

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-14819-RAP (O6-O-14901-RAP;
)	07-O-11544-RAP; 07-O-12046-RAP;
HOWARD CURTIS CRANE,)	07-O-14018-RAP; 08-O-11504-RAP;
)	09-O-11720-RAP)
Member No. 75385,)	
)	DECISION & ORDER OF
A Member of the State Bar.)	INACTIVE ENROLLMENT
_____)	

I. INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **HOWARD CURTIS CRANE**¹ with a total of thirty counts of professional misconduct in seven separate client matters. For the reasons set forth below, the court finds respondent culpable on 21 of the 30 counts and concludes that the appropriate level of discipline for the found misconduct, which includes misappropriating more than \$17,500 in client funds, is disbarment.

The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Respondent initially appeared in this proceeding in propria persona and then submitted his resignation from the State Bar with disciplinary charges pending. (State Bar Court Case No. 10-Q-01323) The resignation matter is currently pending with the Review Department. The present case proceeded

¹ Respondent was admitted to the practice of law in the State of California on September 15, 1977, and has been a member of the State Bar of California since that time. He has no prior record of discipline.

to trial on March 15, 2010. Respondent failed to appear at trial. As noted *post*, this court entered respondent's default on March 15, 2010, when he failed to appear for trial.

II. KEY PROCEDURAL HISTORY

On September 8, 2009, the State Bar filed the notice of disciplinary charges (hereafter NDC) in this proceeding and properly served a copy of the NDC on respondent. On September 9, 2009, the State Bar filed an "amendment" to the NDC. On November 19, 2009, respondent filed a response to the NDC.

The case was called for trial on March 15, 2010. Even though respondent was given adequate notice of the trial setting, respondent failed to appear at trial when his case was called. Accordingly, on March 15, 2010, the court entered respondent's default (Rules Proc. of State Bar, rule 201(b)) and, as mandated by Business and Professions Code section 6007, subdivision (e)(1),² ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective March 18, 2010.³ Also, on March 15, 2010, the court admitted State Bar's exhibits 1 through 104 into evidence and took the matter under submission for decision without a hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under section 6088 and Rules of Procedure of the State Bar, rules 200(d)(1)(A) and 201(c), upon the entry of respondent's default, the factual allegations (but not the charges or conclusions) set forth in the NDC in this proceeding were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the NDC as its factual findings. Briefly, those facts

² Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

³ Inactive members of the State Bar of California cannot lawfully practice law in this state. (§ 6126, subd. (b).)

establish or fail to establish the following charged disciplinary violations by clear and convincing evidence.⁴

A. Stucchi Client Matter -- Case Number 06-0-14819-RAP

In April 2002, Juana Stucchi⁵ employed respondent to represent her on a personal-injury claim arising from an automobile accident that occurred on about April 12, 2002.

On April 14, 2003, respondent filed a personal injury and property damage lawsuit for Stucchi in the Los Angeles County Superior Court.

On August 26, 2003, the superior court mailed notice of an October 3, 2003 hearing on an order to show cause (hereafter OSC) why sanctions should not be imposed or the action be dismissed to respondent, as respondent had not submitted proof of service of the action on the defendants. In the notice, the superior court ordered respondent to appear for the OSC hearing on October 3, 2003, and to serve and file a response to the OSC within 10 days after service of the notice.

Even though respondent received the August 26, 2003 notice, respondent did not file or serve a response to the OSC. Nor did respondent appear at the October 3, 2003 hearing on the OSC. Thus, on October 3, 2003, the superior court dismissed Stucchi's lawsuit without prejudice. Even though respondent received notice of that dismissal, respondent failed to tell Stucchi that her lawsuit had been dismissed.

On about December 11, 2003, the Interinsurance Exchange of the Automobile Club (hereafter AAA) sent respondent a letter offering to settle Stucchi's claims against its insured

⁴ Notwithstanding the entry of respondent's default, "All reasonable doubts must [still] be resolved in [his] favor . . . , and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt [must] be accepted [by the court]. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

⁵ In the NDC, the State Bar spells "Stucchi" a number of different ways. The court uses the spelling "Stucchi," which is the first way the State Bar spells it in the NDC.

(the defendant in Stucchi's lawsuit) for \$1,300. The offer expired on December 21, 2003. Respondent received AAA's letter, but did not inform Stucchi of AAA's settlement offer.

Count One – Failure to Communicate (§ 6068, subd. (m))

The record clearly establishes that respondent willfully violated section 6068, subdivision (m) when he failed to tell Stucchi that her lawsuit had been dismissed.

Count Two -- Failure to Perform (Rules Prof. Conduct, rule 3-110(A))⁶

The record clearly establishes that respondent willfully violated rule 3-110(A) when he failed to file and serve a response to the OSC and when he failed to appear at the OSC hearing. At a minimum, respondent's failure to perform these legal services was reckless.

Count Three -- Failure to Communicate a Settlement Offer (Rule 3-510)

The record clearly establishes that respondent willfully violated rule 3-510 when he failed to inform Stucchi of AAA's \$1,300 settlement offer.

Count Four -- Improper Withdrawal From Employment (Rule 3-700(A)(2))

In count four, the State Bar charges that respondent willfully violated rule 3-700(A)(2) because he failed, “*upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client. . . .*” (Italics added.) In count four, the State Bar does not allege that respondent or Stucchi ever expressly terminated respondent's employment. Nor does the State Bar allege that respondent ever intended to terminate his employment in the Stucchi matter. (See, e.g., *Baker v. State Bar* (1989) 49 Cal.3d 804, 816-817, fn. 5 [noting that an attorney's intentional failure to perform legal services does not establish that the attorney also intended to withdraw from employment].) Instead, the State Bar charges that respondent “effectively” withdrew from employment.

⁶ Unless otherwise indicated, all further references to rules are to these Rules of Professional Conduct of the State Bar of California.

Whether an attorney has effectively withdrawn from employment is determined by the totality of the circumstances. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680; see also *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979.) However, the factual allegations in count four, which are deemed admitted by the entry of respondent's default, simply do not establish, by clear and convincing evidence, that respondent effectively withdrew from employment in the Stucchi matter.⁷ Accordingly, count four is dismissed with prejudice.

B. Peterson Client Matter – Case Number 06-0-14901-RAP

In about August 2002, Consuelo Peterson employed respondent to represent her on a personal-injury and property-damage claims arising out of an automobile accident.

On July 11, 2003, respondent filed a lawsuit on those claims for Peterson in the San Bernardino County Superior Court.

Then, on February 6, 2006, the superior court set Peterson's lawsuit for trial beginning on August 7, 2006, with a trial-readiness hearing to be held three days earlier on August 4, 2006. Even though respondent received notice of those settings, respondent failed to appear for it on August 4, 2006 trial-readiness hearing. As a result, the court set a hearing on an order to show cause regarding dismissal and sanctions (hereafter OSC) for September 8, 2006. On August 4, 2006, both the superior court clerk and the defendant's attorney mailed, to respondent, notice of the September 8, 2006 hearing on the OSC. And respondent received those notices.

⁷ The court declines to sua sponte rely on the factual allegations in counts one through three to support respondent's effective withdrawal that is charged in count four. Even ignoring the obvious due process concerns of doing so, the court has already relied on the factual allegations in counts one through three to find respondent culpable of the misconduct charged in counts one through three. It would be inappropriate for the court to rely on those allegations a second time to find respondent culpable of the rule 3-700(A)(2) violation charged in count four. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 148.)

On September 8, 2006, respondent failed to appear at the OSC hearing. Thus, the superior court rescheduled that OSC hearing for October 11, 2006. Also, on September 8, 2006, Peterson mailed respondent a letter in which she terminated respondent's employment and in which she asked respondent to send her, her client file. Respondent received Peterson's letter, but failed to send Peterson's client file to Peterson.

Apparently, respondent failed to appear at the OSC hearing again on October 11, 2006. On October 11, 2006, the superior court found that Peterson had attempted to contact respondent without success. Pursuant to Code of Civil Procedure section 128.5, the superior court imposed, against respondent, \$700 in sanctions payable to the defendant's counsel and an addition \$1,000 in sanctions payable to the superior court. Respondent was to have paid both of those sanctions no later than November 15, 2006. On October 11, 2006, the superior court clerk mailed, to respondent, notice of these sanctions. Respondent thereafter received that notice, but still failed to pay either of the sanctions. In addition, respondent failed to report either of them to the State Bar.

Count Five -- Failure to Perform Competently (Rule 3-110(A))

The record clearly establishes that respondent willfully violated rule 3-110(A) in that he recklessly failed to perform legal services competently when he failed to appear both at the August 4, 2006 trial-readiness hearing and at the September 8, 2006 OSC hearing.

Count Six – Failure to Obey Court Order (§ 6103)

In count six, the State Bar charges that respondent violated section 6103 by not paying the two sanctions as ordered by the superior court. The court cannot agree.

Section 6103 provides that the willful “disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties

as such attorney, constitute causes for disbarment or suspension.” Moreover, before an attorney may be disciplined for violating a court order under section 6103, the State Bar must prove, by clear and convincing evidence, that the attorney violated a *final, binding court order* requiring him or her to act or to forbear from acting. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 604-605 [in California, an attorney cannot be disciplined for violating a court order issued without or in excess of the court’s jurisdiction]; see *id.* at pp. 606-607 (conc. opn. of O’Brien, P. J.); accord, *In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 787.)

The State Bar failed to establish, by clear and convincing evidence that respondent violated a final and binding court order directing him to pay the two sanctions totaling \$1,700. The record establishes (1) that respondent filed Peterson’s lawsuit on July 11, 2003, and (2) that the sanctions imposed in superior court’s October 2006 sanctions order were based solely on the superior court’s authority to impose sanctions under Code of Civil Procedure section 128.5. Section 128.5, however, was repealed for actions filed on or after January 1, 1995. (*Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal.App.4th 150, 164-165, rehearing denied, review denied.) Thus, the superior court’s sanctions could not have been authorized by section 128.5. Because the superior court’s sanctions were not authorized by statute and because the superior court did not and does not have the inherent authority to impose the sanctions (*Id.* at p. 168), the State Bar has failed to establish, by clear and convincing evidence, that the superior court’s order imposing the sanctions was a final and binding court order that respondent had a duty to obey under section 6103. Accordingly, count six is dismissed with prejudice.

Count Seven -- Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

The record clearly establishes that respondent willfully violated section 6068, subdivision (o)(3), which requires an attorney “to report to the [State Bar], in writing, within 30 days of the

time the attorney has knowledge of . . . [¶] The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).” Respondent willfully violated section 6068, subdivision (0)(3) as charged because he failed to report the \$1,000 in sanctions that the superior court imposed on him in its October 2006 sanctions order. Regardless of whether the superior court’s October 2006 sanctions order was void or otherwise unenforceable, respondent was required to report the \$1,000 sanctions to the State Bar within 30 days. (§6068, subd.(o)(3); cf. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866-867.)

Count Eight -- Failure to Release File (Rule 3-700(D)(1))

The record clearly establishes that respondent willfully violated rule 3-700(D)(1) when he failed to send Peterson her file in accordance with her September 8, 2006 letter request.

C. Lopez Client Matter – Case Number 07-0-11544-RAP

In 2007, respondent represented Shirley Lopez in a medical malpractice law suit against San Bernardino County, which was then pending in the San Bernardino Superior Court. Defendant San Bernardino County (hereafter defendant) was represented in that medical malpractice lawsuit by Attorneys Douglas Smith and Daniel Cantor of the law firm of Lubrani & Smith.

On January 23, 2007, Lopez did not appear for a noticed independent medical examination by George Macer, M.D., that had been scheduled by one of defendant’s attorneys. Neither Lopez nor respondent informed defendant's counsel that Lopez would not appear for the examination.

On January 24, 2007, Attorney Cantor called respondent's office and faxed and mailed respondent a letter about the missed examination. Cantor asked that respondent contact him to reschedule the examination, or defendant would file a motion to compel the examination. Then,

on January 29 and February 2, 2007, in some unspecified matter, Cantor again asked that respondent contact him to reschedule Lopez's examination, or defendant would file a motion to compel the examination.

Having received no response from respondent, on February 6, 2007, defendant filed a motion to compel Lopez's examination and a request for sanctions against Lopez and respondent and notified respondent of the motion to compel. Respondent did not file a written opposition to the motion to compel.

At a March 5, 2007, hearing on the defendant's motion to compel, the superior court granted defendant's motion and ordered Lopez and respondent to pay, within 30 days, \$1,412.50 in sanctions to defendant and \$250 in sanctions to Dr. Macer. Respondent was present during the hearing and thereby received actual notice of the sanctions. Respondent also was served with written notice of the sanctions on about March 6, 2007. Respondent, however, did not inform Lopez of the sanctions. Nor did respondent pay the sanctions.

On June 20, 2007, a State Bar investigator sent respondent a letter requesting a response to allegations of misconduct that Attorney Smith had made against him. Respondent actually received that letter. Additionally, on June 20, June 27, and November 7, 2007, the investigator left telephone messages for respondent about Attorney Smith's complaint and requesting that respondent contact him to discuss that complaint. Respondent did not provide a response to the investigator's requests. Nor did respondent contact the investigator to discuss the complaint.

Court Nine -- Failure to Obey Court Order (§ 6103)

The record clearly establishes that respondent willfully violated section 6103 when he failed to obey the superior court's order directing Lopez and him to pay sanctions totaling \$1,662.50 (\$1,412.50 plus \$250) to defendant and Dr. Macer.

Count Ten – Failure to Communicate (§ 6068, subd. (m))

The record clearly establishes that respondent willfully violated section 6068, subdivision (m) when he failed to tell Lopez that the superior court had ordered them to pay sanctions to defendant and Dr. Macer.

Count Eleven -- Failure to Cooperate in Disciplinary Investigation (§ 6068, subd. (i))

The record clearly establishes that respondent willfully violated section 6068, subdivision (i) when he failed to respond to State Bar investigator's June 20, 2007 letter requesting a response to Attorney Smith's complaint.

D. Tiscareno Client Matter

In September 2003, Soccoro Tiscareno (hereafter Tiscareno) employed respondent to represent her and her children, Juan Tiscareno (hereafter Juan) and Giovanni Tiscareno (hereafter Giovanni), with respect to personal injuries they suffered in an automobile accident.

In about December 2003, respondent executed a lien in favor of Tiscareno's medical providers Chiropractic Injury Care (hereafter Chiropractic Care) and Palm Imaging Institute (hereafter Palm Imaging) and thereby agreed to withhold such sums from any settlement obtained on behalf of Tiscareno as was necessary to adequately compensate her medical providers for the services provided to her.

In about March 2004, respondent settled Tiscareno's, Juan's, and Giovanni's personal injury claims with Safeco Insurance for \$25,000, \$1,000, and \$1,250, respectively.

In about March 2004, Tiscareno authorized respondent to disburse her \$25,000 settlement as follows: \$8,333.33 to respondent for fees; \$345 to respondent for costs; \$9,001 to Tiscareno; \$1,382.20 to Chiropractic Care; and \$5,938.41 to Blue Cross-Blue Shield for reimbursement of medical expenses it paid on Tiscareno's behalf.

In about March 2004, Tiscareno authorized respondent to disburse Juan's \$1,000 settlement as follows: \$250 to respondent; \$450 to Juan; and \$300 to Chiropractic Care. Respondent represented that Chiropractic Care had reduced its bill for Juan from \$810 to \$300.

Respondent waived his fees and costs advanced for Giovanni. And, in about March 2004, Tiscareno authorized respondent to disburse Giovanni's \$1,250 settlement as follows: \$386.15 to Giovanni; \$200 to Chiropractic Care; \$85 to Arrowhead Regional; and \$613.85 to AMR Ambulance. Respondent represented that Chiropractic Care had reduced its bill for Giovanni from \$540 to \$200; that Arrowhead Regional reduced its bill for Giovanni from \$142 to \$85; and that AMR Ambulance reduced its bill for Giovanni from \$778.87 to \$613.85.

On March 8, 2004, respondent deposited the \$25,000, the \$1,000 and the \$1,250 settlement drafts, which total \$27,250, into his client trust account (hereafter CTA). Thereafter, respondent should have held at least \$1,882.20 (\$1,382.20 plus \$300 plus \$200)⁸ in his CTA with which to pay Tiscareno's, Juan's, and Giovanni's medical bills to Chiropractic Care.

Without paying any funds from his CTA to Chiropractic Care, the balance in respondent's CTA repeatedly fell below the \$1,882.20 that should have remained in the CTA for Chiropractic Care, including to \$1,367.15 on March 31, 2004; to \$533.82 on April 1, 2004; and to \$193.65 on September 19, 2005.

In about April 2007, Chiropractic Care notified the Tiscarenos that respondent had not paid their medical bills. Sometime thereafter in 2007, Tiscareno left numerous messages for respondent regarding the status of Chiropractic Care's bills. Even though respondent did not respond to Tiscareno's messages, respondent paid Chiropractic Care \$2,482.20 (\$1,382.20 on

⁸ Even though Chiropractic Care had a lien on only Tiscareno's \$1,382.20 bill, respondent remained obligated to keep the remaining \$500 (\$300 plus \$200) on deposit in his CTA until he used it to pay Juan's and Giovanni's medical bills to Chiropractic Care in accordance with Tiscareno's March 2004 disbursement authorizations.

behalf of Tiscareno plus \$700 on behalf of Juan plus \$400 on behalf of Giovanni) on about May 21, 2007.

On about June 22, 2007, a State Bar investigator mailed respondent a letter requesting respondent to respond to specific allegations of misconduct that Tiscareno had made against him to the State Bar. On July 5, 2007, respondent sent the investigator a letter requesting a two-week extension to respond to Tiscareno's complaint. Apparently, the investigator did not respond to respondent's request for an extension of time. However, on July 26, 2007, the investigator sent respondent another letter requesting a response to the allegations raised by Tiscareno's complaint. Respondent never provided a response to the allegations.

Count Twelve – Trust Account Violations (Rule 4-100(A))

The record clearly establishes that respondent willfully violated rule 4-100(A) because, on March 31, 2004; April 1, 2004; and September 19, 2005; the balance in respondent's CTA fell below the \$1,882.80 respondent was to have had on deposit until he paid the Tiscarenos' medical bills from Chiropractic Care.

Count Thirteen -- Failure to Communicate (§ 6068, subd. (m))

The record fails to establish that respondent willfully violated section 6068, subdivision (m). Resolving all reasonable doubts in respondent's favor, the record establishes (1) that, at some unspecified time after she learned from Chiropractic Care that respondent had not paid Chiropractic Care's bills in about April 2007, Tiscareno left numerous messages that in some unidentified manner dealt with the status of Chiropractic Care's bills and (2) that respondent responded to Tiscareno's messages on May 21, 2007, when respondent paid Chiropractic Care's medical bills. In short, no section 6068, subdivision (m) violation is shown by clear and convincing evidence. Accordingly, count thirteen is dismissed with prejudice.

Count Fourteen -- Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

The record fails to establish that respondent willfully violated rule 4-100(B)(4), which provides that an attorney must “Promptly pay or deliver, *as requested by the client*, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.” (Italics added.) The record establishes that, sometime after learning that respondent had not paid Chiropractic Care in about April 2007, Tiscareno left messages for respondent regarding the status of Chiropractic Care’s bills and that respondent thereafter paid Chiropractic Care’s bills on May 21, 2007. These facts fail to establish a rule 4-100(B)(4) violation by clear and convincing evidence. Accordingly, count fourteen is dismissed with prejudice.

Count Fifteen – Moral Turpitude (§ 6106)

The record establishes that respondent willfully violated section 6106’s proscription against acts involving moral turpitude when, through gross negligence, respondent misappropriated \$1,688.55 (\$1,882.20 less \$193.65) from Chiropractic Care on September 19, 2005, when the balance in respondent’s CTA dropped to \$193.65.

Count Sixteen -- Failure to Cooperate in Disciplinary Investigation (§ 6068, subd. (i))

The record establishes that respondent willfully violated section 6068, subdivision (i) when he failed to respond to Tiscareno’s allegations of misconduct in response to the State Bar investigator’s letters of June 22, 2007, and July 26, 2007.

E. Wilkins Client Matter

In March 2005, Matthew Wilkins employed respondent to represent him in personal injury claims arising from an automobile accident. In May 2006, respondent executed a lien in favor of Wilkins's medical provider Stine Chiropractic and thereby agreed to withhold such sums from any settlement obtained on behalf of Wilkins as was necessary to fully compensate Stine Chiropractic.

In about October 2006, respondent settled Wilkins's claims for \$10,500 with 21st Century Insurance. In about October 2006, Wilkins authorized respondent to disburse the \$10,500 in settlement proceeds as follows: \$3,500 to respondent for fees; \$350 to respondent for costs; \$3,500 to Wilkins; \$2,250 to Stine Chiropractic; and \$900 to Key Health Medical Group (hereafter Key Medical). Respondent represented to Wilkins that Key Medical had reduced its bill from \$1,695 to \$900.

On October 24, 2006, respondent deposited the \$10,500 settlement draft into his client trust account. Thereafter, respondent should have held at least \$3,150 (\$2,250 plus \$900) in his CTA with which to pay Stine Chiropractic and Key Medical. Without paying any funds from his CTA to Stine Chiropractic or to Key Medical, the balance in respondent's CTA repeatedly fell below the \$3,150 that should have remained in the CTA for Stine Chiropractic and Key Medical, including to \$2,633.04 on February 20, 2007; to \$1,354.75 on April 17, 2007; and continued to fall to a negative \$478.93 on February 19, 2008.

In about July 2007, Wilkins sent a certified letter to respondent regarding the unpaid bills of Stine Chiropractic and Key Medical, but respondent never received that letter.

On about May 1, 2007, Stine Chiropractic sent a letter to respondent regarding its outstanding lien against Wilkins's settlement funds and demanding payment from respondent, but there is no clear and convincing evidence that respondent received that letter.

On about December 21, 2007, a State Bar investigator sent a letter to respondent regarding the allegations raised by a State Bar complaint that Wilkins made against him. On January 17, 2008, respondent sent the investigator a letter asking for more time to respond to Wilkins's complaint. Thereafter, respondent failed to provide the investigator with a response to Wilkins's complaint.

At least as of September 8, 2009, the date on which the State Bar filed the NDC in this proceeding, respondent had not yet paid out any funds to Stine Chiropractic or to Key Medical for Wilkins.

Count Seventeen – Trust Account Violations (Rule 4-100(A))

The record clearly establishes that respondent willfully violated rule 4-100(A) because, on February 20, 2007; April 17, 2007; and February 19, 2008; the balance in respondent's CTA fell below the \$3,150 respondent was to have had on deposit until he paid the Stine Chiropractic and Key Medical for Wilkins.

Count Eighteen – Failure to Communicate (§ 6068, subd. (m))

The record fails to establish, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (m) by not responding to Wilkins's requests for the status of the settlement proceeds. There is no clear and convincing evidence that Wilkins made such status inquires. The statement in the NDC that "In 2007, Wilkins made numerous requests to Respondent for the status of the disbursement of the settlement funds to Stine and Key," is a conclusion; it is not a factual allegation that is deemed admitted by the entry of respondent's default. Count eighteen is dismissed with prejudice.

Count Nineteen -- Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

The record fails to establish, by clear and convincing evidence, that respondent willfully violated rule 4-100(B)(4) by failing to promptly pay \$2,250 to Stine Chiropractic and \$900 to Key Medical because, inter alia, there is no clear and convincing evidence that Wilkins, Stine Chiropractic, or Key Medical requested that respondent pay Stine Chiropractic or Key Medical. Moreover, even if there were such evidence, the court would still not find respondent culpable of violating rule 4-100(B)(4) because, in count twenty *post*, the court relies on respondent's failure to pay Stine Chiropractic and Key Medical to find respondent culpable of the misappropriating

the \$3,150 (\$2,250 plus \$900) he was to have paid them. In other words, count nineteen is duplicative of count twenty. Count nineteen is dismissed with prejudice.

Count Twenty – Misappropriation (§ 6106)

The record clearly establishes that respondent willfully violated section 6106's proscription against acts involving moral turpitude by intentionally misappropriating the \$2,250 he owed to Stine Chiropractic under its medical lien and the \$900 that he owed to Wilkins and was suppose to use to pay Wilkins's bill from Key Medical.

Count Twenty-One -- Failure to Cooperate (§ 6068, subd. (i))

The record establishes that respondent willfully violated section 6068, subdivision (i) by not providing a response to the investigator to the allegations raised by Wilkins's State Bar complaint.

F. Sandoval Client Matter – Case Number 08-0-11504-RAP

On about December 7, 2006, respondent settled the personal injury claim of a minor client Benny Sandoval with State Farm Insurance for \$10,000, contingent upon court approval of the settlement. On about March 26, June 27, August 10, October 30, and December 27, 2007, State Farm sent letters to respondent asking about the status of the minor's compromise of Sandoval's settlement.

On August 13, 2007, respondent filed a petition for an order approving a minor's compromise of a disputed claim on behalf of Sandoval in the San Bernardino County Superior Court. In the petition, Sandoval's guardian ad litem, Marival Martinez, approved the payment of Sandoval's medical expenses from the \$10,000 settlement as follows: \$217.41 to Medi-Cal; \$500 to Chiropractic Injury Care; and \$772.08 to American Medical Response.

On November 26, 2007, respondent appeared in superior court for a hearing on the petition to approve the Sandoval settlement. The superior court approved the settlement and the

following division and payout of the \$10,000: \$2,500 to respondent as his fee; \$362.62 to respondent in costs; \$217.41 to Medi-Cal; \$500 to Chiropractic Care; and \$772.08 to American Medical. The superior court ordered that the remaining balance of \$5,647.89 be deposited into an interest-bearing, federally-insured, blocked account in Sandoval's name and maintained in said account until Sandoval reached 18 years of age in 2015. The superior court set a hearing for January 30, 2008, on an order to show cause re: dismissal and proof that the \$5,647.89 was deposited into a blocked account. The court ordered respondent to appear in court on January 30, 2008, if the proof of deposit of the funds was not filed with the court by the hearing date.

On about January 8, 2008, State Farm mailed to respondent a \$5,647.89 draft payable to Martinez as legal guardian of Sandoval, a \$217.41 draft for Medi-Cal, a \$500 draft for Chiropractic Care, and a \$772.08 draft for American Medical in settlement of Sandoval's personal injury claim. Respondent received the drafts.

Respondent did not deposit the \$5,647.89 settlement draft into a blocked account in Sandoval's name and did not provide proof of deposit of such funds to the court. Nor did respondent appear in before the superior court on January 30, 2008, as he was ordered to do. Thus, the superior court set the matter for a hearing on an order to show cause re: contempt on February 28, 2008 (hereafter contempt hearing) and ordered respondent to personally appear at the hearing. On January 30, 2008, the superior court clerk mailed respondent a copy of the court's minutes of the January 30, 2008 hearing and left a telephone message for respondent regarding the contempt hearing and the court's order. Respondent received notice of the contempt hearing and the court's orders.

On February 28, 2008, respondent requested a continuance of the contempt hearing for one day, which the superior court granted. Respondent received notice that the superior court had continued the contempt hearing until February 29, 2008, at respondent's request.

Respondent, however, failed to appear at the hearing on February 29, 2008. Nor did respondent submit proof to the court that the settlement funds were deposited into a blocked account as ordered by the court. The superior court ordered that a bench warrant issued for respondent.

On March 4, 2008, the superior court clerk mailed a copy of the minutes of the February 29, 2008 contempt hearing on respondent. Respondent received the minutes.

On March 11, 2008, the superior court issued a bench warrant for respondent's arrest because respondent failed to comply with the court's order to appear.

Respondent did not pay \$217.41 to Medi-Cal; \$500 to Chiropractic Care, or \$772.08 to American Medical. But, in April 2008, respondent returned the medical payment drafts related to Sandoval's settlement to State Farm and requested that State Farm reissue the drafts.

In June 2008, State Farm stopped payment on all of the drafts it sent to respondent. Thereafter, on Sandoval behalf, State Farm sent \$217.41 directly to Medi-Cal, \$500 directly to Chiropractic Care, and \$772.08 directly to American Medical.

On about July 18, 2008, a State Bar investigator sent respondent a letter requesting that respondent respond to questions about his failure to comply with the superior court's order in the Sandoval client matter. Respondent received that letter, but did not respond.

On about October 29, 2008, respondent deposited the \$5,647.89 draft he received from State Farm for Sandoval into his client trust account. However, the draft was returned unpaid because of State Farm's stop payment order.

Count Twenty Two -- Failure to Perform Competently (Rule 3-110(A))

The record establishes that respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by waiting for eight months (from December 2006 until August 2007) to seek court approval of Sandoval's settlement; by not depositing the \$5,647.89 draft from the settlement into a blocked account in Sandoval's name;

and by not promptly paying Sandoval's medical expenses to Medi-Cal, Chiropractic Care, and American Medical with the drafts State Farm provided him.

Count Twenty-Three -- Failure to Obey a Court Order (§ 6103)

The record establishes that respondent wilfully violated section 6103 by failing to appear at the contempt hearing on February 29, 2008.

Count Twenty-Four – Misappropriation (§ 6106)

The record fails to establish, by clear and convincing evidence, that “respondent intentionally attempted to misappropriate funds belonging to State Farm” *merely* by depositing the \$5,647.89 draft made payable to Martinez into his CTA because, inter alia, the NDC does not allege that respondent forged Martinez's endorsement on the draft. Count twenty-four is dismissed with prejudice.

Count Twenty-Five -- Failure to Cooperate (§ 6068, subd. (i))

The record establishes that respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar investigator's July 18, 2008 letter.

G. Sandoval and Mayorga Client Matter

In May 2006, Maria Sandoval and Yolanda Mayorga employed respondent to represent them in personal injury claims arising from an automobile accident.

In May 2006, respondent executed a lien in favor of Maria Sandoval's medical provider Abba Chiropractic, and thereby agreed to withhold such sums from any settlement obtained on behalf of Maria Sandoval as was necessary to fully compensate Abba Chiropractic for its services.

In about November 2007, respondent settled Maria Sandoval's and Mayorga's claims with Allstate Insurance Company for \$12,338 and \$8,678, respectively.

Also, in November 2007, Maria Sandoval authorized respondent to disburse her \$12,338 in settlement proceeds as follows: \$3,701 to respondent for fees; \$175 to respondent for costs; \$4,985 to Sandoval; and \$3,477 to Abba Chiropractic. Respondent represented that Abba Chiropractic had reduced its lien from \$4,636 to \$3,477.

Also, in November 2007, Mayorga authorized respondent to disburse her \$8,678 in settlement proceeds as follows: \$2,608 to respondent for fees; \$175 to respondent for costs; \$4,195 to Mayorga; and \$1,700 to Foothill Rehabilitation. Respondent represented that Foothill Rehabilitation had reduced its bill from \$2,390 to \$1,700.

On November 13, 2007, respondent deposited Maria Sandoval's \$12,338 settlement draft into his CTA. Then, on November 20, 2007, respondent deposited Mayorga's \$8,678 settlement draft into his CTA. Thereafter, respondent should have held in his CTA at least \$4,985 for Maria Sandoval; \$3,477 for Abba Chiropractic; \$4,195 for Mayorga; and \$1,700 for Foothill Rehabilitation (which totals \$14,357).

Without paying any funds from his CTA to Maria Sandoval, Mayorga, Abba Chiropractic, or Foothill Rehabilitant, the balance in the CTA fell below the \$14,357 that respondent should have had on deposit for them to \$14,226.53 on December 17, 2007, and to a negative \$478.93 on February 19, 2008.

At least as of September 8, 2009, the date on which the State Bar filed the NDC in this proceeding, respondent had not yet paid out any funds to Maria Sandoval, Mayorga, Abba Chiropractic, or Foothill Rehabilitation.

On about April 21, 2009, a State Bar investigator sent respondent a letter requesting that respondent respond to allegations that Maria Sandoval had made against him in a complaint that she filed with the State Bar. Even though respondent received that letter, he did not respond to it.

Count Twenty-Six – Trust Account Violation (Rule 4-100(A))

The record establishes that respondent willfully violated rule 4-100(A) by failing to maintaining at least \$14,357 in the CTA for Maria Sandoval, Mayorga, Abba Chiropractic, and Foothill Rehabilitation on December 17, 2007, and February 19, 2008.

Count Twenty-Seven – Failure to Communicate (§ 6068, subd. (m))

The record does not establish, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (m) as charged in count twenty-seven. Accordingly, count twenty-seven is dismissed with prejudice.

Count Twenty-Eight -- Failure to Pay Client Funds (Rule 4-100(B)(4))

The court declines to find respondent culpable of willfully violating rule 4-100(B)(4) as charged in count twenty-eight the court relies on respondent's failure to pay Maria Sandoval, Mayorga, Abba Chiropractic, and Foothill Rehabilitation to find respondent culpable of the misappropriations charged in count twenty-nine *post*. In other words, count twenty-eight is duplicative of count twenty-nine. Of course, the misappropriation charge in count twenty-nine supports greater discipline than the rule 4-100(B)(4) violation charged in the present count. In any event, county twenty-eight is dismissed with prejudice.

Count Twenty-Nine – Misappropriation (§ 6106)

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude by misappropriating \$4,985 from Maria Sandoval, \$3,477 from Abba Chiropractic, and \$5,895 (\$4,195 plus \$1,700) from Mayorga.⁹

⁹ The record does not establish that respondent had executed a lien with Foothill Rehabilitation. Accordingly, respondent misappropriated the \$1,700 from Mayorga, who owes or owed Foothill Rehabilitation \$1,700.

Count Thirty -- Failure to Cooperate (§ 6068, subd. (i))

The record establishes that respondent willfully violated section 6068, subdivision (i) by failing to respond to the investigator's April 21, 2009 letter.

IV. AGGRAVATION & MITIGATION

A. Aggravation

Respondent's misconduct in this consolidated proceeding involves multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)¹⁰

Respondent failed to appear for trial, which allowed his default to be entered. (Std. 1.2(b)(vi).)

Respondent's misconduct caused significant client harm. (Std. 1.2(b)(iv).)

B. Mitigation

Respondent does not have a prior record of discipline. (Std. 1.2(e)(i).) The court takes judicial notice of the State Bar's official membership records, which establish that respondent has no prior record of discipline.¹¹ Accordingly, respondent is entitled to significant mitigation for his 26 years of misconduct-free practice from his admission in September 1977 through late 2003 when he first engaged in the misconduct found in this proceeding.

¹⁰All further references to standards are to this source.

¹¹ Because of the importance that our Supreme Court places on the issue of whether or not an attorney has a prior record of discipline (e.g., *In re Mostman* (1989) 47 Cal.3d 725, 741), the State Bar Court has long judicially noticed the State Bar's official records to determine both (1) the presence of a prior record of discipline when the State Bar failed introduce the prior record as an aggravating circumstance and (2) the lack of a prior record of discipline when the respondent failed to proffer the absence as a mitigating circumstance.

V. DISCUSSION ON DISCIPLINE

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.) Second, the court looks to caselaw for guidance. (*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(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.2(a), which applies to respondent's section 6106 misappropriations involving moral turpitude totaling \$17,507 in the Wilkins client matter and the Sandoval and Mayorga client matter. Standard 2.2(a) provides:

Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

The Supreme Court has repeatedly held that misappropriation of trust funds is a grievous violation. Moreover, the Supreme Court has made clear that even an isolated instance of misappropriation by an attorney without a prior record of discipline may result in disbarment in the absence of compelling mitigation. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1071-1073.) As noted above, respondent is entitled to very substantial mitigation for his 26 years of misconduct-free practice. But that mitigation, thought substantial, is not compelling particularly in light of the extremely serious misconduct found in this consolidated proceeding, which includes multiple misappropriations of client funds.

In sum, both the standards and the caselaw strongly counsel recommending respondent's disbarment in this proceeding. Moreover, the court independently concludes that respondent should be ordered to make restitution with interest for his misappropriations totaling \$17,507.

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent **HOWARD CURTIS CRANE** be DISBARRED from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

The court further recommends that Howard Curtis Crane be ordered to make restitution to Stine Chiropractic in the amount of \$2,250 plus 10 percent interest per year from November 23, 2006 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Stine Chiropractic plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Howard Curtis Crane be ordered to make restitution to Matthew Wilkins in the amount of \$900 plus 10 percent interest per year from November 23, 2006 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Matthew Wilkins plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Howard Curtis Crane be ordered to make restitution to Maria Sandoval in the amount of \$4,985 plus 10 percent interest per year from December 13, 2007 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Maria Sandoval plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Howard Curtis Crane be ordered to make restitution to Abba Chiropractic in the amount of \$3,477 plus 10 percent interest per year from December

13, 2007 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Abba Chiropractic plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Howard Curtis Crane be ordered to make restitution to Yolanda Mayorga in the amount of \$5,895 plus 10 percent interest per year from December 20, 2007 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Yolanda Mayorga plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that any reimbursement plus interest and costs to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

VII. RULE 9.20 & COSTS

The court further recommends that Howard Curtis Crane 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.¹²

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

¹² Crane is required to file a rule 9.20(c) compliance affidavit even if he 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.)

VIII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Howard Curtis Crane be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: June 10, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court