

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **07-O-11364** (07-O-14458;
) 07-O-15014); 08-O-13242
Jeffrey Martin Jones,) (08-O-14375); 10-O-04691 (Cons.)
)
Member No. 125421,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
A Member of the State Bar.) **ENROLLMENT**
)
_____)

In this consolidated default disciplinary matter, respondent **Jeffrey Martin Jones** is charged with multiple counts of professional misconduct in six client matters, including: (1) failing to maintain client funds in a client trust account; (2) committing acts of moral turpitude, including misappropriation; (3) failing to promptly pay client funds; (4) failing to deposit client funds in a client trust account; (5) failing to communicate; (6) failing to render accounts of client funds; (7) failing to promptly release a client file; (8) failing to promptly notify a client of receipt of client funds; (9) representing clients with adverse interests; (10) engaging in the unauthorized practice of law; (11) failing to return unearned fees; (12) aiding in the unauthorized practice of law; and (13) charging and collecting an illegal fee.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent’s serious misconduct and the evidence in

aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution to two clients.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case Nos. 07-O-11363 (07-O-14458; 07-O-15014))

On December 3, 2008, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) in case Nos. 07-O-11363 (07-O-14458; 07-O-15014). Respondent filed his answer to the NDC on January 9, 2009.

B. Second Notice of Disciplinary Charges (Case Nos. 08-O-13242 (08-O-14375))

On February 23, 2009, the State Bar filed and properly served on respondent a second NDC in case Nos. 08-O-13242 (08-O-14375). Respondent filed his answer to the second NDC on March 17, 2009.

On March 30, 2009, on the State Bar's motion, the court consolidated case Nos. 07-O-11363 (07-O-14458; 07-O-15014) and 08-O-13242 (08-O-14375). The trial in the afore-cited consolidated matter was set for July 7-10, 2009.

On July 7, 2009, a status conference was held in lieu of the trial since respondent had informed the court that he was tendering his resignation with charges pending to the Supreme Court.

C. Third Notice of Disciplinary Charges (Case No. 10-O-04691)

On August 31, 2010, the State Bar filed and properly served on respondent at his official membership records address a third NDC in case No. 10-O-04691. On September 2, 2010, the return receipt for the August 31st mailing was received by the State Bar bearing the signature of Melanie Gross. Respondent did not file a response to the third NDC.

On the State Bar's motion, the court entered respondent's default in case No. 10-O-04691 on October 25, 2010; and, respondent was enrolled as inactive member on October 28, 2010. On October 25, 2010, the court also consolidated case No. 10-O-04691 with the previously consolidated matter, i.e., case Nos. 07-O-11363 (07-O-14458; 07-O-15014); 08-O-13242 (08-O-14375) (Cons.). The court then abated case Nos. 07-O-11363 (07-O-14458; 07-O-15014); 08-O-13242 (08-O-14375); 10-O- O-04691(cons.), pending a ruling by the Supreme Court regarding respondent's tender of resignation with charges pending.

On November 17, 2010, the Supreme Court filed an order (S177998), rejecting respondent's resignation with charges pending.

Thereafter, on December 13, 2010, the court unabated the consolidated matter. At a status conference, on that same date, the court set a trial date of February 8 – 11, 2011, for case Nos. 07-O-11364 et al. and 08-O-13242. As respondent did not move to set aside his default in case No. 10-O-04691, that case was to proceed by default.

On February 8, 2011, the first day of trial, respondent transmitted a letter by facsimile to the State Bar Court and the Office of the Chief Trial Counsel stating that he had decided that he would not attend the trial set to begin on February 8, 2011, and that the entire consolidated matter, including case Nos. 07-O-11364 et al. and 08-O-13242 et al., should proceed by way of default.

As stated in his letter, respondent did not appear for trial on February 8, 2011. Given respondent's nonappearance at trial and given that the requirements of rule 201 of the Rules of Procedure of the State Bar of California (Rules of Procedure)¹ had been met, the court filed an

¹ Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. The court, however, orders the application of the former Rules of Procedure in this consolidated hearing department matter based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.) Therefore, all references to

Order of Entry of Default (Rule 201 - Failure to Appear) and Order of Involuntary Inactive Enrollment in case Nos. 07-O-11363 (07-O-14458; 07-O-15014); 08-O-13242 (08-O-14375) (Cons.). In its February 8, 2011 order, the court also ordered that if the State Bar wished to file any further declarations, exhibits, or legal argument re level of discipline, it was required to do so no later than February 28, 2011.² A copy of the court's February 8, 2011 orders were properly served on respondent on February 8, 2011, by certified mail, return receipt requested, addressed to respondent at his official address.³ The return receipt, bearing the signature of Arianna Genetin and containing an "x" in the box for an agent's signature, was received by the court on February 11, 2011.

The court took the consolidated matter, i.e., case Nos. 07-O-11363 (07-O-14458; 07-O-15014); 08-O-13242 (08-O-14375); 10-O- O-04691(Cons.), under submission on March 1, 2011.

III. Findings of Fact and Conclusions of Law

All factual allegations of the first and second NDCs are deemed admitted upon entry of respondent's default. (Rules Proc. of State Bar, rule 201.) All factual of the third NDC are also deemed admitted upon entry of respondent's default. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1986, and has been a member of the State Bar of California at all times since that date.

the Rules of Procedure in this decision are to the former rules of procedure, which were in effect prior to January 1, 2011, unless otherwise stated.

² On February 24, 2011, the State Bar filed an ex parte application/motion for permission to file a discipline brief in excess of 15 pages. Thereafter, on February 28, 2011, the State Bar filed its brief on culpability and discipline. Good Cause Appearing the State Bar's application/motion to file a discipline brief in excess of 15 pages is **GRANTED**. This **ORDER** is effective, nunc pro tunc, as of February 24, 2011.

³ Pursuant to Business and Professions Code section 6007, subdivision (e), respondent's involuntary inactive enrollment was effective February 11, 2011, three days after the service of the Order of Involuntary Inactive Enrollment by mail.

B. First Notice of Disciplinary Charges

1. Case No. 07-O-11364 (Bessel)

At all relevant times, respondent maintained Bank of the West client trust account (CTA) number 245-009386. At all relevant times, respondent also maintained Bank of the West general office account 245-015268 (general office account.) The general office account was not a CTA.

In August 2002, R. John and Beverly Bessel (the Bessels) employed respondent to represent them in a dispute with the Edward Jones brokerage company. On February 28, 2006, the Bessels' dispute with Edward Jones settled.

On March 7, 2006, Edward Jones issued check No. 05168541 in the amount of \$10,000 payable to the Bessels (check No. 05168541). The Bessels were entitled to receive the entire \$10,000 proceeds of check No. 05168541 in settlement of their dispute with Edward Jones.

On March 9, 2006, respondent deposited check no. 05168541 into the CTA. As of May 31, 2006, the balance of the CTA was \$235.34.

From March 9, 2006 through March 31, 2007, respondent made no disbursements from the CTA to the Bessels or for the benefit of the Bessels. From March 9, 2006 through March 31, 2007, respondent had an obligation to maintain \$10,000 in the CTA on behalf of the Bessels. But, as of March 31, 2007, the balance in the CTA was \$7.10. As of March 31, 2007, respondent had paid out no funds to the Bessels or for the benefit of the Bessels. Respondent used at least \$9,992.90 of funds belonging to the Bessels for his own use and purposes and not for the use and benefit of the Bessels. Respondent, thereby, misappropriated \$9,992.90 from the Bessels.

On July 18, 2006, and on February 15, 2007, John Bessel wrote letters to respondent, requesting that respondent pay the Bessels the \$10,000 that respondent had received in settlement of the their dispute with Edward Jones. The February 15, 2007 letter also informed respondent that the Bessels had been advised to file a complaint with the State Bar regarding

respondent's conduct. Respondent received the July 18, 2006, and February 15, 2007 letters soon after they were sent.

On April 4, 2007, respondent transferred \$10,000 from his general office account into the CTA. On April 5, 2007, respondent paid \$10,000 to the Bessels with a check drawn on the CTA.

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

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.

By allowing the balance in his CTA to fall below \$10,000, reaching \$235.34 on May 31, 2006, and \$7.10 on March 31, 2007, respondent willfully failed to maintain the Bessels' settlement funds, which he received for their benefit, in a trust account in willful violation of rule 4-100(A).

Count 1(B): Moral Turpitude – Misappropriation (Bus. & Prof. Code, § 6106)⁵

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

The evidence is clear and convincing that respondent received a \$10,000 check on behalf of the Bessels, deposited that check in his CTA, and then failed to pay the Bessels any of the \$10,000 proceeds to which they were entitled. Respondent misappropriated at least \$9,992.90 of the proceeds belonging to the Bessels for his own use and purposes and not for the use and benefit of the Bessels. By misappropriating the \$9,992.90 of the proceeds he received on behalf

⁴ All further references to the rules are to the Rules of Professional Conduct, unless otherwise stated.

⁵ All further references to sections are to the provisions of the Business and Professions Code, unless otherwise noted.

of the Bessels for his own use and purposes, respondent committed an act of moral turpitude in willful violation of section 6106.

Count 1(C): Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

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

Although respondent received John Bessel's July 18, 2006 and February 15, 2007 letters requesting that respondent pay the Bessels the \$10,000 client funds that he had received on their behalf, it was not until April 5, 2007, almost one year after Bessel first requested that respondent pay him and his wife the \$10,000, and only after Bessel wrote in his second request letter that he had been advised to file a complaint with the State Bar against respondent, that respondent paid the Bessels with a check in the amount of \$10,000 drawn on the CTA.

By not promptly paying the \$10,000, as requested by Bessel, respondent willfully failed to promptly pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

2. Case No. 07-O-15014 (Lourim)

At all relevant times, respondent maintained Bank of the West client trust account (CTA) number 245-009386. At all relevant times, respondent maintained Bank of the West general office account 245-015268 (general office account). The general office account was not a CTA.

In or about August 2004, Daniel Lourim (Lourim) purchased a single family residence in Sacramento, California. After he purchased the property, he discovered that the roof leaked and the yard did not have adequate drainage.

On April 12, 2006, Lourim employed respondent to represent him regarding the non-disclosure of the defects related to Lourim's purchase of the residence. Between April 2006 and April 2007, respondent performed some services for Lourim by arranging for an inspection of

the property and offering to settle the case with the seller, roofer, and realtor. Prior to August 2007, respondent informed Lourim that he would pursue arbitration through the American Arbitration Association (AAA).

In or about August 2007, respondent requested that Lourim send respondent \$1,250 in advanced costs so that respondent could pay the AAA filing fee. On August 28, 2007, Lourim sent respondent a check for \$1,250 as an advanced cost for the AAA filing fee. As the funds were advanced costs, respondent should have deposited them in his CTA. But, on August 30, 2007, respondent deposited the \$1,250 check into his general office account. Thereafter, respondent failed to transfer any funds to his CTA or pay AAA any funds on behalf of Lourim.

On August 31, 2007, the balance in respondent's general office account was \$512.07. On September 31, 2007, the balance in respondent's general office account was \$-283.02.

Respondent did not deposit Lourim's funds in his CTA.

Respondent never paid AAA any funds and did not use any of the \$1,250 for Lourim's benefit. As the \$1,250 was an advanced cost provided to respondent for the benefit of his client, respondent had an obligation to deposit the \$1,250 into his CTA. Respondent did not do so. On August 31, 2007, respondent used Lourim's funds, which he had deposited into his general business account, for his own use and benefit and not for the benefit of Lourim. Respondent, thereby, misappropriated \$1,250 of Lourim's funds.

Respondent did not inform Lourim that he had failed to file for arbitration with AAA and had used Lourim's funds for his own use and benefit.

On November 5, 2007, Lourim sent respondent a letter requesting that respondent provide him with a status update on his matter. Lourim's November 5, 2007 letter also requested that respondent provide Lourim with an accounting of all funds respondent had received.

Respondent, who received the November 5, 2007 letter soon after it was sent, did not respond to

the letter. He failed to provide Lourim with a status update on his matter and also failed to provide Lourim with an accounting. On November 26, 2007, Lourim contacted AAA and learned that respondent had not filed any papers on his behalf.

On December 10, 2007, Lourim employed attorney Paige Hilbert (Hilbert)⁶ to represent him regarding the non-disclosure of defects.

On December 15, 2007, Lourim wrote respondent a letter requesting that respondent return his client files and return the \$1,250. Respondent received the December 15, 2007 letter soon after it was sent. But, respondent failed to return Lourim's client files and failed to return the \$1,250.

Lourim was entitled to receive all of the \$1,250, since it was a cost that was advanced for the AAA filing fee and respondent had failed to file any papers with AAA. But, respondent did not return any of the \$1,250 to Lourim.

In December 2007, Hilbert wrote respondent a letter informing respondent that Lourim had employed her to replace respondent. In her letter to respondent, Hilbert also requested that respondent return Lourim's client file. Respondent received Hilbert's December 2007 letter soon after it was sent. Thereafter, respondent failed to respond to Hilbert's letter and failed to return Lourim's client file.

On December 15, 2007, respondent also received Lourim's request for the return of his file. But, respondent did not respond to Lourim's letter and did not return the client file.

Count 2(A): Failure to Deposit and Maintain Client Funds in Trust Account (Rule 4-100(A))

Respondent deposited into his general office account the \$1,250 in costs advanced to him by Lourim for the purpose of paying the AAA filing fee. By failing to deposit the \$1,250 that he

⁶Although paragraph 69 of the first NDC states that "respondent employed attorney Paige Hilbert to represent him regarding the non-disclosure defects," it was Lourim who employed Paige Hilbert. The use of the word "respondent" in paragraph 69 is clearly a clerical error.

received from Lourim into a CTA and thereafter maintain those funds in a CTA, respondent willfully violated rule 4-100(A).

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

By misappropriating the \$1,250 advanced costs paid by his client, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count 2(C): 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 failing to respond to his client's November 5, 2007 request for a status update regarding the arbitration through the AAA, and by failing to inform the client that he had not filed any papers for arbitration with AAA and had used the costs advanced to him by the client for his own use and benefit, respondent failed to promptly respond to the reasonable status inquiry of a client and failed to keep his client reasonably informed of significant developments in a matter with regard to which he agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 2(D): 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 his possession and render appropriate accounts to the client. By not providing Lourim with an accounting of all funds respondent received, as requested by Lourim in his November 5, 2007 letter, including the costs Lourim advanced to him, respondent failed to render appropriate

accounts to a client regarding all client funds coming into his possession, in willful violation of rule 4-100(B)(3).

Count 2(E): Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not refunding to Lourim the \$1, 250 in advanced costs, as requested by Lourim, 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).

Count 2(F): Failure to Return Client File (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.

On December 10, 2007, Lourim employed attorney Hilbert to represent him in lieu of respondent. Thereafter, in December 2007, Hilbert wrote a letter to respondent informing him that Lourim had employed her to replace respondent and requesting that respondent return Lourim's client file. On December 15, 2007, Lourim also wrote a letter to respondent requesting that respondent return his client file and the \$1,250 in advanced costs.

By failing to promptly return the Lourim file to his client, despite the requests of attorney Hilbert and of Lourim for him to do so, respondent failed, upon termination of employment, to promptly release to a client, at the request of the client, all the client papers in willful violation of rule 3-700(D)(1).

3. Case No. 07-O-14458 (Blake)

In or about November 2006, respondent claims he began suffering from severe, debilitating inflammation.

Prior to January 2007, Avery and Judith Blake purchased securities through broker James Hauck St. Charles with the promise that they would receive income with little risk. The Blakes

believed that as a result of the mismanagement of their brokerage account, they lost over \$250,000.

On January 19, 2007, the Blakes employed respondent to represent them in a lawsuit against Merrill Lynch, Pierce, Fenner & Smith, McDonald Investments, Inc., and James Hauck St. Charles as a result of the mismanagement.

At the time that the Blakes employed respondent, he maintained an office at 2330 E. Bidwell Street, Folsom, California.

On January 23, 2007, the Blakes paid respondent an advance fee of \$5,000.

In March 2007, respondent vacated his office at E. Bidwell due to what he claimed was mold infestation and moved his law practice to his home. He continued to receive mail addressed to E. Bidwell after he vacated the office space. Respondent failed to inform the Blakes that he vacated his office and moved his office to his home.

In the summer of 2007, respondent met with the Blakes at a coffee shop in Auburn, California to discuss their matter. From August 2007 to September 2007, the Blakes telephoned respondent at his office number and on his cell phone several times and left messages on his cell phone requesting that he provide them with a status update on their matter. Respondent received the Blakes' messages, but failed to return their telephone calls and failed to provide them with a status update.

On September 17, 2007, the Blakes sent a letter to respondent, addressed to the E. Bidwell address, requesting a status update. Respondent received the September 17, 2007 letter soon after it was sent, but failed to respond to it.

On September 21, 2007, the Blakes went to respondent's office and learned for the first time that respondent had vacated the office in March 2007.

On September 22, 2007, the Blakes sent respondent an email to the email address respondent had provided to them. The email informed respondent that due to his failure to respond to their numerous messages, they visited his office and discovered that he had vacated it in March 2007. The email also informed respondent that they were concerned about the welfare of their case. It asked respondent to respond to them by telephone.

On September 30, 2007, respondent left a voice mail message for the Blakes apologizing for his failure to return their telephone calls and respond to their letters. In the telephone message, respondent promised to draft a letter to the National Association of Security Dealers (NASD) by October 5, 2007. Thereafter, respondent failed to draft a letter to NASD.

On October 2, 2007, respondent sent the Blakes a lengthy email explaining that he was suffering from severe, debilitating inflammation due to exposure to mold.

On October 19, 2007, respondent provided the Blakes with a draft Statement of Claim.

On October 25, 2007, the Blakes terminated respondent and employed attorney William Torngren.

On October 25, 2007, the Blakes sent respondent a letter via facsimile and email requesting that respondent refund the balance of the advanced fee and requesting that respondent provide their client file to Torngren. Respondent received the letter soon after it was sent.

On October 31, 2007, respondent hand delivered the file to Torngren and included a letter addressed to Torngren, which stated that he would provide an accounting to the Blakes in the very near future after he had an opportunity to finalize his billings. Thereafter, respondent failed to refund any money to the Blakes and failed to provide them with an accounting of the \$5,000 advance fee that they had paid him.

Count 3(A): Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By: (1) failing to return the telephone calls made by the Blakes to respondent's office and cell phone made from August 2007 to September 2007; (2) failing to respond to the messages that the Blakes left on respondent's cell phone requesting that he provide them with a status update on the legal matter for which the Blakes had employed him; and (3) failing to respond to the Blakes' September 17, 2007 letter to him requesting a status update, respondent failed to promptly respond to the reasonable status inquiries of a client in a matter with regard to which he agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Respondent also willfully violated section 6068, subdivision (m), by failing to keep his clients reasonably informed of a significant development in a matter in which respondent had agreed to provide legal services by failing to inform the Blakes that he had vacated his law office in March 2007.

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

By not providing the Blakes with an accounting of the \$5,000 they had paid him as an advanced fee, respondent failed to render appropriate accounts to clients, in willful violation of rule 4-100(B)(3).

C. Second Notice of Disciplinary Charges

1. Case No. 08-O-14375 (Gennis)

At all relevant times, respondent maintained Bank of the West client trust account (CTA) number 386.⁷

At all relevant times, respondent maintained Bank of the West general office account 268 (general office account). The general office account was not a CTA.

⁷ The account number is identified by the last three digits to protect the privacy of the account.

On December 1, 2000, Michael Gennis employed respondent to represent him in an investment fraud matter. Gennis was defrauded by Douglas Phanco, among others. Prior to being employed by Gennis, respondent was unfamiliar with Douglas Phanco. Respondent's first interaction with Douglas Phanco was through respondent's representation of Gennis.

Prior to July 2002, respondent filed a lawsuit on behalf of Gennis, entitled *Gennis v. Branch Investment Group, LLC, Bruce Anderson, Douglas E. Phanco, David Phanco, et al.*, El Dorado County Superior Court, case number PC20010541. Douglas Phanco is the father of David Phanco. On November 18, 2002, the court entered a default judgment against Douglas Phanco and David Phanco, among others, in the amount of \$101,116.45 (default judgment.)

On September 1, 2004, Gennis employed respondent to represent him regarding the collection of the November 18, 2002 default judgment against the defendants, including Douglas Phanco (Phanco). At the time Gennis employed respondent, respondent provided Gennis with a fee agreement. That fee agreement included a provision whereby respondent would receive fifty percent of the gross recovery of amounts respondent collected to satisfy the default judgment. Gennis added the following provision in his handwriting to the fee agreement: "The payments shall be split 50%/50%: client/attorney as they are received." On October 6, 2004, Gennis executed the fee agreement; and, on October 8, 2004, respondent executed the fee agreement.

Prior to September 1, 2004, respondent caused the wages of David Phanco's wife, Dawn Phanco, to be garnished in partial satisfaction of the default judgment. Between September 1, 2004 and April 25, 2005, respondent received regular payments from the garnished wages and split the payments equally with Gennis, in accordance with the fee agreement.

Prior to July 25, 2005, respondent arranged to meet with Phanco to discuss satisfaction of the default judgment. On July 25, 2005, respondent and Phanco met. They agreed that Phanco would make monthly payments towards the satisfaction of the default judgment. At the meeting,

Phanco indicated that he expected to have funds available to pay the balance of the default judgment within six months. At the time of their meeting, the outstanding balance on the default judgment was \$121,390.11, with interest accruing at \$27.70 per day.

Between July 2005 and January 2006, Gennis had regular discussions with respondent regarding the collection efforts. During those discussions, respondent informed Gennis that Phanco was attempting to close a real estate land deal in Colorado and intended to use the funds he received from the Colorado real estate deal to satisfy Gennis's default judgment. Between July 2005 and January 2006, respondent informed Gennis that he was helping Phanco with the Colorado deal so that Phanco would have the funds available to satisfy the default judgment.

On January 19, 2006, respondent sent Gennis a letter forwarding \$5,000 as his portion of two wire transfers respondent received from Phanco. In the January 19, 2006 letter, respondent reported that he remained in frequent contact with Phanco, who reported that his real estate deal was "on track." Respondent's letter also stated that Phanco reported that he would be in a position to pay off the default judgment "in short order."

Between January 2006 and September 2008, Gennis telephoned and emailed respondent regularly to obtain a status update on respondent's collection efforts. Respondent failed to respond to Gennis's telephone calls and emails and failed to provide Gennis with a status update on respondent's collection efforts.

On January 21, 2007, the balance in respondent's CTA was \$169.55.

Prior to January 22, 2007, Phanco agreed to pay Gennis \$30,000 in partial satisfaction of the default judgment. Respondent arranged for Phanco to transfer \$30,000 to respondent's CTA. On January 22, 2007, Phanco wire transferred \$30,000 to respondent's CTA. And, on January 22, 2007, respondent received Gennis's funds. Respondent never notified Gennis that he received the funds. Pursuant to the September 1, 2004 fee agreement, respondent was entitled to

\$15,000 and Gennis was entitled to \$15,000 of the funds that Phanco paid in partial satisfaction of the default judgment.

On January 22, 2007, respondent transferred his \$15,000 fee to the general office account. On January 22, 2007, the ending balance in respondent's CTA was \$15,157.26. Between January 22, 2007 and January 25, 2007, \$15,000 of the funds on deposit in the CTA belonged to Gennis. On January 25, 2007, respondent transferred \$15,000 to the general office account. The \$15,000 that respondent transferred to the general office account belonged to Gennis. Thereafter, respondent used Gennis's \$15,000 for his own personal use and benefit and not for the use and benefit of Gennis.

On January 31, 2007, the balance in respondent's CTA was \$157.26. Respondent never notified Gennis that he had received funds from Phanco in partial satisfaction of the default judgment. As of February 23, 2009, the date on which the NDC in case Nos. 08-O-13242 (08-O-14375) was filed, respondent had failed and refused to pay Gennis any of the funds respondent received from Phanco on January 22, 2007.

As of January 31, 2007, the balance in respondent's general office account was \$4,220.39. As of February 28, 2007, the balance in respondent's general office account was -\$146.93.

Respondent failed to maintain Gennis's funds in either the CTA or the general office account. Respondent used \$15,000 of funds belonging to Gennis for respondent's own personal use and benefit and not for the use and benefit of Gennis, thereby misappropriating \$15,000 from Gennis.

Prior to May 2007, respondent began representing Phanco and Ambassador Investments, LLC, an entity owned by Phanco. But, at all relevant times, respondent continued to represent

Gennis against Phanco in Gennis's effort to satisfy the default judgment. Thus, respondent represented Gennis and at the same time accepted Phanco as a client in a second, separate matter.

Ambassador Investments LLC entered into a loan agreement to borrow \$20,000,000 from Dragoon Investments Inc. to purchase real estate in Colorado. As part of the loan agreement, Ambassador Investments deposited \$600,000 with Elite Mortgage as a loan origination fee. According to Phanco, Dragoon promised to fund the loan by March 2, 2007, or else Dragoon was obligated to release the \$600,000 that Ambassador Investments paid as an origination fee.

On May 10, 2007, respondent wrote a letter to Elite Mortgage stating that he represented Ambassador Investments, Inc., and demanded that Elite Mortgage return the \$600,000 origination fee. Respondent listed Phanco as one of the clients who was copied on the May 10, 2007 letter.

Respondent never informed Gennis that he represented Phanco in the Colorado real estate matter. Respondent misled Gennis when he informed Gennis that he was assisting Phanco with the Colorado real estate matter in order to obtain funds to satisfy the default judgment. In fact, respondent had no intent of assisting Gennis. Rather, respondent represented Phanco for his own personal gain and benefit. Respondent did not have any intent of assisting Gennis with collection on the default judgment. Although Phanco had access to the \$600,000 origination fees, respondent never attempted to obtain those funds for Gennis.

In Gennis's default judgment matter, the interests of Gennis were adverse to the interests of Phanco, since Gennis was attempting to collect the default judgment against Phanco. Yet, at no time did respondent inform Gennis of the relevant circumstances and of the actual and foreseeable adverse consequences of respondent's simultaneous representation of Gennis and Phanco. And, at no time, while representing both Gennis and Phanco, did respondent obtain Gennis's informed written consent to represent Phanco.

Prior to July 2008, respondent represented all defendants except Phanco in a matter entitled, *Liliane P. Pernet v. Pamela L. Blair, Nicholas W. Jehle, Merton E. Greif, Westco Investment Brokerage, Inc and Douglas E. Phanco*, Orange County Superior Court, Case No. 06CCO5132 (*Pernet v. Blair et al.*). Phanco represented himself in the matter. But, prior to July 2008, respondent worked for the benefit of Phanco by attempting to settle the case on behalf of all defendants, including Phanco.

Prior to July 2008, attorney Bernard Jasper (Jasper) represented plaintiff Liliane Pernet in *Pernet v. Blair et al.*

Prior to July 2008, respondent failed to pay his 2008 State Bar of California membership dues. And, prior to July 2008, the State Bar of California served respondent with a notice that he would be suspended from the practice of law effective July 1, 2008, for failure to pay his 2008 State Bar membership dues. Respondent received that notice of suspension prior to July 1, 2008.

Effective July 1, 2008, the California Supreme Court suspended respondent from the practice of law for failure to pay his 2008 State Bar membership dues. As of July 1, 2008, respondent knew that he was suspended effective July 1, 2008, for failure to pay his State Bar membership dues. Nonetheless, between July 1, 2008 and September 4, 2008, respondent continued to represent the defendants in *Pernet v. Blair* by continuing to discuss settlement of that matter with Jasper on behalf of all defendants, including Phanco. When respondent engaged in settlement negotiations between July 1, 2008 and September 4, 2008, respondent practiced law.

On July 9, 2008, respondent sent Jasper an email regarding the settlement of *Pernet v. Blair*. The July 9, 2008 email included the signature block, "Jeffrey M. Jones, Law Office of Jeffrey M. Jones, P.C."

On September 5, 2008, respondent paid his outstanding State Bar membership dues and was reinstated to the practice of law.

On September 8, 2008, Gennis learned that respondent had received Gennis's funds in September 2007. In September 2008, Gennis telephoned respondent and demanded that respondent pay Gennis his funds and provide him with his portion of the \$30,000 that respondent had collected on January 22, 2007. During that telephone call, respondent claimed that he did not recall the payment from Phanco. But, respondent knew that he had received funds belonging to Gennis and knew that he had misappropriated those funds. Thereafter, respondent failed and refused to provide Gennis with any of the funds.

Count 1(A): Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

By transferring \$15,000 from his CTA to his general office account on January 25, 2007, and causing the balance in his CTA to fall below \$15,000 and reach \$157.26 on January 31, 2007, respondent willfully failed to maintain the \$15,000 belonging to Gennis that respondent was obligated to maintain in his CTA until paid out to Gennis, in willful violation of rule 4-100(A).

Count 1(B): Moral Turpitude – Misappropriation (Bus. & Prof. Code, § 6106)

On January 22, 2007, Phanco wire transferred \$30,000 to respondent's CTA in partial satisfaction of the default judgment that Gennis had obtained against Phanco. By January 25, 2007, respondent used the \$15,000 portion of the funds belonging to Gennis for his own personal use and benefit and not for the use and benefit of Gennis, thereby misappropriating \$15,000 from Gennis. By misappropriating the \$15,000 portion of the funds that belonged to Gennis, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count 1(C): Failure to Notify Client of Receipt of Client Funds (Rule 4-100(B)(1))

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

By failing to notify Gennis of the receipt of the \$30,000 in funds from Phanco, respondent failed to promptly notify a client of the receipt of client's funds, securities, or other properties in willful violation of rule 4-100(B)(1).

Count 1(D): Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By 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 providing Gennis with his \$15,000 portion of the \$30,000, that respondent had received on January 22, 2007, as requested by Gennis in September 2008, 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).

Count 1(E): Avoiding the Representation of Adverse Interests—Actual Conflict (Rule 3-310(C)(3))

Rule 3-310(C)(3) provides that an attorney must not, without the informed written consent of each client, represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: "By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney

are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent.” (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

“It is . . . an attorney’s duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter’s free and intelligent consent given after full knowledge of all the facts and circumstances.” (*Anderson v. Eaton, supra*, 211 Cal. 113, 116; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 350-351.)

Respondent accepted representation of Phanco and Ambassador Investments LLC, an entity owned by Phanco, in a matter without ever obtaining the informed written consent of Gennis. At the time he accepted representation of Phanco and Ambassador Investments LLC, respondent was already representing Gennis in the default judgment collection matter, in which the interests of Phanco and Gennis were adverse.

Therefore, by accepting representation of Phanco and Ambassador Investments LLC in a second, separate matter, without providing written disclosure to Gennis of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to Gennis resulting from respondent’s simultaneous representation of Phanco and Gennis, respondent willfully violated rule 3-310(C)(3).

Count 1(F): Unauthorized Practice of Law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125 and 6126)

Section 6068, subdivision (a), provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California.

The State Bar charges that respondent violated section 6068, subdivision (a), by advertising or holding himself out as practicing or entitled to practice law or otherwise practicing law when he was not an active member of the State in violation of sections 6125 and 6126.

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

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

Respondent included the signature block which stated, "Jeffrey M. Jones, Law Office of Jeffrey M. Jones, P.C." in his July 9, 2008 email to the plaintiff's attorney in *Pernet v. Blair* and discussed settlement on behalf of the defendants in *Pernet v. Blair* with the plaintiff's attorney when respondent knew that he was not entitled to practice law. By so doing, respondent held himself out as entitled to practice law and actually practiced law when he was not an active member of the State Bar of California in willful violation of sections 6125 and 6126, and thereby

failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count 1(G): Moral Turpitude (Bus. & Prof. Code, § 6106)

Moral turpitude has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. . . . Although an evil intent is not necessary for moral turpitude, at least gross negligence of some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

Respondent knew that he was suspended from practicing law in California, effective July 1, 2008, for failure to pay his State Bar membership dues. Nonetheless, between July 1, 2008 and September 4, 2008, respondent continued his representation of the defendants in *Pernet v. Blair* by engaging in settlement discussions on their behalf and held himself out as entitled to practice law in his July 9, 2008 email to the attorney for the defendants in *Pernet v. Blair*.

By holding himself out as entitled to practice law when he knew that he was not entitled to do so and by practicing law when he knew that he was not entitled to practice law, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of section 6106.

2. Case No. 08-O-14375 (Safeed)

On October 11, 2006, Rashid Saeed (Saeed) employed respondent to represent him regarding funds that he loaned his brother, Chaudhry Azeem (Azeem), for the purchase of property in Sacramento. And, on October 11, 2006, Saeed paid respondent \$5,000 as an

advanced fee. At the time that Saeed employed respondent, respondent promised that he would write a demand letter to Azeem within one week.

Between October 18, 2006 and December 5, 2006, Saeed telephoned respondent's office almost daily requesting a status update on his matter. Each time he called, Saeed left a message with respondent's secretary requesting that respondent provide him with a status update on his matter. Respondent received the messages that Saeed had telephoned and requested a status update, but respondent failed to return the telephone calls and failed to provide a status update.

On November 26, 2006, Saeed sent respondent a letter outlining the points that respondent should make in a demand letter to Azeem. On December 4, 2006, Saeed learned that respondent had failed to send a demand letter to Azeem and had done nothing to pursue Saeed's claim against Azeem.

On December 5, 2006, Saeed informed respondent's secretary that he wanted his file and his advanced fee returned, if respondent intended to take no action on Saeed's behalf. Saeed provided respondent with a letter on December 6, 2006. In his letter, Saeed indicated that he intended to pick up his file and requested the return of the \$5,000 fee, since respondent had failed to return his phone calls and had failed to take any action on his behalf.

On December 6, 2006, respondent sent a one and one half page demand letter to Azeem that followed the outline contained in Saeed's November 26, 2006 letter. Sending that December 6, 2006 letter was the only service respondent provided to Saeed. The December 6, 2006 letter indicated that if Azeem failed to pay the money he owed Saeed by December 20, 2006, respondent would initiate appropriate legal proceedings on December 21, 2006. Azeem failed to respond to the December 6, 2006 letter and failed to pay Saeed any of the money he owed Saeed. Thereafter, respondent took no action on behalf of Saeed.

The services that respondent did provide to Saeed were minimal and resulted in no benefit to Saeed, since respondent relied upon Saeed's outline to write the December 6, 2006 letter and since respondent took no action when Azeem failed to respond to that 2006 letter.

Between December 6, 2006 and January 27, 2007, Saeed telephoned respondent several times. Each time he called, Saeed left a message with respondent's secretary requesting that respondent provide him with a status update on his matter. Respondent received the telephone messages, but failed to respond to them and failed to provide Saeed with a status update.

On January 28, 2007, Saeed sent respondent a letter indicating that he had called respondent's office for the past six weeks and left numerous messages, but received no response to his requests for a status update on his matter. In his letter, Saeed requested that respondent return the \$5,000 advanced fee and the client file. Respondent received the January 28, 2007 letter, soon after it was sent. But, he failed to respond to the letter and failed to return the \$5,000 fee or Saeed's client file.

On February 5, 2007, Saeed filed a complaint with the State Bar regarding respondent's failure to perform and failure to return the \$5,000 fee.

On February 26, 2007, respondent prepared an accounting, indicating that respondent had earned \$2,146 and that Saeed was entitled to a refund of \$2,840.13 in unearned fees.

At all relevant times, respondent maintained Bank of the West general office account 268 (general office account).

On February 26, 2007, respondent issued check number 6125 to Saeed in the amount of \$2,840.13 drawn on the general office account. At the time respondent issued check number 6125, the balance in his general office account was approximately -\$85. Respondent knew at the time that he issued check number 6125 that he had insufficient funds in his general office account to cover the \$2,840.13 check he provided Saeed.

On March 7, 2007, Saeed arranged for the deposit of check number 6125. Thereafter, on March 12, 2007, Saeed received notification that check number 6125 had been returned by the bank as unpaid, since there were insufficient funds in respondent's general office account.

The State Bar alleged in the NDC that as of February 23, 2009, the date of the filing of the NDC in case No. 08-O-13242 et al., respondent had not returned any funds to Saeed. However, in footnote 14 on page 26 of the State Bar's brief on culpability, the State Bar acknowledged that it had learned that on January 27, 2009, respondent returned \$2,850.13 in unearned fees to Saeed. Therefore, in the interest of justice and due to the existence of contrary evidence, which the State Bar has acknowledged in its brief on culpability, the court finds that respondent returned \$2,850.13 in unearned fees to Saeed.

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

By issuing a check, which was drawn on his general office account, on February 26, 2007, in the amount of \$2,840.13, when at the time he issued the check he knew that there were insufficient funds in the account to pay the check, respondent committed an act involving moral turpitude in willful violation of section 6106.

Count 2(B): 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.

In January 2007, Saeed sent a letter to respondent in which he requested the return of the client file and the advance fee he had paid. On February 5, 2007, Saeed filed a complaint with the State Bar regarding respondent; on February 26, 2007, respondent prepared an accounting. By the end of February 2007, the attorney-client relationship had terminated.

By failing to make good on the \$2,840.13 insufficient funds check that he had provided to Saeed for unearned fees until January 27, 2009, respondent failed to promptly refund any

part of an attorney fee paid in advance that had not been earned, in willful violation of rule 3-700(D)(2).

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

Between October 18 and December 5, 2006, Saeed telephoned, respondent's office almost daily, leaving a message with respondent's secretary, requesting that respondent provide a status update on his matter. Respondent received the messages that Saeed had telephoned and requested a status update, but did not return the calls or provide a status update. And, between December 6, 2006 and January 27, 2007, Saeed telephoned respondent several times. Each time he called, Saeed left a message with respondent's secretary requesting that respondent provide him with a status update on his matter. Respondent also received those messages, but did not respond to them and did not provide Saeed with a status update on his matter.

By failing to respond to any of Saeed's numerous telephone calls and messages left for him from October 18, 2006 through January 27, 2007, and failing to provide a status update to Saeed in response to those calls and messages, respondent failed to promptly respond to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services in willful violation of section 6068, subdivision (m).

C. Third Notice of Disciplinary Charges

Case No. 10-O-04691 (Wills)

On May 20, 2007, former attorney Daniel Patrick Whaley (Whaley) resigned from the State Bar with disciplinary charges pending.

Prior to July 1, 2008: (1) respondent failed to pay his State Bar membership dues; (2) the State Bar notified respondent that he would be suspended from the practice of law effective July 1, 2008 for failure to pay his State Bar membership dues; and (3) respondent received the State Bar notification.

Effective July 1, 2008 through September 4, 2008, the Supreme Court suspended respondent from the practice of law for failure to pay his State Bar membership dues.

Effective July 8, 2009, respondent was placed on involuntary inactive status after he submitted his resignation with charges pending.

On April 26, 2008, Stephanie Wills was killed in a motor vehicle accident. She was survived by her husband, Brian Wills (Wills), and their three minor children.

On July 1, 2008, Whaley met with Wills to discuss legal representation regarding Stephanie Wills's accident. At the time that Whaley met with Wills, he informed Wills that he had retired from the practice of law, but would help Wills pursue an insurance claim for the benefit of Wills and his children. At no time did Whaley inform Wills that he had resigned with disciplinary charges pending or that he was unable to practice law.

On July 1, 2008, Wills employed Whaley and entered into a fee agreement containing respondent's name. Whaley did not provide Wills with a copy of the fee agreement and did not inform Wills that respondent was listed as the attorney on the fee agreement. At the time that Wills signed the fee agreement, he understood that the fee agreement listed Whaley as the attorney. Unbeknownst to Wills, the fee agreement identified respondent as the attorney. The fee agreement provided for a 25 percent contingency fee.

Between July 2008 and February 2009, Whaley provided legal services to Wills regarding his insurance claims and held himself out as an attorney to Wills.

Between July 2008 and February 2009, respondent permitted Whaley to: (1) provide legal services to Wills; (2) hold himself out as an attorney to Wills; and (3) use respondent's identity on correspondence with the insurance company and on settlement checks.

At no time did respondent have any contact or communication with Wills.

At all relevant times, respondent maintained Bank of the West CTA number 386.⁸

Between July 1, 2008 and September 4, 2008, Whaley negotiated a settlement with Viking Insurance on behalf of Wills and his three minor children. Prior to September 4, 2008, Viking Insurance provided Whaley with a \$15,000 settlement check. Wills instructed Whaley to distribute the Viking settlement proceeds as follows: \$7,500 to Wills and \$2,500 to each of Wills's three minor children. On September 4, 2008, Whaley arranged for respondent to deposit the settlement funds in his CTA.

Respondent never notified Wills that he had received funds from Viking Insurance for Wills and his children.

Neither respondent nor Whaley were entitled to charge or collect attorney fees from the Viking Insurance settlement proceeds, since neither was entitled to practice law during the entire time period the settlement discussions with Viking Insurance occurred.

On September 11, 2008, respondent collected \$3,750 in attorney fees from the Viking Insurance proceeds. Thereafter, respondent was obligated to maintain \$11,250 in the CTA until paid out for the benefit of Wills and his three minor children.

As of October 31, 2008, respondent owed \$11,250 to Wills and his three children. On October 31, 2008, the balance in the CTA was \$90.23. Prior to October 31, 2008, respondent did not pay Wills or his minor children any of the \$11,250 settlement funds to which they were entitled.

As of October 31, 2008, respondent used at least \$11,159.77 belonging to Wills and his three children for his own personal use and benefit, and not for the use and benefit of Wills or his children. As of October 31, 2008, respondent misappropriated at least \$11,159.77 from Wills and his three children.

⁸ The account number is identified by the last three digits to protect the privacy of the account.

On December 23, 2008, Whaley provided Wills with a check for \$5,625, which represented Wills's portion of the Viking Insurance settlement proceeds. Thereafter, respondent was obligated to maintain \$5,625, the children's portion of the Viking settlement proceeds, in the CTA.

In January 2009, Wills's claim against State Farm Insurance settled for \$100,000, with \$25,000 being allocated to each of the three children. On February 24, 2009, State Farm funded an annuity for Wills's children in the amount of \$56,250, which represented their portion of the settlement funds after deducting the attorney fees.

On February 27, 2009, Whaley: (1) received settlement funds from State Farm for Wills; (2) forged Wills's name to the back of the State Farm check; and (3) arranged for respondent to deposit the \$25,000 check into respondent's CTA.

Respondent never notified Wills that he received Wills's funds from State Farm.

Respondent was obligated to maintain \$18,750, Wills's State Farm settlement proceeds, in the CTA until paid out for the benefit of Wills.

As of July 8, 2009, respondent owed \$5,625 to Will's children for their portion of the Viking settlement proceeds and owed \$18,750 to Wills for his portion of the State Farm settlement proceeds, for a total of \$24,375. As of July 8, 2009, respondent, therefore, was obligated to maintain a total of \$24,375 in the CTA.

But as of July 8, 2009, respondent used at least \$24,365 that belonged to Wills and his children for his own use and benefit, and not for the use and benefit of Wills or his three children. Therefore, as of July 8, 2009, respondent misappropriated at least \$24,365 from Wills and his children. As of July 8, 2009, the balance in the CTA was \$10.

On May 6, 2010, respondent deposited money into his CTA to fund the amount he owed Wills and his three children.

On May 31, 2010, Wills filed a complaint with the State Bar and with the San Joaquin County District Attorney's Office.

On June 15, 2010, Whaley provided Wills with a check for \$27,243.61, drawn on the CTA, which represented the amount respondent had misappropriated plus interest.

On June 16, 2010, during an interview at the San Joaquin County District Attorney's Office, respondent admitted that he used Wills's funds for his basic living expenses.

Count 1: Aiding the Unauthorized Practice of Law (Rule 1-300(A))

Rule 1-300(A) prohibits an attorney from aiding any person or entity in the unauthorized practice of law. There is clear and convincing evidence that respondent violated rule 1-300(A) by aiding and abetting Whaley, a lawyer who had resigned from the State Bar with disciplinary charges pending, in practicing law and holding himself out as entitled to practice law.

Between July 2008 and February 2009, respondent permitted Whaley to: (1) provide legal services to Wills; (2) hold himself out as an attorney to Wills; and (3) use respondent's identity on correspondence with insurance companies and on settlement checks. Respondent actively assisted Whaley by accepting and depositing settlement funds that Whaley received while practicing law, when Whaley was not entitled to do so, into respondent's CTA. Respondent's assistance allowed Whaley to represent Wills and process settlement checks that Whaley received. By so doing, respondent aided Whaley in the unauthorized practice of law in willful violation of rule 1-300(A).

Count 2: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Respondent deposited the Viking Insurance settlement proceeds check for \$15,000 in his CTA on September 4, 2008. On September 11, 2008, respondent collected \$3,750 in attorney fees from the Viking proceeds. Thereafter, respondent was obligated to maintain the remaining \$11,250 settlement proceeds until paid out for the benefit of Wills and his children. Prior to

October 31, 2008, respondent did not pay Wills or his children any of the \$11,250 settlement funds to which they were entitled. Yet, on October 31, 2008, the balance in respondent's CTA was \$90.23.

By allowing the balance in his CTA to fall below \$11,250, reaching \$90.23 on October 31, 2008, respondent willfully failed to maintain the \$11,250 belonging to Wills and his children in a trust account, in willful violation of rule 4-100(A).

Count 3: Moral Turpitude – Misappropriation (Bus. & Prof. Code, § 6106)

By misappropriating at least \$24,365 that belonged to Wills and his children for his own use and benefit, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count 4: Failure to Notify Client of Receipt of Client Funds (Rule 4-100(B)(1))

Respondent never notified Wills that he had received \$15,000 in settlement funds from Viking Insurance in September 2008. Nor did respondent notify Wills in February 2009, that he received \$25,000 in settlement funds from State Farm for Wills and his children. By failing to notify Wills when he received the settlement funds, respondent failed to promptly notify a client of the receipt of client funds in willful violation of rule 4-100(B)(1).

Count 5: Illegal Fee (Rule 4-200(A))

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

Effective July 1, 2008 through September 4, 2008, the Supreme Court suspended respondent from the practice of law in California. The settlement with Viking Insurance was negotiated between July 1 and September 4, 2008. Neither respondent nor Whaley were entitled to practice law during the entire time period in which the settlement discussion with Viking occurred.

While he was suspended, respondent charged and collected \$3,750 in attorney fees from the Viking Insurance settlement proceeds.

While respondent was suspended from the practice of law, he was legally precluded from practicing law and therefore, his performance of legal services in exchange for a fee was illegal. He was not entitled to charge or collect fees for those services that constituted the unauthorized practice of law. (*Birbrower, Montalbana, Condon, and Frank v. Superior Court* (1998) 17 Cal.4th 19, 136.)

By charging and accepting the \$3,750 as an attorney fee, for legal services which were provided when both he and Whaley were legally precluded from practicing law, respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds.⁹ 1.2(e) and (b).)

A. Mitigation

Respondent's discipline free record since 1986 until the commencement of his misconduct in 2006 is a significant mitigating factor, even though the present misconduct is serious. (Std. 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

B. Aggravation

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

⁹ Future references to standard(s) are to this source.

Respondent committed multiple acts of misconduct by: (1) failing to maintain client funds in a client trust account; (2) committing acts of moral turpitude, including misappropriation; (3) failing to promptly pay client funds; (4) failing to deposit client funds in a client trust account; (5) failing to communicate; (6) failing to render accounts of client funds; (7) failing to promptly release a client file; (8) failing to promptly notify a client of receipt of client funds; (9) representing clients with adverse interests; (10) engaging in the unauthorized practice of law; (11) failing to return unearned fees; (12) aiding in the unauthorized practice of law; and (13) charging and collecting an illegal fee. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed his clients and the administration of justice. Respondent's misappropriation from four clients, totaling \$50,617.90, significantly harmed those clients. Even those clients whom respondent eventually reimbursed were deprived of the use of their funds for years. Additionally, by engaging in the unauthorized practice of law, respondent harmed the administration of justice. And, respondent's collection of a \$3,750 illegal fee from Wills, during the time that respondent was suspended and precluded from practicing law, deprived Wills of his funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to reimburse two clients as follows:

- Michael Gennis \$10,000
- Brian Wills \$ 3,750

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC in case No. 10-O-04691, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.3, 2.4, 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.) As 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 insignificantly small or if the most compelling mitigating circumstances clearly predominate. Then the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances. Here, respondent's misappropriation of \$50,517.90 is significant.

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, fraud or intentional dishonesty 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 reproof 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 reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges that respondent be disbarred for his misappropriation and be ordered to make restitution, citing several cases including *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for \$40,000 misappropriation].

The court also finds *Grim v. State Bar* (1991) 53 Cal.3d 21 and *Edwards v. State Bar* (1990) 52 Cal.3d 28 to be instructive.

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. He was disbarred.

In *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37, an attorney was not disbarred but suspended for one year for misappropriation of \$3,000 because of extenuating circumstances – his good faith in refraining from acts of deceit towards the client, making full repayment within three months after the misappropriation and before the attorney was aware of the complaint to the State Bar, cooperating candidly throughout the proceedings, and voluntarily taking steps to improve his management of entrusted funds. The Supreme Court explained: “Disbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors.” (*Id.* at p. 38.)

However, “[a]n attorney who deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception.” (*Edwards v. State Bar, supra*, 52 Cal.3d 2, 39.)

In this matter, unlike the attorney in *Edwards*, respondent's misconduct was not a single act of negligent misappropriation. Like the attorneys in *Spaith* and *Grim*, he intentionally took his clients’ funds, spent them for his own benefit, and in some instances lied to the clients.

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.) Here, respondent has flagrantly breached his fiduciary duties by

violating rules 4-100(A), 4-100(B)(1), 4-100(B)(3), 4-100(B)(4), and sections 6068, subdivision (m), and 6106, among other violations.

More significantly, respondent's misappropriation weighs heavily in assessing the appropriate level of discipline. 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 his client[s]. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client[s] of [their] funds." (*Grim v. State Bar, supra*, 53 Cal.3d 21, 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." (*Id.* 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.) 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. (*Grim v. State Bar, supra*, 53 Cal.3d 21.)

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the severity of respondent's offenses, the serious aggravating circumstances, and mitigation that is insufficient to outweigh the seriousness of respondent's misconduct and the aggravating circumstances surrounding that misconduct, the court recommends disbarment.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Jeffrey Martin Jones** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

B. Restitution

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

1. **Michael Gennis** in the amount of \$15,000 plus 10% interest per annum from the January 22, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Michael Gennis, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

2. **Brian Wills** in the amount of \$3,750 plus 10% interest per annum from September 11, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Brian Wills, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

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.¹⁰

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.

¹⁰ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (Powers v. State Bar (1988) 44 Cal.3d 337, 341.)

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and new rule 5.111(D) of the Rules of Procedure of the State Bar, effective January 1, 2011. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: June _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court