson, as personal representative of Annie Weemes' estate to attempt to attach some of Albert Weemes' real estate holdings.

On October 17, 2005, Van Leesten filed several notices of proposed action regarding the sale of one of seven pieces of real property from the Albert Weemes estate. Stephen Weemes, Albert Weemes' heirs, and Melvin Dobb (the son of Katie Dobb Weemes, Albert Weemes'

predeceased spouse), all consented to the sale of the property. Respondent was served with and received a copy of the notices of proposed action.

On October 27, 2005, respondent wrote Van Leesten a letter informing her that he was objecting to the notices of proposed action.

On October 28, 2005, respondent filed an objection to the notice of proposed action with the court in the Albert Weemes probate matter.

On November 1, 2005, Van Leesten filed an Ex-Parte Application to Confirm Real Property Sale by Notice of Proposed Action to Buyers Clark and to Quiet the Objection of the Estate of Annie Weemes, an Unrelated Person to this Estate (ex-parte application). A hearing was set for November 17, 2005. On November 3, 2005, Van Leesten served, and respondent received, the ex parte application.

On November 15, 2005, respondent filed a substitution of attorney, substituting himself for Wieder as attorney for the estate of Annie Weemes. On that same date, he also filed a Preliminary Objection to the Ex-Parte application and requested for evidentiary hearing. A hearing was set for November 17, 2005.

On November 15, 2005, respondent also filed a petition under Probate Code 850(a)(2)(D) for conveyance or transfer of title to real and personal property. A hearing was set for December 20, 2005.

On November 17, 2005, the hearing to confirm sale of real property was transferred to a different department of the court, and was continued until January 13, 2006. The court also continued a hearing on respondent's objection to the notice of proposed action regarding the sale of property.

On November 18, 2005, Van Leesten filed a notice of hearing. A hearing was set for December 8, 2005. Respondent was served with and received notice of the hearing.

On November 28, 2005, respondent filed a peremptory challenge for the recusal of Judge Aviva Bobb. A hearing was set for December 8, 2005. Respondent alleged that "organized crime" had penetrated the probate court and referred to the Weemes estate as "the Sopranos." Respondent further falsely asserted he was being assisted by former law enforcement officials experienced in organized crime syndicates in Southern California. He contended that the entire bench in Los Angeles should be recused as the purported investigation of the organized crime involved all of the judges. At that time, he also requested the matter be reassigned to another county.

On December 1, 2005, the court's order on respondent's peremptory challenge was transferred to the Van Nuys Superior Court, and the court continued the hearing on the application to confirm real property sale to December 16, 2005.

On December 20, 2005, the hearing regarding conveyance or transfer of title to real property was transferred to a different department and taken off calendar.

On January 13, 2006, the application to confirm real property sale was continued to February 10, 2006. On February 10, 2006, the hearing was again continued.

On April 7, 2006, respondent filed with the Los Angeles Superior Court a Motion to Reopen Certain Probate Proceedings Re Estate of Albert B. Weemes and a Verified Statement of Shirley Wilson, As Administrator of the Estate of Annie Weemes Requesting Recusal for Disqualification of the Honorable Michael R. Hoff and the Referral to Judge Charles McCoy for Recusal of All Judges of the Los Angeles Superior Court; Declaration of Ronald Gottschalk; Shirley Wilson and Felicia Ford in Support Thereof (CCP Section 170.1 and CCP Section 170.3); Request for Continuance and Stay of Proceedings (April 7 motion).

In the April 7 motion, respondent attempted to mislead and deceive the court by stating, among other things, that Andrea Van Leeston and others were going to be sued in federal court

for RICO violations; and that the Probate Court and probate attorneys of the Los Angeles Superior Court were recently the subject of a FBI investigation.

In the April 7 motion, respondent intentionally misrepresented the following alleged facts about Judge Hoff, among others: (1) that Judge Hoff was going to be a material witness in proceedings before the Commission on Judicial Performance and the California Judicial Council and with respect to federal proceedings, as well as ancillary proceedings, both state and federal; and (2) that Judge Hoff had improper ex-parte communications with Judge Bobb and Judge Kolostian and probate attorneys regarding the Albert Weemes Estate.

On April 7, 2006, Judge Hoff denied respondent's attempt to disqualify the court, and found respondent's action "baseless and designed to delay matters." Judge Hoff granted Van Leesten's request to release the proceeds of the sale of realty that was previously ordered to be held in escrow.

On April 13, 2006, the court issued and filed an order striking statement of disqualification, along with Judge Hoff's verified answer. The clerk of the court mailed a copy of the minute order and the order striking statement of disqualification to Van Leesten and respondent. Respondent received it.

On February 16, 2007, the court granted Van Leesten's application to confirm real property sale. As of the filing of the NDC in this disciplinary matter, respondent has not filed any additional documents in the Albert Weemes estate on behalf of Wilson and the estate of Annie H. Weemes.

On September 4, 2008, a State Bar investigator sent respondent a letter in which he inquired about the misconduct alleged in counts 1 through 8 and 11 through 16, above (the Mohr/Chaney, CTA and Weemes matters). Specifically, the investigator requested that respondent account for the \$400,000 he obtained in settlement funds from the Bodywise and

Apothecary defendants in the IMR matters, and the \$105,102.96 of the \$117,438.61 he obtained in the Annie Weemes estate matter.

On September 17, 2008, respondent met with two State Bar investigators, including the author of the September 4, 2008, letter. When asked about the \$105,102.96 of funds from the Annie Weemes estate that he deposited and withdrew from his Cal National CTA, respondent asserted that the funds did not belong to the estate, but belonged to Medi-Cal. Therefore, he said, he did not have to account for them to the court or to Wilson. When asked the whereabouts of the IMR Plaintiffs' funds that he deposited and removed from his Cal National CTA, respondent asserted that the funds were used for costs of the litigation. In fact, respondent did not incur any costs between the time he received the funds and the time of his termination.

When asked to account for the funds he withheld from his clients, the IMR Plaintiffs, respondent asserted that his former client, Taras Wybaczynsky, has all of his records, as well as his "master computer," and that respondent could not provide an accounting. In fact, Wybaczynsky does not have respondent's records.

Respondent further contended that he had prevailed in the Los Angeles Superior Court in the lawsuit brought by his former clients to retrieve their files, accounting and funds. Specifically, respondent claimed that he had prevailed against them and their case had been dismissed on May 5, 2008. In fact, only the plaintiffs' request for a preliminary injunction to freeze respondent's assets was heard on that date, and the matter remained on calendar in the Los Angeles County Superior Court at the time the NDC was filed herein.

When confronted with evidence that appeared to show that Shirley Wilson had not endorsed the \$100,000 withdrawal slip, respondent insisted that she had signed it in his presence at Cal National Bank on November 2, 2005, and allowed the funds to be withdrawn from the Annie Weemes estate account. In fact, Wilson had not accompanied respondent to the bank on

November 2, 2005, did not sign the withdrawal slip, and did not know that respondent had removed the \$100,000 from the Annie Weemes estate account.

Count Eleven: Presenting an Unwarranted Claim or Defense (Rule 3-200(B))

By improperly interfering with the sale of real property by the Albert Weemes estate; and by attempting to disqualify Judge Hoff and the entire Los Angeles County Superior Court from presiding over the Albert Weemes probate matter based on intentional misrepresentations, respondent knew or should have known that the objective of his representation was to present a claim or defense in litigation that was not warranted under existing law.

Count Twelve: Failure to Maintain Respect to the Court (Section 6068(b))

By his unwarranted attempt to have Judge Hoff and Judge Bobb disqualified in the Weemes matter; by falsely accusing Judge Hoff of engaging in illegal acts; and by seeking the recusal of all Los Angeles Superior Court judges, based on misrepresentations, deceit, and unsupported and unsupportable defamatory assertions, respondent failed to maintain respect to the courts of justice and judicial officers.

Count Thirteen: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

By depositing \$105,102.96 of Annie Weemes' estate assets into his CTA and disbursing all of the funds to himself, without any right to payment, respondent failed to maintain the balance of funds received for the benefit of a client in a client trust account.

Count Fourteen: Not Promptly Notifying Client of Receipt of Funds

(Rule 4-100(B)(1))

Rule 4-100(B)(1) requires that an attorney promptly notify a client of the receipt of the client's funds, securities or other properties.

There is clear and convincing evidence that respondent did not promptly notify the client of the receipt of funds in wilful violation of rule 4-100(B)(1). Respondent did not inform Wilson that he had received \$5,102.96 from Wilkes & McHugh on behalf of the Annie Weemes estate.

Count Fifteen: Seeking to Mislead a Judge (Section 6068(d))

By informing the Los Angeles Superior Court in the matter of the Estate of Annie Weemes that the estate had no assets, when at the time he was in possession of \$105,102.96 of funds belonging to the estate, respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law.

Counts Sixteen and Seventeen: Moral Turpitude (Section 6106)

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

(1) depositing \$105,102.96 of the Annie Weemes estate's assets into his CTA and then disbursing all such funds to himself, without any right to payment;

(2) misappropriating \$105,102.96 from the Annie Weemes estate; by withdrawing \$100,000 from the Cal National account for the Annie Weemes estate in order to conceal it from DHHS; and by misrepresenting to the Los Angeles Superior Court that the Annie Weemes estate did not have any assets; and

(3) asserting to State Bar investigators in response to questions concerning allegations of misconduct: that the \$105,102.96 he misappropriated from the Annie Weemes estate were not estate funds; that the monies he misappropriated from the IMR Plaintiffs were used for costs; that the IMR Plaintiffs' lawsuit had been dismissed on May 5, 2008; and that Shirley Wilson endorsed the Cal National withdrawal slip for the \$100,000.

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

F. Case No. 06-O-14571 (The Devore Matter)

In July 2005, Linda Devore met respondent and employed him to review her recent divorce settlement. At the time, Devore believed the judge in her San Diego family law matter was biased against her. She gave respondent a banker's box full of documents to review in relation to the family law matter. Devore said that, in exchange for the services respondent rendered in the family law matter, she agreed to serve as his paralegal and as his driver to various hearings and settlement conferences in San Diego.

In August 2005, Devore again employed respondent, this time to represent her in a dispute regarding a condominium she purchased in Delaware from Frank Robino Associates, Inc. Devore decided she did not want the condominium and was negotiating with Robino's attorneys, the Bayard Firm, to get Robino to buy back the condominium. Devore initially paid respondent \$400 for some legal research he conducted on the Robino matter.

Between August 2005 and March 2006, Devore lived on the East coast. In March 2006, she moved to Toluca Lake, California. After Devore's relocation to California, in exchange for additional services respondent rendered to her regarding the Robino matter, Devore performed clerical work for respondent and continued to drive him to hearings and various meetings in San Diego.

On April 20, 2006, respondent faxed a demand letter on behalf of Devore to Charlene Davis, the principal attorney from the Bayard Firm who represented Robino. On August 6, 2006, respondent e-mailed Devore a copy of the April 20, 2006, letter that he sent to Davis. In the letter, respondent listed (along with other reimbursements he was attempting to collect from Robino) attorney fees in the amount of \$25,000 which he claimed Devore owed him for his services.

After receipt of the August 6, 2006 letter from respondent, Devore called respondent and inquired about the \$25,000 in attorney fees he alleged she owed him in the demand letter to Davis. When she informed him that he was not entitled to the \$25,000, respondent became "irate." Although she requested one, respondent failed to produce an accounting to justify the \$25,000 he sought in attorney fees.

Respondent wrote two letters on Devore's behalf to Davis regarding settlement of the Robino matter, and that was the sum of the services he provided to her.

In August 2006, Devore terminated respondent's services, and requested the return of the box of documents she gave him to review regarding her family law matter.

Thereafter, Devore continued to negotiate a settlement of the Robino matter on her own, and without respondent's involvement and services.

On September 25, 2006, respondent send Davis a letter asserting a lien in the amount of \$25,000 for attorney fees and expenses owed to him for his representation of Devore in the Robino matter. Respondent was fully compensated for the reasonable value of his services in Devore's labor, and he earned no portion of the \$25,000 held by Robino's counsel. On October 11, 2006, Davis sent Devore a letter informing her of respondent's \$25,000 lien on any settlement Devore was to receive from the Robino matter.

On January 24, 2007, Davis sent Devore a letter summarizing the settlement of the Robino matter: On January 12, 2007, Devore received \$349,314.13 from the settlement Devore negotiated in the settlement of the Robino matter. The disputed \$25,000 that respondent placed a lien on as attorney fees was set aside and placed in an account by Robino's attorneys.

Between October 2006 and the filing of the NDC herein, Devore has requested that respondent return the box of documents she gave to him to review regarding her family law matter. He has refused to return Devore's documents to her.

Count Eighteen: Failure to Release Files (Rule 3-700(D)(1))

By not returning Devore's documents to her, respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all client papers and property.

Count Nineteen: Unconscionable Fee (Rule 4-200(A))

By asserting a lien in the amount of \$25,000 for legal services, although he had been fully compensated by his client's labor pursuant to his agreement with Devore and although he did not fully perform the services for which he was employed, respondent charged his client an unconscionable fee.

III. 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. Misconduct⁴, std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) The IMR Plaintiffs had to pursue litigation against respondent to obtain an accounting of the funds entrusted to him. They had to retain other counsel to pursue their claims against IMR. Respondent's actions also caused delay in the proceedings of the IMR Plaintiffs, Devore and the Albert Weems estate as well as unnecessarily consumed judicial resources. IMR Plaintiffs, Devore and Wilson still do not have the funds to which they are entitled. Devore's box of documents has not been returned. Some of the IMR Plaintiffs are elderly and/or ill. Four of them have passed away pending resolution of these matters. Also, after Wilson filed a State Bar

⁴.Future references to standard or std. are to this source.

complaint against respondent, she was subjected to respondent's threats, verbal abuse and false accusations resulting in hypertension and other effects of stress.

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 at the time of trial, the court has been provided no basis for finding mitigating factors other than approximately 33 years of discipline-free practice, a significant 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).) Moreover, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.2, 2.3, 2.6, 2.7 and 2.10 apply in this matter. The most severe sanction is found at standard 2.2(a) which 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. The one-year "minimum discipline" set forth in the standard "is not faithful to the teachings of [the Supreme] court's decisions" and "should be

regarded as a guideline, not an inflexible mandate.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

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 four matters, of violations of sections 6068(d) (one count) and 6106 (four counts), as well as rules 3-200(A) (one count), 3-200(B) (one count), 3-700(D)(1) (two counts), 4-100(A) (two counts), 4-100(B)(1) (one count), 4-100(B)(3) (one count) and 4-200(A) (one count). Aggravating factors included multiple acts of misconduct, harm to clients and to the administration of justice. In mitigation, the court considered respondent’s 33-year discipline-free record at the time the misconduct commenced, a significant mitigating factor.

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because the amount misappropriated is clearly not insignificantly small (in excess of \$345,000) and the most compelling mitigating circumstances do not clearly predominate. The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent’s actions 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.

IV. Discipline Recommendation

IT IS HEREBY RECOMMENDED that respondent **Ronald Norton Gottschalk** 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.

It is recommended that respondent make restitution to the following 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 Shirley Wilson as personal representative of the Estate of Annie Weems, Los Angeles Superior Court case no. BP091806, in the amount of \$105,102.96 plus 10% interest per annum from September 14, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Shirley Wilson as personal representative of the Estate of Annie Weems, Los Angeles Superior Court case no. BP091806), 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.

V. 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. **Ronald Norton Gottschalk** must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

VI. 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: September _____, 2010

PAT E. McELROY
Judge of the State Bar Court