

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-14210-RAH (06-O-14404;
)	07-O-14287; 07-O-14717;
SUSAN ANN MITCHELL,)	07-O- 14958)
)	
Member No. 158640,)	DECISION
)	
A Member of the State Bar.)	
)	

In this default disciplinary matter, respondent **Susan Ann Mitchell** is charged with multiple acts of misconduct in two client matters and a trust account matter, which include: (1) failing to deposit client funds in a client trust account; (2) engaging in the unauthorized practice of law; (3) charging an illegal fee; (4) failing to avoid adverse interests; (5) failing to deliver client properties promptly; (6) committing acts of moral turpitude; and (7) commingling.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that she be suspended for a minimum of two years and will remain suspended until the State Bar Court grants a motion to terminate her suspension (Rules Proc. of State Bar, rule 205).

II. Pertinent Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent on December 10, 2008. Respondent filed her response to the NDC on January 30, 2009.

On January 23, 2009, an in-person status conference was held. The State Bar was represented at the status conference by the assigned deputy trial counsel (DTC), who appeared in-person. Attorney Ellen A. Pansky (Pansky) appeared in-person on behalf of respondent; respondent appeared telephonically. At the status conference, the court ordered, among other things, that a further status conference would be held on February 6, 2009, at 9:30 a.m. to discuss trial dates.

On February 6, 2009, an in-person status conference was held. Participating were the assigned deputy trial counsel for the State Bar and attorney Pansky for respondent. Based on the discussions at the status conference and the documents in the court file, the court ordered, among other things, that: (1) a pre-trial conference would be held in-person on May 22, 2009, at 9:30 a.m.; (2) pretrial statements were to be filed no later than May 15, 2009; and (3) the trial in the instant matter was to begin on June 4, 2009, at 9:30 a.m. On February 20, 2009, the court filed a Trial Date and Order Pursuant to Status Conference setting forth the pretrial conference date, the due date of the pretrial statements, and the trial date. On that same date, the order was served on respondent's counsel of record, Pansky, by first-class mail, with postage fully prepaid.

On May 12, 2009, the State Bar filed its pretrial statement with the court. On May 13, 2009, attorney Pansky filed a motion to be relieved as counsel in this matter. On May 15, 2009, respondent's pretrial statement, which was signed by attorney Pansky, was filed with the court.

On May 21, 2009, the State Bar filed a notice of non-opposition to counsel for respondent's motion to be relieved as counsel in this matter.

On May 22, 2009, the pre-trial conference previously set by the court was held. The DTC, assigned to this matter, appeared for the State Bar; attorney Pansky appeared for respondent. Respondent made no appearance at the pre-trial conference. At the pre-trial conference the court again ordered the trial to commence on June 4, 2009, at 9:30 a.m., as previously scheduled. A minute order reflecting the court's pretrial conference rulings was properly served on respondent's counsel of record on May 22, 2009. In its May 22nd order the court also indicated that it would rule on Pansky's motion to be relieved as counsel on May 26, 2009. On May 26, 2009, the court, finding good cause, granted Pansky's motion to be relieved as counsel in this matter. The order granting Pansky's motion to be relieved as counsel was properly served on respondent at her official membership record address (official address).

On June 4, 2009, respondent failed to appear for trial. On that same date, given respondent's failure to appear at trial and given that the requirements of rule 201 of the Rules of Procedure of the State Bar of California (Rules of Procedure) were met, the court filed an Order of Entry of Default (Rule 201—Failure to Appear) and Order Of Involuntary Inactive Enrollment. A copy of said order was properly served on respondent on June 4, 2009, by certified mail, return receipt requested, addressed to respondent at her official address.¹

The matter was submitted for decision on August 3, 2009, following the filing of State Bar's brief on culpability and discipline.

¹ Pursuant to Business and Professions Code section 6007, subdivision (e), respondent's involuntary inactive enrollment was effective June 7, 2009, three days after the service of the Order of Involuntary Inactive Enrollment by mail.

III. 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).)

Respondent was admitted to the practice of law in California on June 8, 1992, and has since been a member of the State Bar of California.

At all times relevant herein, respondent maintained a client trust checking account at Bank of the West, designated as account No. 686-018979 (CTA).

A. Suspension from the Practice of Law

On or about October 26, 2004, a NDC was filed in State Bar Court, case No. 04-O-12160. On or about January 4, 2005, the State Bar Court entered respondent's default in case No. 04-O-12160 and ordered that she be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code, section 6007, subdivision (e).² Respondent's inactive enrollment became effective January 7, 2005. Respondent received notice of her inactive status. On April 4, 2005, respondent was returned to active status by the State Bar of California.

B. The Wright Matter (Case No. 06-O-14210)

In April 2002, respondent was hired by Patricia Wright (Wright) to represent Wright with respect to all matters arising from her special needs trust and other legal matters.

Respondent continuously represented Wright through, at least, January 2006.

On or about December 1, 2004, Wright received a check for \$10,295.89 representing the proceeds of a life insurance policy on her son, Ronald Wright. Subsequently, Wright took the check to respondent's office and asked that the check be deposited by respondent.

² All further references to "section(s)" are to the provisions of the Business and Professions Code, unless otherwise stated.

In or about January 2005, respondent deposited the life insurance check into a non-client trust account. At no time did respondent deposit any of the proceeds from Wright's life insurance check into a client trust account.

In or about January 2005, respondent performed legal services for Wright including, but not limited to, participating in telephone conferences with Wright and reviewing documentation regarding Wright's legal affairs. In or about February 2005, respondent performed legal services for Wright including, but not limited to, participating in telephone conferences with Wright and with a collection agency, and reviewing disability issues. In or about March 2005, respondent performed legal services for Wright including, but not limited to, reviewing a file regarding veteran's matters and other matters, conferring with Wright, and participating in telephone conferences with Wright.

Between January 7, 2005, and April 4, 2005, respondent did not inform Wright that she was not entitled to practice law during this period.

Respondent billed Wright \$520 for attorney fees earned between January 5 and January 31, 2005. Respondent billed Wright \$440 for attorney fees earned between February 1 and February 28, 2005. Respondent billed Wright \$1, 220 for attorney fees earned between March 1 and March 30, 2005.

Count 1: Failure to Deposit Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))³

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that funds belonging to the attorney must not be deposited therein or otherwise commingled therewith.

³ References to rule(s) are to the Rules of Professional Conduct, unless otherwise indicated.

On or about December 1, 2004, respondent's client, Wright received a check in the amount of \$10,295.89, representing the proceeds of a life insurance policy on her son. Subsequently, Wright brought the check to respondent's office and asked that the check be deposited by respondent. In January 2005, respondent deposited the check in a non-client trust account.

The court finds by clear and convincing evidence that respondent violated rule 4-100(A) by failing to deposit the \$10,295.89 check she received for the benefit of a client into a client trust account.

Count 2: Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126)

Respondent is charged in count two of the NDC with violating section 6068, subdivision (a), which provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California. The State Bar charges that respondent violated section 6068, subdivision (a), by improperly holding herself out as entitled to engage in the practice of law and by practicing law in violation of sections 6125 and 6126.

Section 6125 provides that no person shall practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar, or who has been suspended from practice, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 126.)

In January, February and March 2005, while placed on inactive status, respondent performed various legal services for Wright, including , but not limited to: (1) engaging in telephone conferences with Wright in January, February, and March 2005, regarding Wright's legal affairs; (2) reviewing documentation regarding Wright's legal affairs in January 2005; (3) engaging in a telephone conference with a collection agency on behalf of Wright in February 2005; (4) reviewing disability issues for Wright in February 2005; (5) reviewing a file regarding veteran's matters for Wright in March 2005; and (6) participating in a conference with Wright in March 2005.

By working on Wright's legal matters between January 7 and April 4, 2005, respondent held herself out to her client as entitled to practice law and actually practiced law, while she was not an active member of the State Bar, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of section 6068, subdivision (a).

Count 3: Illegal Fee (Rule 4-200(A))

Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable fee agreement or charging or collecting an illegal or unconscionable fee.

While respondent was enrolled inactive, she was legally precluded from practicing law and, therefore, her performance of legal services in exchange for a fee was illegal. She was not entitled to charge or collect fees for those services that constituted the unauthorized practice of law. (*Birbrower, Montalbana, Condon, and Frank v. Superior Court* (1998) 17 Cal.4th 119, 136.) "Permitting respondent to have earned any of the money paid him by [his client], even a reasonable fee under a quantum meruit theory, would condone his unauthorized practice of law." (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.)

Respondent billed Wright \$520 for attorney fees earned between January 5 and January 31, 2005; respondent billed \$440 for attorney fees earned between February 1 and February 28, 2005; and she billed \$1,220 for attorney fees earned between March 1 and March 30, 2005.

The court finds by clear and convincing evidence that respondent charged an illegal fee in willful violation of rule 4-200(A) by charging attorney fees for legal services that were performed while respondent was not entitled to practice law and thus constituted the unauthorized practice of law.

C. The Landrum Matter (Case No. 06-O-14404)

On or about September 22, 2004, respondent was employed by Howard Landrum (Landrum) to represent him in a marital dissolution matter (dissolution matter). Landrum agreed to pay respondent a \$3,500 nonrefundable retainer fee. Landrum paid respondent \$2,500 in cash. As collateral for the remaining \$1,000 due for the retainer fee, Landrum allowed respondent to hold a South African gold coin, a silver bar, and a Joe DiMaggio baseball card (personal property). Respondent did not advise Landrum in writing as to the terms of taking a security interest in the personal property turned over to respondent as collateral, nor did she advise Landrum in writing to seek independent counsel. Further, Landrum did not consent in writing to the terms of respondent taking a security interest in Landrum's personal property as collateral for respondent's retainer fee.

On or about October 1, 2004, Landrum went to respondent's office and paid the \$1,000 balance due on the retainer fee. Landrum requested of respondent's secretary that his personal property be returned to him. Landrum's personal property was not returned.

On or about October 22, 2004, Landrum spoke with respondent on the telephone and requested that his personal property be returned. Respondent told Landrum that she would return the personal property. Approximately two weeks later, Landrum again called respondent

and requested that his personal property be returned. Respondent told Landrum that the personal property was in her mother's safe and that she would contact Landrum. Respondent did not contact Landrum regarding the return of his personal property.

In the following several months, Landrum contacted respondent and requested that his personal property be returned. Respondent did not return Landrum's personal property after any of Landrum's requests.

Subsequently, Landrum hired attorney J. Michael Jacob (Jacob) to assist him in obtaining his personal property from respondent and to represent him in a fee dispute that had developed with respondent. On or about June 8, 2006, Jacob sent a letter to respondent requesting the immediate return of Landrum's personal property.

On or about June 28, 2006, respondent sent a letter to Jacob responding to his June 8, 2006, letter. In her letter respondent stated that she had "cashed in" the coin and silver bar. Respondent also stated that she was still in possession of the baseball card and would return it upon Landrum's payment of her fees.

On June 30, 2006, Jacob sent a letter to respondent in which he stated that respondent had failed to comply with Rules of Professional Conduct, rule 3-300. In his letter, Jacob again requested the immediate return of the baseball card. Subsequently, respondent returned the baseball card to Landrum.

At no time did respondent advise Landrum in writing as to the terms of taking a security interest in the personal property turned over to respondent as collateral; nor did she advise Landrum in writing to seek independent counsel. Further, Landrum did not consent in writing to the terms of respondent taking a security interest in Landrum's personal property as collateral for respondent's retainer fee.

Between October 1, 2004, and through, at least, June 30, 2006, Landrum and his counsel made numerous requests for respondent to return Landrum's personal property. Without receiving the consent of Landrum or even advising him, respondent sold the gold coin and silver bar Landrum had given respondent as collateral. Respondent kept the funds from this sale. Respondent did not return the baseball card that Landrum had given her until sometime after June 30, 2006.

As noted, *ante*, respondent was ordered enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (e), effective January 7, 2005. Respondent was returned to active status on April 4, 2005, Respondent, however, continuously represented Landrum from in or about September 2004, through, at least, March 1, 2006.

Between January 13, 2005 and March 2005, respondent sent letters to opposing counsel, Peter Wernicke (Wernicke) regarding the dissolution matter and spoke with Landrum about his case. Specifically, respondent sent letters to Wernicke regarding the Landrum dissolution matter on or about January 13, 2005, on or about January 23, 2005, and on or about January 24, 2005. In or about February and March 2005, respondent worked on Landrum's dissolution matter and held herself out as entitled to practice law by, among other things, reviewing documents and speaking with Landrum about his case.

At no time between January 7 and April 4, 2005, did respondent inform Landrum or opposing counsel Wernicke that she was not entitled to practice law during that period.

On or about February 14, 2005, respondent sent Landrum a statement for attorney fees earned between January 1, 2005 and January 31, 2005. Respondent billed Landrum \$3,570 for attorney's fees earned between January 7, 2005 and January 31, 2005.

On or about March 21, 2005, respondent sent Landrum a statement for attorney fees earned between February 1, 2005 and February 28, 2005. Respondent billed Landrum \$2,280 for attorney fees earned between February 1, 2005 and February 28, 2005.

On or about May 9, 2005, respondent sent Landrum a statement for attorney fees earned between March 1, 2005, and March 31, 2005. Respondent billed Landrum \$1,230 for attorney fees earned between March 1, 2005, and March 31, 2005.

On or about September 22, 2006, the State Bar of California opened an investigation into respondent's representation of Landrum following the receipt of a complaint from Landrum.

On or about January 18, 2007, a State Bar investigator sent respondent an investigative letter. The letter requested a response to the allegations contained in Landrum's complaint, including, among other things, respondent's failure to notify Landrum or opposing counsel about her suspension from January 7, 2005 to April 4, 2005.

On or about February 15, 2007, in response to the January 18, 2007 investigative letter, respondent sent a letter to the State Bar investigator. Respondent stated in the letter that she informed all of her clients of her suspension. Further, respondent stated that opposing counsel Wernicke "knew the situation" regarding her suspension during the January 7, 2005 to April 4, 2005 time period.

Respondent, however, had not sent a letter to Landrum or opposing counsel Wernicke informing them of her suspension, nor had she at any time informed them in any other manner of her suspension between January 7, 2005, and April 4, 2005. Respondent knew or should have known that she had not informed Landrum or opposing counsel Wernicke of her suspension at the time she sent her February 15, 2007 letter to the State Bar in response to the State Bar's investigative letter.

Count 4: Avoiding Interests Adverse to a Client (Rule 3-300)

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless the transaction or acquisition is fair and reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition. The purpose of this rule is to "recognize the very high level of trust a client reposes in his attorney and to ensure that that trust is not misplaced. [Citations.] Sadly, this case stands with too many others as an example of an attorney's preference of his personal interests in manifest disregard of the interests of his client." (*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 623.)

Here, respondent willfully violated rule 3-300 by failing to comply with its prophylactic terms. Respondent acquired an ownership, possessory, security or other pecuniary interest adverse to Landrum by receiving Landrum's gold coin, silver bar, and DiMaggio baseball card (personal property) as collateral for the \$1,000 unpaid remainder of the \$3,500 retainer fee that Landrum had agreed to pay respondent. The acquisition/transaction was manifestly unfair and unreasonable. Respondent failed to advise Landrum in writing that he could consult with independent counsel regarding respondent's possessory and security interest in the personal property; respondent failed to give Landrum a reasonable opportunity to seek advice from independent counsel regarding the transaction and respondent's acquisition of the personal property; and respondent failed to obtain Landrum's written consent to the terms of the acquisition of the personal property. By so doing respondent, clearly and convincingly, improperly entered into an unfair and unreasonable business transaction with a client and

acquired ownership, possessory, security or other pecuniary interests adverse to a client in willful violation of both the substantive and procedural protections of rule 3-300.

Count 5: Failure to Deliver Client Properties Promptly (Rule 4-100(B)(4))

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive.

By failing to return Landrum's gold coin and silver bar and by failing to promptly return Landrum's baseball card, despite the numerous requests made by Landrum and his counsel between October 1, 2004 and June 30, 2006, for respondent to return those properties, respondent failed to promptly deliver client properties in his possession in willful violation of rule 4-100(B)(4).

Count 6: Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126)

By failing to advise Landrum and opposing counsel Wernicke between January 7 and April 4, 2005 that she was not entitled to practice law during that period, by sending letters to opposing counsel Wernicke, between January 13, 2005 and March 2005, regarding Landrum's dissolution matter, by working on Landrum's dissolution in February and March 2005, by reviewing documents and speaking with Landrum about his case, when she was an inactive member of the State Bar, respondent willfully held herself out as practicing law or entitled to practice law or otherwise practicing law when she was not entitled to do so, in willful violation of sections 6125 and 6126, and 6068, subdivision (a).

Count 7: Illegal Fee (Rule 4-200(A))

Respondent was not entitled to practice law in California from January 7 to April 4, 2005. As discussed, *ante*, respondent was legally precluded from charging fees for those services that constituted the unauthorized practice of law. Yet, respondent billed Landrum \$3,570 for attorney fees earned between January 7 and January 31, 2005; she billed Landrum

\$2,280 for attorney fees earned between February 1 and February 28, 2005; and she billed Landrum \$1,230 for attorney fees earned between March 1 and March 31, 2005. Thus, respondent charged Landrum a total of \$7,080 in illegal fees for legal services performed between January 7 and April 4, 2005, in willful violation of rule 4-200(A).

Count 8: Moral Turpitude (§ 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

Moral turpitude has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not necessary for moral turpitude, at least gross negligence or some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363,384.)

The court finds by clear and convincing evidence that respondent committed an act of moral turpitude in willful violation of section 6106, by misrepresenting to the State Bar investigator that she had informed all of her clients of her suspension and that opposing counsel Wernicke “knew of the situation” regarding her suspension from the practice of law for the period from January 7 to April 4, 2005, when in fact respondent knew or should have known

that at no time had she informed Landrum or attorney Wernicke that she was not entitled to practice law between January 7 and April 4, 2005.

C. The Client Trust Account Matter (Case Nos. 07-O-14287, 07-O-14717, 07-O-14958)

On or about February 12, 2007, the balance in respondent's CTA was \$280.21. On or about February 12, 2007, respondent issued check No. 1199 from her CTA in the amount of \$300. The check was returned due to the account having insufficient funds; the CTA was assessed a \$20 fee. On or about February 12, 2007, Bank of the West wrote to respondent, informing her that check No. 1199 had been returned due to non-sufficient funds in the CTA. On or about February 20, 2007, the balance in respondent's CTA was \$146.71.

On or about February 20, 2007, respondent issued check number 1203 from her CTA in the amount of \$250. The check was returned due to the account having insufficient funds; the CTA was assessed a \$20 fee. On or about February 20, 2007, Bank of the West wrote to respondent, informing her that check No. 1203 had been returned due to non-sufficient funds in the CTA.

On or about November 6, 2007, respondent issued check No. 1019 from her CTA in the amount of \$2,695. The check was returned due to the account having insufficient funds; the CTA was assessed a \$32 fee. On or about November 6, 2007, the balance in the CTA was \$565.

On or about November 9, 2007, another attempt to negotiate check No. 1019 was made. The check was again returned due to the account having insufficient funds; the CTA was again assessed a \$32 fee. On or about November 9, the CTA balance was \$489.06.

On or about November 30, 2007, respondent issued check No. 1035 from her CTA in the amount of \$1,269.80. The check was returned due to the account having insufficient funds;

the CTA was assessed was assessed a \$32 fee. On or about November 30, 2007, the balance in the CTA was \$643.26.

Respondent repeatedly issued checks from her CTA when she knew there were insufficient funds to cover them. On each occasion, Bank of the West sent notice to the State Bar as required by section 6091.1.

On or about July 30, 2007, respondent issued check No. 1216 to Amstar/Red Oak Huntington Beach in the amount of \$1,269.80 from her CTA to pay her personal and/or business expenses.

In or about August 2007, respondent repeatedly issued checks from her CTA to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
1224	8/10/07	Preferred Finish	\$2,000
1230	8/22/07	Office Depot	\$56.25
1231	8/22/07	Office Depot	\$25.48
1232	8/23/07	Preferred Finish	\$2,000
1237	8/28/07	Amstar/Red Oak Huntington Beach	\$1,269.80
1240	8/31/07	Preferred Finish	\$1,000

On or about September 20, 2007, respondent issued check No. 1004 to Office Depot in the amount of \$49.50 from her CTA to pay her personal and/or business expenses.

In or about October 2007, respondent repeatedly issued checks from her client trust account to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
9088	10/19/07	Preferred Finish	\$5,000

1014	10/20/07	T Mobile	\$215.80
9056	10/31/07	Preferred Finish	\$3,250

In or about November 2007, respondent repeatedly issued checks from her CTA to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
1019	11/5/07	Tom Shelley (notation indicates “carpet cleaning”)	\$2,695
1023	11/14/07	Armstar/Red Oak Huntington Beach LLC	\$1,401.80
1024	11/15/07	Robert A. Arvizo	\$2,000
1028	11/20/07	Pitney Bowes	\$173.39
1030	11/20/07	Pitney Bowes	\$3.62
1032	11/20/07	Arrowhead	\$30.88
1034	11/20/07	O-TV Computers	\$270
1035	11/21/07	Armstar/Red Oak Huntington Beach LLC	\$1,269.80
1036	11/21/07	T Mobile	\$180.22

In or about December 2007, respondent repeatedly issued checks from her CTA to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
1041	12/11/07	Coreland	\$1,269.80
1059	12/27/07	American Express	\$63.98

In or about January 2008, respondent repeatedly issued checks from her CTA to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
1075	1/22/08	Armstar/Red Oak	\$1,294.80
1072	1/23/08	Preferred Finish	\$2,000
1087	1/30/08	Preferred Finish	\$750
1083	1/30/08	OTV	\$60

In or about February 2008, respondent repeatedly issued checks from her CTA to pay her personal and/or business expenses, including, but not limited to, the following:

CHECK NUMBER	DATE ISSUED	PAYEE	AMOUNT
1093	2/4/08	Arrowhead	\$45.88
1095	2/4/08	T Mobile	\$183.66
1110	2/26/08	T Mobile	\$170.60
1111	2/26/08	Verizon	\$253.27
1115	2/26/08	Amstar/ Red Oak Huntington Beach	\$55.53
1116	2/26/08	Amstar/ Red Oak Huntington Beach	\$1,306.80

Count 9: Moral Turpitude (§ 6106)

It is well settled that the “conduct of issuing numerous checks with insufficient funds ‘manifests an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.’” (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324, citing *Tomlinson v. State Bar* (1975) 13 Cal.3d 567, 577.) Moreover, “[i]n every instance of which we are aware, where an attorney was found to have written multiple bad checks, the Court has found such continued conduct to be an act of moral turpitude. [Citations.]” (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 53-54.)

Accordingly, respondent willfully violated section 6106, by engaging in acts of moral turpitude by repeatedly issuing checks drawn upon her Bank of the West CTA when she knew or was grossly negligent in not knowing that there were insufficient funds in the account to pay them, and by failing to ensure that there were sufficient funds in the account to pay the checks.

Count 10: Commingling (Rule 4-100(A))

Rule 4-100(A) “absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit. Because [respondent] used the account while it was ... denominated a trust account, even if he [did not intend] ... to use it for trust purposes, rule [4-100(A)] was violated. The rule leaves no room for inquiry into the depositor’s intent.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

Thus, by issuing checks for her personal and/or business expenses from her Bank of the West CTA, respondent commingled her personal funds in a client trust account. Accordingly, the court finds by clear and convincing evidence that respondent willfully violated rule 4-100(A).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁴ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

⁴ Future references to standard(s) or std. are to this source.

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On August 21, 2005, respondent, upon stipulation, was privately reprovved for failure to perform legal services competently and failure to cooperate with the State Bar. (State Bar Court case No. 04-O-12160.)

Respondent committed multiple acts of wrongdoing by failing to deposit client funds in a client trust account, by engaging in the unauthorized practice of law, charging an illegal fee, failing to avoid adverse interests, failing to deliver client properties promptly, committing acts of moral turpitude, and commingling personal funds with client funds in his CTA. (Std. 1.2(b)(ii).)

Respondent sold client Landrum's gold coin and silver bar without receiving his consent to the sale. Furthermore, respondent failed to advise Landrum of the sale, and kept the funds from the sale. That misconduct was surrounded by bad faith, dishonesty, concealment, and overreaching. (Std. 1.2(b)(iii).)

Respondent's misconduct significantly harmed her client. (Std. 1.2(b)(iv).) Landrum had to hire an attorney to assist him in obtaining his gold coin, silver bar, and DiMaggio baseball card from respondent. Moreover, respondent sold Landrum's gold coin and silver bar, thus depriving him of his property.

Respondent's failure to participate in this disciplinary matter before the entry of her default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(b), 2.3, 2.6, 2.8, and 2.10 apply in this matter.

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 Silvertown* (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.)

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.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.8 provides that culpability of a willful violation of rule 3-300 must result in suspension, unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline must be reproof.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges that the discipline in the instant matter include three years' stayed suspension and actual suspension for two years and until the State Bar Court grants a motion to terminate respondent's suspension under rule 205 of the Rules of Procedure of the State Bar. In support of its recommendation, the State Bar cites to, among other cases, *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *Rose v. State Bar* (1989) 49 Cal.3d 646, and *Rodgers v. State Bar* (1989) 48 Cal.3d 300. The court finds the cited cases instructive in determining the discipline to be imposed in the instant matter, as those cases involve facts and considerations similar to those present here.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against her, nor her duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of her misconduct or of any mitigating circumstances surrounding her misconduct.

Balancing all relevant factors – respondent’s misconduct, the standards, the case law, and the aggravating evidence, the court concludes that placing respondent on a suspension for a minimum of two years would be appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommendations

A. Discipline

Accordingly, the court hereby recommends that respondent **Susan Ann Mitchell** be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a minimum of two years and she remain suspended until the following requirements are satisfied:

1. The State Bar Court grants a motion to terminate respondent’s suspension pursuant to rule 205 of the Rules of Procedure of the State Bar; and
2. Respondent provides proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating her suspension. (Rules Proc. of State Bar, rule 205(g).)

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination during the period of her suspension and provide satisfactory proof of such passage to the State Bar’s Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

Respondent must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

D. Costs

It is further 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.

Dated: November _____, 2009

RICHARD A. HONN
Judge of the State Bar Court

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)