FILED MAY 21, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **STACEY ANNETTE MATRANGA,** **Member No. 204308,** A Member of the State Bar.	)	Case Nos. **06-O-15426-RAH** (07-O-10083); **08-O-12729** (08-O-14025); **09-O-10740** (09-O-11010; 09-O-17414; 10-O-00308) **(Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

1. INTRODUCTION AND PROCEDURAL HISTORY

Respondent **Stacey Annette Matranga** was charged with 19 counts of professional misconduct in two Notices of Disciplinary Charges (NDC). The first NDC was filed on November 21, 2008, in case Nos. 07-O-10083 and 06-O-15426. The second NDC was filed on July 29, 2009, in case nos. 08-O-12729 and 08-O-14025. In addition, in this proceeding, respondent and the Office of the Chief Trial Counsel of the State Bar of California have resolved investigative matters identified as case Nos. 09-O-10740, 09-O-11010, 09-O-17414, and 10-O-00308.

Counts three and four in case No. 08-O-14025 (Boyd) were dismissed without prejudice in the interest of justice. With the exception of case No. 07-O-10083 (Navarrette), the parties stipulated to facts and conclusions of law as to all the remaining cases (Sneed and Yslava) and investigative matters (Dobbins; Duata; Davis; and Taylor). At the trial on March 3, 2010, this court was called upon to approve the stipulated facts and conclusions of law, determine the facts

and conclusions of law in case No. 07-O-10083, as well as recommend the appropriate level of discipline for all of the above pending matters.

Accordingly, the court finds, by clear and convincing evidence, that respondent is culpable of 17 counts of misconduct. In view of respondent's serious misconduct, the evidence in aggravation, and the lack of compelling mitigation, the court recommends that respondent be disbarred from the practice of law.

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 2, 1999, and since that time has been an attorney at law and a member of the State Bar of California.

B. Case No. 06-O-15426 – The Sneed Matter

In February 2006, the Styron Law Firm ("Styron") of Ozark, Missouri, employed respondent at the request of Styron's client, Evelyn Wampler ("Wampler"), to handle the probate of the estate of Wampler's late brother, C. Raymond Sneed ("Sneed"), who died in the State of California. On February 24, 2006, Styron mailed a letter to respondent, enclosing several documents pertinent to the Estate of Sneed, including but not limited to Sneed's original will ("Styron's February 24 letter"). Respondent received Styron's letter and enclosures.

Respondent did not file for probate of the Estate of Sneed or perform any other legal services of value in connection with the Estate of Sneed. There was no formal retainer agreement between respondent and Wampler, or between respondent and Styron, to file the probate of the Estate of Sneed.

In September 2006, Wampler terminated respondent's services and retained the law firm of Covington & Crowe (the "Covington Firm") to handle the probate of the Estate of Sneed. On

October 10, 2006, Styron sent a letter to respondent by fax, notifying respondent that Wampler had retained the services of the Covington Firm to handle the Estate of Sneed and requesting respondent to make available and ready for pick-up by the Covington Firm the documents and file in her possession pertaining to the Estate of Sneed. Respondent received Styron's letter of October 10, 2006. On that same date, the Covington Firm contacted respondent's office to arrange pick-up of the Estate of Sneed documents and file. On October 18, 2006, the Covington Firm obtained documents from respondent pertaining to the Estate of Sneed; however, Sneed's original will was not among them.

On October 24, 2006, the Covington Firm sent an e-mail to respondent, asking her when they could obtain the rest of the documents and file in the matter of the Estate of Sneed. Respondent received this e-mail, but did not respond in any manner, and did not make any other documents pertaining to the Estate of Sneed (including but not limited to Sneed's original will) available to the Covington Firm, Styron, Wampler, or anyone else acting on Wampler's behalf.

On November 14, 2006, the Covington Firm sent a letter to respondent by certified mail, return receipt requested, demanding that respondent turn over to them the rest of the documents and file in her possession relating to the Estate of Sneed. Respondent received this letter. To date, respondent has not responded to the Covington Firm's November 14 letter in any manner, nor has she provided to the Covington Firm, Styron, Wampler, or anyone else acting on behalf of Wampler, any further documents pertaining to the Estate of Sneed.

On January 8, 2007, the State Bar opened an investigation, pursuant to a complaint filed by Samuel P. Crowe against respondent (the "Crowe complaint"). On January 24 and February 14, 2007, a State Bar Investigator wrote to respondent regarding the Crowe complaint. Respondent received both letters. Respondent did not respond in writing or any other manner to

either of these letters. Respondent did not timely provide the State Bar with her response, written or otherwise, to the Crowe complaint.

Count 5: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))[1]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

By failing to perform any legal services of value to Wampler in connection with the matter of the Estate of Sneed, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 6: Failure to Return Client File (Rules of Prof. Conduct, Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property.

By not releasing all of the documents and entire file pertaining to the Estate of Sneed to either the Covington Firm, Styron, Wampler, or anyone else acting on Wampler's behalf, respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers in willful violation of rule 3-700(D)(1).

Count 7: Failure to Cooperate with State Bar Investigations (Bus. & Prof. Code, § 6068, Subd. (i))[2]

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By not providing a response in any manner to the allegations in the Crowe complaint or otherwise cooperating in the investigation of the Crowe complaint, respondent failed to

[1] References to rules are to the Rules of Professional Conduct, unless otherwise stated.
[2] References to sections are to the provisions of the Business and Professions Code.

cooperate and participate in a disciplinary investigation pending against her in willful violation of section 6068, subdivision (i).

C. Case No. 08-O-12729 – The Yslava Matter

In May 2005, Robert and Sandra Yslava (the "Yslavas") hired respondent to sue Enterprise Builders Incorporated ("EBI"); Doug Smith ("Smith"), the owner of EBI; and Albert Gass ("Gass"), among others. On November 23, 2005, respondent filed a lawsuit in the Superior Court of California, County of Los Angeles, East District (the "Superior Court"), case No. KCO47364, naming EBI, Smith (EBI/Smith), and Gass (among others) as defendants. EBI/Smith answered the complaint and litigated the lawsuit.

On October 12, 2006, the Yslavas dismissed case No. KCO47364 as to defendants EBI/Smith only. On May 31, 2007 respondent filed a lawsuit on behalf of the Yslavas in the Superior Court, case No. KCO50700J, naming EBI/Smith as defendants.

On December 21, 2007, EBI/Smith filed a Motion for Summary Judgment in case No. KCO50700J (the "Summary Judgment motion") and properly served respondent. Respondent received the served copy of the Summary Judgment motion. Respondent did not inform the Yslavas that EBI/Smith had filed the Summary Judgment motion until after the Yslavas' response to the Summary Judgment motion was due. Respondent did not file an opposition or any other response to EBI/Smith's Summary Judgment motion.

On April 2, 2008, the court granted EBI/Smith's Summary Judgment motion. At no time on or after April 2, 2008 did respondent take any steps to try to set aside the court's order granting summary judgment, or seek any other relief from the court on behalf of the Yslavas. On August 14, 2008, the Superior Court entered a judgment, including costs, against the Yslavas in case No. KCO50700J (the "judgment").

Count 1: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By failing to file an opposition or any other response to EBI/Smith's Summary Judgment motion, and by failing to take any steps to try to set aside the Superior Court's order granting Summary Judgment, respondent willfully failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not timely informing the Yslavas that EBI/Smith had filed a Summary Judgment motion, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

D. Case No. 09-O-10740 – The Dobbins Matter

In April 2008, LaTanya Dobbins ("Dobbins") hired respondent to file a lawsuit against Josie Rivas ("Rivas"). Dobbins paid respondent $1,200 in advanced fees. On June 10, 2008, respondent sent a demand letter to Rivas, demanding payment of monies Rivas owed Dobbins. Rivas did not respond to respondent's demand letter.

On July 10, 2008, Dobbins met with respondent and instructed respondent to file suit against Rivas. On that same date, Dobbins paid respondent an additional $2,000. Respondent did not thereafter file a lawsuit, or perform any further legal services of value, on behalf of Dobbins. On December 1, 2008, respondent met with Dobbins and informed her that no lawsuit

had been filed against Rivas. On that same date, Dobbins orally terminated respondent's services and requested a refund of unearned fees.

On December 15, 2008, Dobbins sent a letter to respondent terminating her services and requesting a refund of unearned fees. Respondent received the letter, but did not respond to it. To date, respondent has not provided an accounting to Dobbins, and has not refunded any portion of the advanced fees Dobbins paid her that respondent did not earn.

Count 1: Failure to Render Accounts of Client Funds (Rules of Prof. Conduct, Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in her possession and render appropriate accounts to the client. By not providing Dobbins with an accounting for the advanced fees Dobbins had paid her, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count 2: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

By not refunding to Dobbins any portion of the $3,200 in advanced fees that she did not earn, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

E. Case No. 09-O-11010 – The Duata Matter

In September 2007, Carmen Duata ("Duata") hired respondent to represent her in a dispute with the management of the mobile home park Duata lived in, and to file a lawsuit against the mobile home park management. Duata paid respondent a total of $2,840 in advanced fees.

Respondent did not file suit against the mobile home park management or perform any legal services of value on Duata's behalf, apart from resolving a billing dispute Duata had with her cable company. Respondent did not refund any unearned fees to Duata until after Duata successfully prevailed against respondent in a fee arbitration and was awarded $2,000. Respondent paid Duata the $2,000. Respondent did not, however, return Duata's file to her, despite agreeing to do so.

Count 1: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

By not refunding to Duata any portion of the $2,840 in advanced fees that she did not earn until after Duata obtained an arbitration award against her, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 2: Failure to Return Client File (Rules of Prof. Conduct, Rule 3-700(D)(1))

By failing to return Duata's file to her, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1).

F. Case No. 09-O-17414 – The Davis Matter

In September 2006, Sylvia Davis and her husband ("Davis"; collectively, the "Davises") hired respondent to file a Chapter 7 bankruptcy petition on their behalf, and paid respondent $1,500 in advanced fees and $299 in advanced costs which were to be used for "court fees."

Davis forwarded various documents to respondent which the Davises were receiving from various creditors. In September 2007, the Davises met with respondent, who informed them she was working on their case. In May 2008, Davis spoke with respondent and asked for a status update on the Davis's bankruptcy matter. Respondent informed Davis she was still working on the case.

In July 2009, Davis terminated respondent's services, and requested a refund of unearned fees and unused costs. Respondent did not respond to Davis's request. Respondent did not file a bankruptcy petition or provide any legal services of value to the Davises. Respondent did not earn any of the advanced fees paid by Davis. Respondent did not use any portion of the $299 in advanced costs on behalf of Davis. To date, respondent has not refunded any portion of the $1,500 in advanced fees or the $299 in advanced costs to Davis.

Count 1: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By performing no legal services of value to the Davises in connection with their bankruptcy matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 2: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

By not refunding to the Davises any portion of the $1,500 in advanced fees that she did not earn, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 3: Failure to Promptly Pay Client Funds (Rules Prof. Conduct, 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 not refunding to the Davises the $299 in advanced costs, as requested by Davis, respondent failed to promptly pay or deliver, as requested by the client, any funds, securities or properties in the possession of the member which the client is entitled to receive, in willful violation of rule 4-100(B)(4).

G. Case No. 10-O-00308 – The Taylor Matter

In 2009, respondent represented the wife in a marital dissolution matter entitled *Taylor v. Taylor*, case No. RID 216630, filed in the Riverside County Superior Court (the "*Taylor*

matter"). Respondent was required to file a Code of Civil Procedure, section 473(b) motion (the "473(b) motion") in the *Taylor* matter.

Respondent represented to the Court, in her declaration accompanying her 473(b) motion, that she would reimburse the opposing party's counsel for reasonable attorney's fees; however, counsel's efforts to arrive at an agreement with respondent concerning his fees were unsuccessful.

On July 27, 2009, respondent was ordered by the Court in the *Taylor* matter to pay $10,000 in compensatory attorneys' fees to the opposing party's counsel. Respondent did not appeal or otherwise formally challenge the Superior Court's July 27, 2009 order. To date, respondent has not paid any portion of the court-ordered $10,000 to the husband or his counsel.

Count 1: Failure to Obey Court Orders (Bus. & Prof. Code, § 6103)

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

By failing to pay any portion of the $10,000 in attorney's fees to the opposing party or his counsel, as she was ordered to do by the Superior Court, respondent disobeyed or violated a court order requiring her to do or forbear an act connected with or in the course of respondent's profession which she ought in good faith to do or forbear, in willful violation of section 6103.

H. Case No. 07-O-10083 – The Navarrette Matter

In April 2005, respondent was retained by Rudy and Maria Navarrette (the "Navarrettes") to represent them in a Chapter 7 bankruptcy matter. On August 2, 2005, respondent filed a Voluntary Petition for Bankruptcy on behalf of the Navarrettes, case No. RS 05-17819MG.

On May 8, 2005, the trustee in the Navarrettes' bankruptcy case filed a Motion for Order Approving Compromise of Controversy between Chapter 7 Trustee and Debtor (the "Compromise"), including the following term: that the Navarrettes would pay the sum of

$30,000 on or before August 31, 2006. The Bankruptcy Court granted the trustee's motion on June 2, 2006. On May 19, 2006, the Navarrettes delivered to respondent a personal check in the amount of $30,000, payable to respondent. These funds were to be paid in their entirety to the trustee pursuant to the Compromise in the Navarrettes' bankruptcy case.

Respondent maintained a client trust account at the Bank of America, account No. xxxxxx3456 (the "CTA"). On May 19, 2006, respondent deposited the Navarrettes' $30,000 check into her CTA, bringing the balance in the CTA to $30,043.27.

On September 15, 2006, respondent issued check No. 383, drawn on her CTA, in the amount of $30,000, payable to the trustee in the Navarrettes' bankruptcy matter.

Between May 19 and September 15, 2006, respondent was required to maintain $30,000 in the CTA. She did not. The balance fell below that amount on several occasions, reaching a low of $8,764.27 on September 13, 2006. During this period, respondent wrote 15 checks drawn on her CTA payable to the Law Office of Stacey A. Matranga totaling $20,700. Twelve of those checks indicated "Navarrette" in the memo portion.

On August 30, September 18, and September 21, 2006, respondent deposited into the CTA, a total of $23,460 of her funds. The parties have stipulated that $21,235.73 of those funds were required to replenish the amounts taken from the CTA.

On February 13, and March 8, 2007, a State Bar investigator wrote to respondent regarding the Navarrette matter and requested a written response to specific questions. Respondent received these two letters but did not respond. In both of these letters, respondent was advised of his duties to respond under section 6068, subdivision (i).

On March 8, 2007, the State Bar investigator telephoned respondent and left a message. Respondent returned the call on the same day. Respondent told the investigator that she had already sent her response to the letter. The interview was not completed, because respondent

was driving in an automobile and was talking on her cell phone. The State Bar investigator told respondent that she would call respondent's office and leave her with her contact information, so that respondent could return the call to conclude the interview. Although the investigator later called respondent's office and left the contact information, respondent never called back and never otherwise made contact with the investigator or the State Bar.

On cross-examination, the investigator acknowledged that on at least one previous investigation, respondent had cooperated. But respondent did not cooperate in this matter.

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

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

When the balance fell below $30,000 on several occasions, reaching a low of $8,764.27 on September 13, 2006, there is clear and convincing evidence that respondent failed to maintain the $30,000 in the CTA on behalf of the Navarrettes in willful violation of rule 4-100(A).

Count 2: Moral Turpitude (Bus. & Prof. Code, § 6106)

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

It is well settled that the mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

"[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) When the balance in the CTA fell below $30,000 between May and September 2006 and the balance was only $8,764.27 on September 13, 2006, respondent misappropriated $21,235.73 of her client funds. She knew or should have known that the balance was dipping below the $30,000, particularly since she had written at least 15 checks totaling $20,700 payable to her office during this period.

Thus, respondent committed an act of moral turpitude in willful violation of section 6106 by misappropriating at least $21,235.73 of her client funds between May and September 2006.

Count 3: Commingling (Rules Prof. Conduct, Rule 4-100(A))

Respondent deposited into the CTA a total of $23,460 of her funds. The parties have stipulated that $21,235.73 of those funds were required to replenish the amounts taken from the CTA. Therefore, $2,224.27 ($23,460 - $21,235.73) of respondent's personal funds were deposited and commingled in the CTA.

An attorney's restoration of funds wrongfully withdrawn from a trust account is not a further violation of the Rules of Professional Conduct as a prohibited "commingling" of attorney and client funds. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978-979.)

But the balance amount of $2,224.27 of her personal funds which respondent deposited into the CTA is clear and convincing evidence of respondent's commingling of her personal funds with client funds. Therefore, respondent willfully violated rule 4-100(A).

Count 4: Failure to Cooperate with State Bar Investigations (Bus. & Prof. Code, § 6068, Subd. (i))

By not providing a written response to the allegations in the Navarrette complaint and by failing to return the State Bar's call, respondent failed to cooperate and participate in a disciplinary investigation pending against her in willful violation of section 6068, subdivision (i).

3. LEVEL OF DISCIPLINE

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, standard 1.2(b) and (e).)[3]

A. Factors in Mitigation

Respondent did not testify, nor did she offer any mitigation evidence on her own behalf. As such, there was little direct mitigation evidence, other than what can be discerned from the record before the court.

Although respondent has no prior record of discipline, her misconduct took place in 2006, only six and one-half years after she was admitted to the practice of law. As such, the court finds minimal mitigation credit for this rather brief period without misconduct. (Standard 1.2(e)(i).)

Respondent did not cooperate with the State Bar during the investigation of this matter. However, respondent did enter into an extensive stipulation which included all but one of the charged matters, and all three of the investigative matters.[4] Since she had no obligation to stipulate, in this proceeding, to the matters in investigation, the court finds that she is entitled to mitigation credit for her efforts. (Std. 1.2(e)(v).)

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[3]All further references to standards are to this source.

[4] Respondent's attorney, in argument, advised the court that she could not stipulate to the counts in the Navarrette matter because she was asserting her Fifth Amendment rights.

B. Factors in Aggravation

The record establishes two factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

The current misconduct, involving writing 15 checks from her CTA over several months payable to her own office in one matter, and other misconduct in other matters, constitute multiple acts of misconduct. (Std. 1.2(b)(ii).) She failed to perform services, failed to return client files, failed to communicate with client, failed to return unearned fees, failed to promptly return client funds, failed to render an accounting, failed to obey a court order, failed to maintain funds, commingling, and committing acts of moral turpitude.

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Respondent has yet to return all the client papers, file, unearned fees and client funds. She still has not obeyed a court order, instructing her to pay $10,000 to the opposing party for attorney fees.

4. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.3, 2.4(b), 2.6, 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 Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

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(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificant or if the most compelling mitigating circumstances clearly predominate. In those latter cases, the discipline must not be less than one-year actual suspension, irrespective of mitigating circumstances.

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 an act of moral turpitude must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproval or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

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.

Finally, 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

reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

While the State Bar urges disbarment, respondent argues that a significant period of actual suspension with probation conditions would suffice.

The court finds these cases instructive. In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who intentionally misappropriated $29,000 from his law firm. In mitigation, the attorney had no prior record of discipline in 12 years of practice of law and suffered from emotional problems. The court did not find these factors sufficiently compelling to warrant less than disbarment.

In *Grim v. State Bar* (1991) 53 Cal.3d 21, the attorney misappropriated over $5,500 of client funds and did not return the funds to the client until after almost three years later and after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing. The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties which arose out of a business venture were neither unforeseeable nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court therefore did not find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors.

Here, like the attorneys in *Grim* and *Kaplan*, respondent had misappropriated a large sum of client funds ($21,000) without any explanation for a period of five months. And, no compelling mitigation has been shown.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) In this matter, respondent had flagrantly breached her fiduciary

duties in seven client matters, including failure to return unearned fees of almost $5,000 to two clients and misappropriation of more than $21,000 in five months. Such misconduct reflects a blatant disregard of professional responsibilities.

Moreover, the misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (See *Grim v. State Bar, supra,* 53 Cal.3d 21.)

Respondent's misappropriation, client abandonments and failure to return unearned fees weigh heavily in assessing the appropriate level of discipline. Respondent had not returned any portion of the unearned fees to her clients. Like the attorney in *Grim*, the "misappropriation in this case . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to [her] client. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive [her] client of [his] funds." (*Grim v. State Bar, supra,* 53 Cal.3d at p. 30.) "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest." (*Grim v. State Bar, supra,* 53 Cal.3d at p. 31.)

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.) Therefore, based on the severity of the offense, the serious aggravating circumstances and the lack of any significant mitigating factors, the court recommends disbarment.

5. RECOMMENDATIONS

A. Discipline

Accordingly, the court recommends that respondent **Stacey Annette Matranga** 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.

B. Restitution

It is also recommended that respondent make restitution to the following:

i. **LaTanya Dobbins** in the amount of $3,200 plus 10% interest per annum from December 1, 2008 (or to the Client Security Fund to the extent of any payment from the fund to LaTanya Dobbins, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

ii. **Sylvia Davis** in the amount of $1,799 plus 10% interest per annum from July 1, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Sylvia Davis, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

Respondent must furnish satisfactory proof of payment thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.[5]

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

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.

6. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: May _____, 2010

RICHARD A. HONN
Judge of the State Bar Court