

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **06-O-14466-RAH**
) 08-O-12367 (Cons.)
JACQUELINE STATEN)
) **DECISION AND ORDER OF INACTIVE**
Member No. 175733) **ENROLLMENT**
)
A Member of the State Bar.)

1. INTRODUCTION AND PROCEDURAL MATTERS

The trial in this matter commenced on September 22, 2010, and was completed on September 24, 2010. The Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) was represented by Agustin Hernandez. Respondent Jacqueline Staten (“respondent”) was represented by Early M. Hawkins, Esq. This matter was submitted for decision on October 4, 2010.

The Office of the Chief Trial Counsel seeks to disbar respondent. For the reasons set forth below, and, in particular, because of the seriousness of respondent’s misconduct and her record of prior misconduct, this court agrees that disbarment is the appropriate level of discipline.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 19, 1994, and since that time has been an attorney at law and a member of the State Bar of California.

B. Facts and Conclusions of Law of Charged Matters

The culpability case was presented by an agreed upon set of facts and conclusions of law, contained in a Stipulation as to Facts, Conclusions of Law, and Admission of Documents, filed September 8, 2010. Those facts and conclusions of law are set forth below.

The Eduardes Matter—Case No. 06-O-14466

At all relevant times, respondent maintained a Client Trust Account at Union Bank of California (“CTA”). At all relevant times, respondent maintained a personal account at Union Bank of California (“personal account”).

In August 2003, respondent represented Cheryl Eduardes (“Cheryl”) in her marital dissolution matter entitled *Eduardes v. Eduardes*, Orange County Superior Court case number 02D002677. On August 15, 2003, the parties stipulated, and the court ordered, that the proceeds from the sale of the Eduardeses’ family residence be deposited into respondent’s CTA. The stipulated order provided that the proceeds were to be disbursed only by court order or agreement of the parties. On August 26, 2003, Bixby Knolls Escrow Services provided a check to respondent in the amount of \$304,620.25, which represented the proceeds from the sale of the Eduardeses’ home (“the check”). The check was made payable to the “Jacqueline Staton (sic) Attorney Trust Account for the benefit of Gilberto A. Eduardes and Cheryl Eduardes.” On August 28, 2003, respondent caused the check to be endorsed and deposited into her personal

account without the knowledge or consent of Cheryl, Cheryl's estranged spouse, Gilberto ("Gilberto"), or Gilberto's counsel.

On August 29, 2003, respondent withdrew \$299,520.25 of the \$304,620.25 from her personal account and deposited the \$299,520.25 into her CTA. On August 29, 2003, respondent intentionally or with gross negligence misappropriated \$5,100 belonging to the Eduardeses for her own use and benefit. On September 5, 2003, respondent deposited \$5,000 of her personal funds into her CTA to partially replace the \$5,100 of the Eduardeses' funds that she had misappropriated for her own use and benefit.

By October 30, 2003, the balance in respondent's personal account was -829.72.

In addition to the \$5,100 identified above, respondent issued the following checks, and made the following withdrawals and transfers of funds from her CTA using the Eduardeses' funds, all for her own use and benefit:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>
10/28/03	Withdrawal	\$300.00
11/13/03	Transfer	\$1,000.00
11/13/03	Transfer	\$9,200.00
11/20/03	Withdrawal	\$750.00
11/24/03	Withdrawal	\$2,850.00
11/25/03	Withdrawal	\$1,500.00
11/28/03	Withdrawal	\$3,100.00
11/28/03	Withdrawal	\$6,500.00
12/01/03	Withdrawal	\$2,200.00
12/02/03	Withdrawal	\$400.00
12/04/03	Withdrawal	\$100.00
12/11/03	Check #148	\$850.00
12/11/03	Check #149	\$250.00
12/19/03	Transfer	\$250.00
12/19/03	Transfer	\$500.00
12/22/03	Withdrawal	\$2,500.00
12/24/03	Withdrawal	\$3,000.00
12/29/03	Withdrawal	\$800.00
12/30/03	Withdrawal	\$6,000.00
01/02/04	Withdrawal	\$5,000.00
01/04/04	Withdrawal	\$3,000.00
01/05/04	Withdrawal	\$6,000.00
01/09/04	Withdrawal	\$13,000.00

01/09/04	Withdrawal	\$5,000.00
01/09/04	Withdrawal	\$3,300.00
01/16/04	Withdrawal	\$3,500.00
01/23/04	Withdrawal	\$1,000.00
01/23/04	Withdrawal	\$3,000.00
02/03/04	Withdrawal	\$2,000.00
02/17/04	Withdrawal	\$1,600.00
02/19/04	Check #152	\$36.30
02/20/04	Withdrawal	\$3,500.00
02/25/04	Withdrawal	\$3,500.00
03/12/04	Withdrawal	\$1,000.00
03/15/04	Withdrawal	\$2,000.00
03/18/04	Withdrawal	\$2,000.00
03/29/04	Withdrawal	\$2,000.00
04/13/04	Withdrawal	\$15,000.00
04/13/04	Withdrawal	\$500.00
04/14/04	Transfer	\$1,000.00
04/27/04	Withdrawal	\$250.00
05/11/04	Check #158	\$1,940.00
05/11/04	Withdrawal	\$300.00
06/25/04	Withdrawal	\$25,000.00
06/28/04	Withdrawal	\$2,100.00
07/02/04	Withdrawal	\$1,000.00
09/01/04	Transfer	\$500.00
10/12/04	Transfer	\$130.00
10/12/04	Transfer	\$170.00
10/12/04	Withdrawal	\$100.00
11/08/04	Withdrawal	\$250.00
11/11/04	Check #159	\$1,614.90
11/29/04	Withdrawal	\$100.00
12/09/04	Withdrawal	\$180.00

Respondent made the following deposits of personal funds into her CTA to partially replace the Eduardeses' funds that she had misappropriated for her own use and benefit (in addition to the \$5,000 that she deposited on September 5, 2003):

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>
11/13/03	Deposit	\$10,000.00
11/18/03	Deposit	\$750.00
04/21/04	Deposit	\$9,000.00
04/21/04	Deposit	\$4,800.00
06/16/04	Deposit	\$25,000.00
07/07/04	Deposit	\$20.00
07/07/04	Deposit	\$30.98
07/07/04	Deposit	\$200.00
07/07/04	Deposit	\$5,000.00
08/20/04	Deposit	\$1,000.00
10/22/04	Deposit	\$2,000.00

Respondent made the following disbursements to the Eduardeses or on their behalf:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>	<u>Payee</u>
09/05/03	Check #145	\$25,000	Cheryl Eduardes
09/05/03	Check #146	\$25,000	Gilberto Eduardes
12/05/03	Check #147	\$11,736.00	Gilberto Eduardes
01/13/04	Check #150	\$1,966.50	Dr. Kenneth Fineman
02/03/04	Check #151	\$25,000.00	Gilberto Eduardes
03/24/04	Cashier's Check	\$40,000.00	Cheryl Eduardes
04/06/04	Check #157	\$82,958.88	Gilberto Eduardes
07/07/04	Cashier's Check	\$43,000.00	Cheryl Eduardes
10/31/05	Cashier's Check	\$50,000.00	Cheryl Eduardes
Total Disbursements:		\$304,661.38	

As reflected in the table below, respondent was required to maintain the noted amounts and balances in her CTA on behalf of the Eduardeses. She failed to do so and misappropriated the noted amounts for her own use and benefit:

<u>Date</u>	<u>Amount Required to be Maintained in CTA on behalf of the Eduardeses</u>	<u>Actual CTA Bal.</u>	<u>Amount Misappropriated</u>
08/29/03	\$304,620.25		
09/05/03	\$254,620.25		
09/29/03	\$254,620.25	\$254,458.70	\$161.55
10/30/03	\$254,620.25	\$254,158.70	\$461.55
11/26/03	\$254,620.25	\$249,608.70	\$5,011.55
12/05/03	\$242,884.25		
12/30/03	\$242,884.25	\$211,422.70	\$31,461.55
01/13/04	\$240,917.75		
01/29/04	\$240,917.75	\$171,656.20	\$69,261.55
02/03/04	\$215,917.75		
02/26/04	\$215,917.75	\$136,018.90	\$79,898.85
03/24/04	\$175,917.75		
03/30/04	\$175,917.75	\$129,018.90	\$46,898.85
04/06/04	\$92,958.87		
04/29/04	\$92,958.87	\$43,109.02	\$49,849.85
05/27/04	\$92,958.87	\$40,869.02	\$52,089.85
06/29/04	\$92,958.87	\$38,769.02	\$54,189.85
07/07/04	\$49,958.87		
07/29/04	\$49,958.87	\$46.98	\$49,911.89
08/30/04	\$49,958.87	\$1,046.98	\$48,911.89
09/29/04	\$49,958.87	\$546.98	\$49,411.89
10/28/04	\$49,958.87	\$2,146.98	\$47,811.89
11/29/04	\$49,958.87	\$182.08	\$49,776.79

12/30/04	\$49,958.87	\$2.08	\$49,956.79
01/28/05	\$49,958.87	\$2.08	\$49,956.79
02/25/05	\$49,958.87	\$2.08	\$49,956.79

By February 26, 2004, respondent had properly disbursed \$88,702.50 to the Eduardeses or on their behalf. On February 26, 2004, respondent was required to maintain \$215,917.75 in her CTA on behalf of the Eduardeses. On February 26, 2004, the balance in respondent's CTA was \$136,018.90. By February 26, 2004, respondent had intentionally, or with gross negligence, misappropriated \$79,898.85 of the Eduardeses' funds for her own use and benefit (this amount includes the \$5,100 that was misappropriated on August 29, 2003, described above.)

Between August 29, 2003 and December 30, 2004, respondent disbursed \$254,661.38 to the Eduardeses or on their behalf. On December 30, 2004, respondent was required to maintain \$49,958.87 of the Eduardeses' funds in her CTA. The balance in respondent's CTA on December 30, 2004, was \$2.08.

Respondent did not have a court order or the agreement of the parties before she distributed the Eduardeses' funds for her own use and purposes as described above.

On October 11, 2005, attorney Alexander Macksoud II ("Macksoud") substituted in as Cheryl's attorney in her dissolution matter. On October 11, 2005, Macksoud and Cheryl appeared in court for a hearing on the dissolution matter. Macksoud informed the court that respondent had not provided him with an executed Substitution of Attorney. On that day, the court issued an order relieving respondent as Cheryl's counsel of record ("October 2005 order").

The October 2005 order further ordered respondent to prepare an accounting of the Eduardeses' community funds, to provide the accounting to Macksoud and Gilberto's counsel, and to transfer the remaining community property assets from respondent's CTA to Macksoud, all within 10 days.

On October 17, 18, or 19, 2005, Macksoud caused to be delivered to respondent's office a letter he had written, as well as a copy of the October 2005 order. Among other things, Macksoud's letter informed respondent that she had been relieved as Cheryl's counsel of record, that she was ordered to provide an accounting of the Eduardeses' funds, and that she was to

immediately turn over to Macksoud the Eduardeses' remaining community funds. Respondent received the letter and the October 2005 order.

On October 19, 2005, respondent sent to Macksoud via facsimile a document entitled "Trust Accounting - Cheryl & Gilberto Eduardes" ("accounting"). The accounting reflected the following information:

<u>Date</u>	<u>Action</u>	<u>Amount</u>	<u>Balance</u>
08/28/03	Deposit	\$304,620.25	\$304,620.25
09/05/03	Check #145 Cheryl Eduardes	\$25,000.00	\$279,620.25
09/05/03	Check #146 Gilberto Eduardes	\$25,000.00	\$254,620.25
01/13/04	Check #150 Dr. Kenneth Fineman	\$1,966.50	\$240,917.75
02/03/04	Check #151 Gilberto Eduardes	\$25,000.00	\$215,917.75
03/25/04	Check #156 Cheryl Eduardes	\$42,958.87	\$172,958.88
04/06/04	Check #157 Gilberto Eduardes	\$82,958.88	\$90,000.00
08/04	Cashier's Check	\$40,000.00	\$50,000.00

At the time respondent provided the accounting to Macksoud, respondent knew, or was grossly negligent in not knowing, that the information contained in the accounting was inaccurate because the accounting did not reflect respondent's use of the Eduardeses' trust funds for her own use and purposes as identified above, or the deposits of her own personal funds to replace the misappropriated amounts as identified above. Additionally, the accounting of the disbursements did not reflect check no. 147 from respondent's CTA that she issued to Gilberto on December 6, 2003, in the amount of \$11,736.00.

On October 19, 2005, respondent sent via mail and facsimile to Macksoud check no. 173 dated October 21, 2005, which respondent had issued from her CTA in the amount of \$50,000

payable to Macksoud pursuant to the court's October 2005 order. On October 19, 2005, when respondent issued check no. 173, the balance in respondent's CTA was \$1,876.90. Along with this check, respondent attached a note indicating that a cashier's check for the trust funds would be provided to Macksoud on October 20, 2005. Respondent issued check no. 173 when she knew, or was grossly negligent in not knowing, that there were insufficient funds in the CTA to pay it. On October 31, 2005, respondent provided to Macksoud a cashier's check for \$50,000 as a replacement for check no. 173. Prior to respondent providing the \$50,000 cashier's check to Macksoud, Macksoud attempted to negotiate check no. 173 in the bank on two occasions. Each time that Macksoud attempted to negotiate the check, the bank rejected the check because there were insufficient funds in respondent's CTA to cover check no. 173. Between October 21, 2005 and October 31, 2005, the highest balance in respondent's CTA was \$1,876.90.

Cheryl Eduardes was not the complaining witness in this matter.

Conclusions of Law (Case No. 06-O-14466)

By failing to deposit \$5,100 of the proceeds from the sale of the Eduardeses' home into her CTA, respondent failed to deposit funds in trust, in willful violation of rule 4-100(A), Rules of Professional Conduct.¹

By failing to maintain \$304,620.25 of the Eduardeses' funds in her CTA, respondent failed to maintain client funds in trust, in willful violation of rule 4-100(A).

By misappropriating \$79,898.85 of the Eduardeses' funds, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.²

By failing to deposit \$5,100 of the Eduardeses' funds in her CTA as she was ordered to do on August 15, 2003, and by failing to obtain a court order or the agreement of the parties pursuant to the court's August 15, 2003 order before she distributed \$79,898.85 of the Eduardeses' funds from her CTA for her own use and purposes, respondent willfully disobeyed an order of the court, in violation of section 6103.

¹ All further references to "rule(s)" are to this source, unless otherwise noted.

² All further references to "section(s)" are to this source, unless otherwise noted.

By providing an accounting to Macksoud that did not reflect respondent's use of trust funds for her own use and purposes, the deposits of her own personal funds to replace the misappropriated amounts, or the correct disbursements, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

By issuing check 173 drawn upon her CTA when she knew, or was grossly negligent in not knowing, that the check was issued against insufficient funds, respondent committed an act involving moral turpitude, dishonestly or corruption, in willful violation of section 6106.

The parties stipulated to the dismissal of Counts Two, Three, Four and Ten.

The Johnston Matter—Case No. 08-O-12367

In September 2006, Helen Johnston ("Helen") filed a petition for dissolution of marriage against her husband, Eric Johnston ("Eric"). The matter was entitled *Johnston v. Johnston*, Riverside Superior Court case no. RID 217315. In September 2006, Helen was represented by Attorney William Bratton ("Bratton").

In 2006, Eric and Helen sold their family residence. On December 13, 2006, the court ordered that \$143,726 of the proceeds from the sale of Eric and Helen's home be held in trust by Bratton. In late December 2006, Bratton divided \$143,726 in half and placed the funds in two trust accounts.

On March 17, 2008, respondent substituted into the Johnston matter as Helen's counsel of record. On that date, the court ordered Bratton to deliver the \$143,726 that Bratton was holding in trust to respondent and ordered respondent to deposit the funds in a trust account for the benefit of Helen and Eric. The court further ordered respondent not to disburse the funds unless ordered by the court.

On March 21, 2008, Bratton caused two cashier's checks in the amount of \$71,863.15 each (collectively "the funds") to be given to respondent. Respondent received the checks. On March 21, 2008, respondent caused the funds to be deposited into respondent's client trust account at Bank of America ("Bank of America CTA"). Immediately before the deposit of the funds was made, the balance in the Bank of America CTA was \$80.00.

In late May 2008, Helen terminated respondent's employment and rehired Bratton.

Thereafter, on May 28, 2008, an Order to Show Cause ("OSC") was heard regarding Eric's ex-parte application for an order allowing his attorney, Susan Gavigan ("Gavigan"), to hold the Johnstons' funds in trust. Respondent appeared at the OSC telephonically. The court ordered Helen to pick up her file and a check in the amount of \$143,726 plus interest from respondent, payable to Bratton, no later than 4:00 p.m. on May 29, 2008. The judge further ordered that respondent provide the check and a bank statement regarding the funds to Helen and that Helen deliver the check, bank statement, and file to Bratton. Respondent, while still on the telephone, received verbal notice of the court's order. Respondent did not make the funds available to Bratton or Helen by May 29, 2008, as ordered by the court.

On June 2, 2008, Gavigan mailed a letter to respondent in which she informed respondent that despite the court's order, respondent had not provided Helen and Eric's funds. Respondent received the letter, but did not respond to it. On June 3, 2008, Bratton substituted into the Johnstons' dissolution matter as Helen's counsel of record. On June 27, 2008, respondent left a voicemail message for Bratton stating that the funds were ready and that she planned to deliver the funds to Bratton on the following Monday, June 30, 2008.

Respondent did not provide the funds to Bratton or Helen on June 30, 2008, or on any other day.

Between March 21, 2008 and May 31, 2008, respondent was required to maintain \$143,726.30 of the funds in her Bank of America CTA. On May 31, 2008, and without disbursing any funds to the Johnstons or on their behalf, the balance in respondent's Bank of America CTA was \$102,774.60.

Between March 21, 2008 and May 31, 2008, respondent intentionally, or with gross negligence, misappropriated \$40,951.70 (\$143,726.30, less the lowest CTA balance of \$102,774.60) of Helen and Eric's funds for her own use and benefit.

Thereafter, respondent deposited \$27,028.59 of her personal funds into the Bank of America CTA to replenish a portion of the misappropriated funds.

By late June 2008, when Helen, Bratton, Eric, or Gavigan had still not received the funds from respondent, Eric reported respondent to the Riverside County Sheriff's Department. The Riverside County Sheriff's Department then transferred the investigation to the Murrieta Police Department for handling. On July 17, 2008, the Murrieta Police Department obtained a court order freezing respondent's CTA and allowing it to collect Helen and Eric's funds from the Bank of America CTA. On July 19, 2008, pursuant to the court order, Bank of America gave the Murrieta Police Department a cashier's check in the amount of \$129,803.19, which represented the balance of Helen and Eric's funds in respondent's Bank of America CTA as of that date.

Respondent did not obtain a court order or the written agreement of the parties before she disbursed \$40,951.70 of the funds, as she was ordered to do by the court on March 17, 2008.

Helen Johnston was not the complaining witness in this matter.

Conclusions of Law (Case No. 08-O-12367)

By failing to deliver the funds to Bratton or Helen, respondent failed to pay promptly client funds in her possession, in willful violation of rule 4-100(B)(4).

By failing to maintain \$143,726.30 of Helen and Eric's funds in her CTA, respondent failed to maintain client funds in trust, in willful violation of rule 4-100(A).

By misappropriating \$40,951.70 of Helen and Eric's funds, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

By failing to obtain a court order before disbursing \$40,951.70 of the funds from her CTA, and by failing to provide a check for the funds, the bank statement, or Helen's file to Helen or to Bratton by 4:00 p.m. on May 29, 2008, as she was ordered to do by the court, respondent willfully disobeyed orders of the court, in violation of section 6103.

The parties stipulated to the dismissal of Count Five.

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3. LEVEL OF DISCIPLINE

A. Factors in Aggravation

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(b).)³

Prior Record of Discipline

Respondent's prior record of discipline is a factor in aggravation. (Std. 1.2(b)(i).)

Effective February 11, 2010, respondent received a two year suspension, stayed, with three years' probation, including a one-year actual suspension. (Supreme Court case no. S177763; State Bar Court case nos. 06-C-11615; 06-O-11559 (06-O-11880; 06-O-14274; 06-O-14275; 06-O-14276) (Cons.).)

This prior misconduct involved several matters. In one matter, respondent plead guilty to a count of misdemeanor battery arising out of an altercation on January 5, 2006. In another matter, respondent failed to refund \$1,551.71 in unearned fees, in violation of rule 3-700(D)(2). These fees were initially requested on June 20, 2005, but were not refunded until April 18, 2008. In a third matter, respondent failed to oppose a motion to compel discovery responses that was served on her on October 26, 2005. She then failed to appear at the hearing on the motion on November 28, 2005. The motion was granted and sanctions were imposed against respondent's client. Respondent then failed to seek relief of the order on behalf of the client. She also failed to refund \$2,400 in unearned fees requested by the client on January 25, 2006. As a result of this misconduct, respondent stipulated to violations of rules 3-110(A) and 3-700(D)(2).

In three other matters, respondent violated rule 4-100(A) by misusing her client trust account and making it possible for her roommate to use her CTA to pay personal expenses.

³ All further references to standard(s) are to this source.

Seven improper transactions from this account occurred between January 17, 2006 and February 21, 2006, totaling \$861.96.

Multiple Acts of Misconduct

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

B. Factors in Mitigation

Mental Health Testimony

Respondent has had a traumatic life, and still suffers from the misfortune she has faced. In 1999, respondent had a hysterectomy and suffered from hormonal complications. She became edgy, irrational, and suffered from mood swings. She became confused about her sexual identity and suffered from serious hot flashes. She has sometimes used drugs, including marijuana and methamphetamine.

In 2003, her law partner asked her to sign a lease for the firm. She signed the lease. That night, her partner moved out with all the employees. This set in motion a series of mental health difficulties caused by the stress associated with sorting out the former firm's obligations.

Respondent filed for bankruptcy and, in 2003, she lost her house. She was granted a discharge from the Bankruptcy Court on January 5, 2004. Respondent moved her home or office about ten times during the next several years. Her daughter was living with her at the time, but she eventually was forced to send her daughter away to live with her mother because of respondent's lack of a stable living environment.

Dr. Theodore Guy Williams, M.D. is a clinical psychiatrist specializing in mood and eating disorders. He testified on behalf of respondent. He originally saw respondent as a patient in early 2007, when she came to him complaining of depression, anxiety, and sleep disorders. She had been seeing other mental health professionals, including Dr. Tom E. Noyes, M.D. Dr.

Williams diagnosed that she was suffering from bipolar disorder and was then in an episode of depression. In her manic stage, he testified that her behavior was grandiose and she exhibited bad judgment, sleeplessness, hyperactivity, and paranoia. In her depressed stage, he noted she suffered from hopelessness, helplessness, and suicidal thoughts. Although he no longer sees her in counseling, he still regularly meets with her to monitor her medication. He stated that as long as she remains on her medication, she can be a functional professional.

Aside from these general comments about the affect of her disease on her behaviors, Dr. Williams offered little insight into the reasons why her mental illness caused respondent to misappropriate entrusted funds or commit the other found misconduct.

Respondent participated in the Alternative Discipline Program. However, she was terminated and received the high level of discipline when the Lawyers Assistance Program discovered that she tampered with her urine test on two occasions.

Given the lack of a causal connection between respondent's mental health condition and her misconduct, the court only finds minimal mitigation for this condition.

Witnesses in Support of Respondent's Good Character

Respondent presented testimony from witnesses as to her good character. (Std. 1.2(e)(vi).) Each was very supportive of her and aware of her misconduct. Respondent's mother, Margie Staten, was very close to respondent. Respondent lived with her mother during the period of respondent's treatment for her mental health problems. Her mother saw first-hand how her condition affected her ability to function. She also observed her going through rehabilitation for these problems.

Jaime Beth Cameron also testified on respondent's behalf. She is a close friend of respondent, and worked with her in respondent's office. She also lived with respondent for a short while. Ms. Cameron felt that respondent was a person of good moral character and one

that would not knowingly steal from clients. She also feels that respondent is an excellent attorney.

Both of the above character witnesses supported respondent's return to practice as an attorney.

Respondent also had several other favorable character witnesses who testified by declaration. One notable example was Cheryl Eduardes Howell, her former client. Her testimony was very supportive of respondent and asserted that, while acting as her attorney, respondent committed no acts involving moral turpitude, dishonesty, or corruption. Also supporting respondent by declaration were Christine C. Smith and Sue Brotherton, Ph.D.

Respondent also testified on her own behalf about the efforts she is making to rehabilitate herself. She attends church regularly and benefits from the spiritual focus her Bible study provides.

Charitable Activities

Respondent participates in some charitable activities. She acts as a volunteer in a senior center in Costa Mesa. She assists the residents by taking them on walks. She also helps the handicapped doing similar support services. She donates clothes and furniture to kids once or twice a month.

She has done extensive pro bono legal work in her career. She also has freely written off bills to clients who could not afford legal services.

Cooperation with the Office of the Chief Trial Counsel (Std. 1.2(e)(v))

Respondent cooperated with the Office of the Chief Trial Counsel of the State Bar by entering into an extensive stipulation of facts and conclusions of law. This dramatically reduced the time necessary for trial of the matter. Therefore, respondent is entitled to credit in mitigation for such conduct.

4. DISCUSSION

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

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

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).)

Standards 2.2, 2.3, and 2.6 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful 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 a one-year actual suspension.

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.) 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.) There is no reason, however, to deviate from the standards in this case.

The court also finds *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511, to be instructive. In *Spaith*, the attorney was found culpable of misappropriating approximately \$40,000 from a client and misleading the client regarding the status of the money for over a year. In mitigation, the attorney demonstrated good character; provided community service and other pro bono activities; and cooperated with the State Bar by admitting his wrongdoing and stipulating to the facts and culpability. In addition, the attorney had no prior record of discipline in over 15 years of practicing law.⁴ In aggravation, the attorney's misconduct involved multiple acts of wrongdoing. The Review Department ultimately found that the mitigating circumstances were not sufficiently compelling to justify a lesser sanction than disbarment when weighed against the attorney's misconduct and aggravating circumstances. (*Id.* at p. 522.)

The court finds the facts involved in the instant case to be more egregious than those of *Spaith*. Here, respondent, in two separate matters, misappropriated a total sum of over \$120,000. This amount is three times the amount misappropriated in *Spaith*. The court also notes that, unlike the attorney in *Spaith*, respondent still owes money to the victims of her misappropriation.

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, the court finds no compelling reason to recommend a level of discipline short of disbarment.

⁴ Although the attorney paid restitution, this did not warrant mitigative credit due to the fact that none of the restitution was paid until after the attorney's client threatened to report him to the State Bar.

5. RECOMMENDED DISCIPLINE

This court recommends that respondent **Jacqueline Staten** be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys in this state.

It is also recommended that respondent make restitution to Helen and Eric Johnston in the amount of \$13,923.11 plus 10% interest per annum from May 31, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Helen and Eric Johnston, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation.

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

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁵

6. COSTS

The court recommends that costs be awarded to the Office of the Chief Trial Counsel 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.

7. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of

⁵ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

Dated: January _____, 2011

RICHARD A. HONN
Judge of the State Bar Court