

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case Nos.: 07-O-11898-LMA (08-O-11455; |
| |) | 08-O-11483; 08-O-11741) & |
| SANG HYUN KANG, |) | 09-O-12084-LMA (Consolidated.) |
| |) | |
| Member No. 125089, |) | DECISION & ORDER OF INVOLUNTARY |
| |) | INACTIVE ENROLLMENT |
| A Member of the State Bar. |) | |

I. Introduction

In this consolidated original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **SANG HYUN KANG**¹ with 16 counts of professional misconduct. Deputy Trial Counsel Jean Cha (hereafter DTC Cha) appeared for the State Bar. Respondent, however, did not appear in person or by counsel.

For the reasons set forth *post*, the court finds, by clear and convincing evidence, that respondent is culpable of at least some of the misconduct charged in 10 of the 16 counts of misconduct. Furthermore, the court concludes that the appropriate discipline for the found misconduct is disbarment. In light of its disbarment recommendation, the court must order that

¹ Respondent was admitted to the practice of law in the State of California on December 11, 1986, and has been a member of the State Bar since that time.

respondent be involuntarily enrolled as an inactive member of the State Bar of California. (Bus. & Prof. Code, § 6007, subd. (c)(4).)²

II. Key Procedural History

A. Case Number 07-O-11898-LMA

On July 23, 2009, the State Bar filed the notice of disciplinary charges (hereafter NDC) in case number 07-O-11898-LMA and, in accordance with section 6002.1, subdivision (c), properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (hereafter official address). That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.) Nonetheless, the declaration of DTC Cha, which is attached to the State Bar's September 2, 2009, motion for entry of default, establishes that the State Bar undertook additional meaningful steps to give respondent actual knowledge of case number 07-O-11898-LMA. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent's response to the NDC was to have been filed no later than August 17, 2009. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. And, on September 2, 2009, the State Bar filed a motion for the entry of respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC.

B. Case Number 09-O-12084-LMA

On September 1, 2009, the State Bar filed the NDC in case number 09-O-12084-LMA and, in accordance with section 6002.1, subdivision (c), properly served a copy of that NDC on respondent by certified mail, return receipt requested, at his official address. That service was

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

deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar*, *supra*, 48 Cal.3d at pp. 107-108.) Nonetheless, the declaration of DTC Cha, which is attached to the State Bar's October 9, 2009, motion for entry of default, establishes that the State Bar undertook additional meaningful steps to give respondent actual knowledge of case number 09-O-12084-LMA. (*Jones v. Flowers*, *supra*, 547 U.S. at pp. 224-227, 234.)

Respondent's response to the NDC was to have been filed no later than September 28, 2009. (Rules Proc. of State Bar, rule 103(a); see also Rules Proc. of State Bar, rule 63 [computation of time].) Respondent, however, did not file a response. And, on October 9, 2009, the State Bar filed a motion for the entry of respondent's default. Thereafter, respondent did not file a response to that motion or to the NDC.

Because all of the statutory and rule prerequisites were met, this court filed an order on October 26, 2009, in which it (1) entered respondent's default in both case number 07-O-11898-LMA and in case number 09-O-12084-LMA; (2) ordered respondent's involuntary inactive enrollment as mandated by section 6007, subdivision (e)(1); and (3) consolidated case numbers 07-O-11898-LMA and 09-O-12084-LMA for all purposes.

On November 16, 2009, the State Bar filed a discipline brief in the consolidated matter.³ And the court took the consolidated case under submission for decision without a hearing on November 17, 2009.

III. Findings of Fact and Conclusions of Law

Under Rules of Procedure of the State Bar, rule 200(d)(1)(A), upon entry of default, "The factual allegations set forth in the notice of disciplinary charges [are] deemed admitted. . . and no

³ Unfortunately, the State Bar's discipline brief contains less than two pages of substantive text. In addition, the State Bar incorrectly states in its brief that respondent has one prior record of discipline and incorrectly cites to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.7(a) (all further references to standards are to this source). As noted *post*, respondent has two prior records of discipline and the applicable standard is standard 1.7(b) (not standard 1.7(a)).

further proof [is] required to establish the truth of such facts.” Accordingly, the court adopts the facts alleged (but not the charges) in the two NDC’s as its factual findings. Briefly, those facts and exhibit 1 to the State Bar's November 16, 2009, discipline brief, which exhibit is admitted into evidence, establish the following.

A. Case No. 07-O-11898-LMA

1. Jang Client Matter (Counts One through Five)

In about November 2001, Kyoung Jang (hereafter Kyoung) and her son Juho Jang (hereafter Juho) were involved in an automobile accident and retained respondent to handle their personal-injury claims. Thereafter, in November 2002, respondent filed a personal-injury complaint for Kyoung and Juho in the Los Angeles Superior Court.

In January 2004, the parties to the personal injury lawsuit agreed to settle Kyoung’s and Juho’s claims for \$6,000 each (for a total of \$12,000). In February 2004, respondent received two \$6,000 settlement checks. One was payable to respondent and Juho, and the other was payable to respondent and Kyoung.

On about February 12, 2004, respondent deposited Juho’s \$6,000 settlement check into respondent’s general account at Saehan Bank. And, on about February 17, 2004, respondent also deposited Kyoung’s \$6,000 settlement check into his general account. Later that same February, respondent (1) paid Kyoung \$1,500 as her portion of the settlement proceeds and (2) paid Juho \$1,500 his portion of the settlement proceeds.

Also, in February 2004, respondent told Kyoung and Juho that he would pay their outstanding medical bills stemming from their personal injuries. In fact, respondent retained \$5,500 out of the \$12,000 settlement proceeds to pay their medical bills. Respondent, however, never paid any of Kyoung’s and Juho’s outstanding medical bills. Juho first learned that

respondent had not paid his medical bills in December 2005 when he ran his credit report and saw that one of his medical bills had been sent to collections.

To date, respondent has not paid Kyoung's or Juho's medical bills. Nor has respondent paid any of the \$5,500 he withheld to Kyoung or Juno. Instead, respondent converted the \$5,500 for his own use and purposes.

On September 5, 2007, and again on September 24, 2007, a State Bar investigator mailed respondent a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that the State Bar was investigating with respect to the Jung client matter. Even though respondent received both of those letters, respondent failed to respond to them.

Count One – Trust Account Violations (Rules Prof. Conduct, rule 4-100(A))⁴

Respondent willfully violated rule 4-100(A) by depositing the two \$6,000 settlement checks into his general checking account (and not his client trust account).

Count Two – Misappropriation (§ 6106)

Respondent wilfully violated 6106 by misappropriating (converting) for his own use and benefit the \$5,500 in settlement proceeds that he was to have used to pay Kyoung's and Juho's medical bills. Clearly, respondent's misappropriation of the \$5,500 involved not only moral turpitude, but dishonesty.

Count Three – Failure to Pay Client Funds (Rule 4-100(B)(4))

The charged violation of rule 4-100(B)(4) in count three is clearly duplicative of the charged and found violation of section 6106 in count two *ante*. Accordingly, in case number 07-O-11898-LMA, count three is DISMISSED with prejudice.

⁴ Unless otherwise noted, all further references to rules are to the Rules of Professional Conduct.

Count Four – Failure to Communicate (§ 6068, subdivision (m))

The charged violation of section 6068, subdivision (m) in count four is clearly encompassed within the section 6106 dishonesty violation that was charged and found in count two *ante*. Accordingly, in case number 07-O-11898-LMA, count four is DISMISSED with prejudice.

Count Five – Failure to Cooperate (§ 6068, subdivision (i))

Respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations by failing to respond to the State Bar investigator's September 5, 2007, and September 24, 2007, letters.

2. The Pang Client Matter (Counts Six through Nine)

Attorney James B. Auspitz represented Chan Pang in a worker's compensation case before the Worker's Compensation Appeals Board (hereafter WCAB). In about June 2004, respondent replaced Attorney Auspitz as Pang's attorney of record in the WCAB case.

Thereafter, Pang's worker's compensation case settled. And, on March 7, 2006, the WCAB awarded \$14,250 in attorney's fees on Pang's claims and ordered respondent "to place the \$14,250 in attorney's fees into his trust account until further order of the court." Later that same month, when respondent received a check for the \$14,250 in attorney's fees from State Farm, respondent did not deposit the check into his trust account as ordered. Instead, respondent deposited the check into his personal checking account at Hanin Federal Credit Union (hereafter respondent's credit union account).

By April 13, 2006, the balance in respondent's credit union account was only \$91.03, which was \$14,158.97 below the amount respondent was ordered to keep in his trust pending further order of the WCAB.

On about May 21, 2007, respondent and Attorney Auspitz entered into a stipulation in which respondent agreed to pay Attorney Auspitz \$2,375 as Auspitz's share of the \$14,250 attorney's fees award. And, on about May 21, 2007, the WCAB issued an order approving the \$2,375 attorney's fees award to Attorney Auspitz. The WCAB properly served respondent with the order. In accordance with the requirement that the court resolve all reasonable doubts in respondent's favor, the court must find that the remaining balance of \$11,875 (\$14,250 less \$2,375) belonged to respondent as his attorney's fees.

On about May 22, 2007, the balance in respondent's credit union account was a negative \$458.80. To date, respondent has failed to pay the \$2,375 to Attorney Auspitz.

On April 21, 2008, and again on August 7, 2008, a State Bar investigator mailed respondent a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that the State Bar was investigating with respect to the Pang client matter. Even though respondent received both of those letters, respondent failed to respond to them.

Count Six – Misappropriation (§ 6106)

Respondent wilfully violated 6106 by misappropriating Attorney Auspitz's \$2,375 share of the \$14,250 attorney's fees award in Pang's worker's compensation case. Respondent's misappropriation of Attorney Auspitz's \$2,375 attorney's fees award clearly involved moral turpitude, if not dishonesty.

Even though the record establishes that, on April 13, 2006, the balance in respondent's credit union account was \$14,158.97 below the amount that the WCAB ordered respondent to deposit and maintain in his trust account, the record does not clearly establish that respondent *misappropriated* (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.

17, 26) that \$14,158.97. Accordingly, the charged misappropriation of \$14,158.97 in court six in case number 07-O-11898-LMA is DISMISSED with prejudice.

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

The record fails to establish that respondent willfully violated rule 4-100(A) when he failed to deposit the \$14,250 in attorney's fees into his client trust account. Without question, the \$14,250 were *not* "funds received or held for the benefit of clients" that respondent was required to deposit into and maintain in his client trust account under rule 4-100(A). In other words, rule 4-100(A) did not require that respondent deposit and maintain the \$14,250 in his client trust account. Respondent was required to deposit the \$14,250 into his client trust account because, and only because, the WCAB ordered him to do so. Accordingly, in case number 07-O-11898-LMA, count seven is DISMISSED with prejudice.⁵

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

As charged in count eight, the record establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do acts connected with or in the course of his profession, which he ought in good faith to do, when he failed to obey the WCAB's March 7, 2006, order to deposit and maintain the \$14,250 attorney's fees award in his trust account pending further order.

However, the record does not clearly establish that respondent willfully violated section 6103 when he failed to pay \$2,375 to Attorney Auspitz as also charged in count eight. Even though the record establishes that the WCAB authorized respondent to pay \$2,375 to Attorney Auspitz, the record does not clearly establish that the WCAB ordered respondent to do so. Accordingly, the charged violation of section 6103 based on respondent's failure to pay \$2,375

⁵ Respondent's failure to deposit and maintain the \$14,250 in his trust account as ordered by the WCAB is properly charged as a willful violation of section 6103 in count eight *post*.

to Attorney Auspitz in court eight in case number 07-O-11898-LMA is DISMISSED with prejudice.

Count Nine – Failure to Cooperate (§ 6068, subdivision (i))

Respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations by failing to respond to the State Bar investigator's April 21, 2008, and August 7, 2008, letters.

3. The Lee Complaint Matter (Counts Ten and Eleven)

On January 16, 2008, the Supreme Court filed an order in *In re Sang H. Kang on Discipline*, case number S158214 (State Bar Court case number 06-O-11063) (hereafter *Kang II*). In that order, the Supreme Court placed respondent on one year's stayed suspension and one year's probation with conditions, including a sixty-day suspension that continued until respondent obeyed a superior court order to pay an opposing party \$2,000 in sanctions together with interest thereon. The Supreme Court properly mailed a copy of its order in *Kang II* to respondent at his official address. And respondent received that copy of the order. The Supreme Court's *Kang II* order became effective on February 15, 2008. Respondent's suspension under that order began on February 15, 2008, and ended on April 25, 2008, after he paid the \$2,000 in sanctions plus interest.

In 2008, respondent represented certain clients that are neither named in the NDC nor otherwise identified in the record (hereafter the X clients). At that time, respondent represented the X clients in a pending litigation matter that is also neither named in the NDC nor otherwise identified in the record (hereafter the X clients' litigation matter). In addition, Attorney Thomas M. Lee represented the unnamed opposing party or parties in the X clients' litigation matter.

On about March 11, 2008, while respondent was on suspension under the Supreme Court's order in *Kang II*, respondent, on behalf of his X clients, wrote and mailed a letter to

Attorney Lee. In his March 11, 2008, letter to Attorney Lee, respondent: (1) acknowledged receipt of Attorney Lee's March 5, 2008, letter to respondent; and (2) discussed issues dealing with an unidentified ongoing discovery dispute between the parties. Respondent sent, to his X clients, a copy of his March 11, 2008, letter to Attorney Lee.

On April 21, 2008, a State Bar investigator mailed respondent a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that Attorney Lee had made against him. Even though respondent received that April 21, 2008, letter, respondent failed to respond to it.

Count Ten – Unauthorized Practice of Law (§§ 6068, subd. (a); 6125, 6126)

In count ten, the State Bar charges respondent with willfully violating his duty, under section 6068, subdivision (a), to obey the laws of this state. More specifically, the State Bar charges that respondent violated his duty, under section 6068, subdivision (a), to obey the law by violating sections 6125 and 6126, which proscribe the unauthorized practice of law in California. According to the State Bar, respondent engaged in the unauthorized practice of law in violation of sections 6125 and 6126 when he wrote and sent his March 11, 2008, letter to his clients and Attorney Lee. The court cannot agree because the State Bar failed to prove by clear and convincing evidence that the X clients' litigation matter was a California state court litigation matter.

Under the well-established principle that the court must resolve all reasonable doubts in the respondent attorney's favor, the court must find that the X clients' litigation matter was a federal court litigation matter (and not a California state court litigation matter). Neither section 6125 nor section 6126 prohibit an attorney from practicing law in a federal court or before a federal agency. (*Benninghoff v. Superior Court* (State Bar of California) (2006) 136 Cal.App.4th 61, 74 [state law cannot restrict the right of federal courts and agencies to control who practices

before them]; see also *Surrick v. Killion* (3d Cir. 2006) 449 F.3d 520, 529-534 [suspended attorney permitted to open law office in state for sole purpose of conducting federal practice]; *In re Desilets* (6th Cir. 2002) 291 F.3d 925, 930-931 [Texas attorney and admitted to the federal bar in Michigan can practice bankruptcy law in Michigan without being a member of the State Bar of Michigan]; *In re Poole* (9th Cir. 2000) 222 F.3d 618, 620 [“Once federal admission is secured, a change in circumstances underlying state admission . . . is ‘wholly negligible’ on the right to practice before a federal court”]; *Paul E. Iacono Structural Engineer, Inc. v. Humphrey* (9th Cir. 1983) 722 F.2d 435, 439].) In other words, engaging in the practice of federal law (even engaging in the unauthorized practice of federal law) does not and cannot violate either section 6125 or section 6126.

In sum, in case number 07-O-11898-LMA, count ten is DISMISSED with prejudice.

Count Eleven – Failure to Cooperate (§ 6068, subdivision (i))

Respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations by failing to respond to the State Bar investigator’s April 21, 2008, letter.

4. Count Twelve is Fatally Defective

In count twelve, the State Bar again charges that respondent engaged in the unauthorized practice of law in violation of sections 6068, subdivision (a); 6125; and 6126. However, the factual allegations in the NDC that support these charged violations in count twelve provide only that, on about March 11, 2008, while respondent was on suspension under the Supreme Court's order in *Kang II*, “respondent wrote a letter on behalf of his client to the opposing counsel in an ongoing litigation matter. Respondent sent the March 14, 2008, letter to the opposing counsel and to his client.”

Indeed, neither the factual allegations nor the charging allegations in count twelve give respondent adequate notice of the charges alleged against him. The NDC does not identify either respondent's client or the opposing counsel. In short, count twelve is DISMISSED with prejudice for want of *fundamental* due process.⁶ (E.g., *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163.)

5. The Chong Complaint Matter (Count Thirteen)

On May 12, 2008, a State Bar investigator mailed respondent a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that Edward J. Chong had made against him. Even though respondent received that May 12, 2008, letter, respondent failed to respond to it.

Count Thirteen – Failure to Cooperate (§ 6068, subdivision (i))

Respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations by failing to respond to the State Bar investigator's May 12, 2008, letter.

B. Case Number 09-0-12084-LMA

1. Probation Violations

As noted *ante*, in its January 16, 2008, order in *Kang II*, the Supreme Court placed respondent on one year's stayed suspension and one year's probation with conditions. The Supreme Court imposed that discipline, including each of the probation conditions, in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent entered into with the State Bar and which the State Bar Court approved in an order filed on

⁶ Even if the NDC gave respondent adequate notice of the charges alleged against him in count twelve, the court would still dismiss count twelve with prejudice on the same grounds that it dismissed count ten *ante*.

September 26, 2007, in case number 06-O-11063. Thus, the probation violations found *post* involve respondent's failure to comply with his own agreement.

One of the probation conditions imposed on respondent in *Kang II* required respondent to submit a final probation report to the State Bar's Office of Probation no later than February 15, 2009. Respondent, however, never submitted a final probation report to the Office of Probation.

Another probation condition in *Kang II* required respondent to provide, to the Office of Probation no later than February 15, 2009, satisfactory proof that he attended and successfully completed the State Bar's Ethics School. Respondent never provided the required proof to the Office of Probation.

Count One -- Probation Violations (§ 6068, subd. (k))

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (k), to comply with all conditions attached to any disciplinary probation imposed on him when he failed to submit a final probation report to the Office of Probation and when he failed to provide the Office of Probation with the required proof that he attended and successfully completed Ethics School.

2. Multistate Professional Responsibility Examination Condition

In its January 16, 2008, order in *Kang II*, the Supreme Court also ordered that respondent “take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)” Respondent, however, did not take and pass the MPRE within the time prescribed (i.e., no later than February 15, 2009 -- which was one year after the February 15, 2008, effective date of the Supreme Court's order in *Kang II*). Accordingly, on May 14, 2009, the review department filed an order in which it suspended respondent from the practice of law in this state effective June 8,

2009.⁷ (Cal. Rules of Court, rule 9.10(b); *Segretti v. State Bar*, *supra*, 15 Cal.3d at p. 891, fn. 8.) Moreover, respondent will remain on suspension under the review department's May 14, 2009, order until he provides the review department with proof that he pass the MPRE. (*Ibid.*)

Count Two -- Failure to Obey Court Order (§ 6103)

In count two, the State Bar charges that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do acts connected with or in the course of his profession, which he ought in good faith to do, when he failed to take and pass the MPRE within the time prescribed in the Supreme Court's January 16, 2008, disciplinary order in *Kang II* (i.e., by February 15, 2009).

It is true that respondent failed to obey the Supreme Court's order that he take and pass the MPRE no later than February 15, 2009. But it is equally true that not every violation of a court order by an attorney will rise to the level of willful violation of section 6103. In any event, the State Bar failed to cite any authority to support its contention that respondent's failure (or *inability*) to take and pass the MPRE within the time prescribed in the Supreme Court's order in *Kang II* is disciplinable as a willful violation of section 6103. And this court is unaware of any such authority. Furthermore, at least in this court's view, the Bar's contention is clearly inconsistent, if not irreconcilable, with *Segretti v. State Bar*, *supra*, 15 Cal.3d at pager 891, footnote 8. It is also inconsistent with *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 531-532 and *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331, which hold that, while a suspension for failing to take and pass the MPRE within the time prescribed by the Supreme Court is relevant to the determination of the appropriate level of discipline in a later State Bar Court proceeding, the suspension is not a "prior record of discipline" under standard 1.2(b)(i).

⁷ This court takes judicial notice of the review department's May 14, 2009, suspension order.

In sum, in case number 09-O-12084-LMA, count two is DISMISSED with prejudice.

3. Failure to Maintain Official Address

On about April 27, 2009, the Office of Probation mailed a letter to respondent at his official address at 3701 Wilshire Boulevard., Suite 850, Los Angeles California 90010. Thereafter, on about May 21, 2009, the Postal Service returned the letter to the State Bar marked “Undeliverable as Addressed and Unable to be Forwarded.”

Count Three -- Failure to Maintain Official Address (§ 6068, subd. (j))

Respondent willfully violated his duty, under section 6068, subdivision (j), to maintain his current office address and telephone number on the official membership records of the State Bar by failing to notify the State Bar of his new office address after he moved his office from 3701 Wilshire Boulevard, Suite 850, Los Angeles, California 90010.

IV. Level of Discipline

A. Factors in Mitigation

There are no mitigating circumstances.

B. Factors in Aggravation

1. Prior Record of Discipline

Respondent has two prior records of discipline. (Std. 1.2(b)(i).) Respondent’s first prior record of discipline is a 1995 public reproof with conditions attached that was imposed on him in State Bar Court case number 93-O-18867 for violating rule 3-700(D)(2) by failing to refund an unearned fee. The conditions attached to respondent’s reproof included restitution, MPRE, and Ethics School.

Respondent’s second prior record of discipline is the Supreme Court’s January 16, 2008, order in *Kang II* in which, as noted *ante*, the Supreme Court placed respondent on one year’s stayed suspension, one year’s probation, and sixty days’ suspension continuing until respondent

made restitution to a former client with interest. The Supreme Court imposed that discipline on respondent because, in a single client matter, respondent stipulated that he (1) improperly withdrew from representation in willful violation of State Bar Rules of Professional Conduct, rule 3-700(A)(2)); (2) failed to obey a court order to pay opposing counsel \$2,000 in sanctions in willful violation of section 6103; and (3) failed to report the \$2,000 sanction order to the State Bar in willful violation of section 6068, subdivision (o)(3).

2. Multiple Acts

Respondent's present misconduct involves multiple acts of misconduct. (Std. 1.2(b)(ii).)

3. Significant Harm

Respondent's present misconduct caused significant harm. First, respondent misappropriated \$5,500 from the Jangs. Second, respondent misappropriated \$2,375 from Attorney Auspitz.

4. Failure to File a Response to the NDC

Respondent's failures to file responses to the two NDC in the present consolidated proceeding, which allowed his defaults to be entered, are aggravating circumstances. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) However, contrary to the State Bar's contention in its discipline brief, these failures warrant little weight because the misconduct underlying the aggravation finding closely equals the misconduct underlying the findings of culpability under section 6068, subdivision (i) and the entries of respondent's defaults. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

C. Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for

guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.2(a), which applies to respondent's deliberate misappropriation of \$5,500 from the Jangs and of \$2,375 from Attorney Auspitz in willful violation of section 6106. Standard 2.2(a) provides:

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

Also, relevant is standard 1.7(b), which provides that, if an attorney has two prior records of discipline, “the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

The Supreme Court has repeatedly held that misappropriation of trust funds is a grievous violation. Moreover, the Supreme Court has made clear that even an isolated instance of misappropriation by an attorney without a prior record of discipline may result in disbarment in the absence of compelling mitigation. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1071-1073.) There is no compelling mitigation in this proceeding. In addition, respondent failed to take and pass the MPRE within the prescribed by the Supreme Court in its order in *Kang II*. (*In the Matter of Babero, supra*, 2 Cal. State Bar Ct. Rptr. at p. 331.) What is more, even at this late date, there is no evidence that respondent has paid a single dollar of restitution to the Jangs or to Attorney Auspitz.

In sum, both the standards and case law support a disbarment recommendation in this proceeding. Moreover, the court independently concludes that respondent should be ordered to make restitution with interest to the Jangs and to Attorney Auspitz.

V. Discipline Recommendation

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

The court further recommends that Sang Hyun Kang be ordered to make restitution to Kyoung Jang and Juho Jang in the amount of \$5,500 plus 10 percent interest per year from March 1, 2004 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Kyoung Jang or Juho Jang, in accordance with Business and Professions Code section 6140.5).

The court further recommends that Sang Hyun Kang be ordered to make restitution to Attorney James B. Auspitz in the amount of \$2,375 plus 10 percent interest per year from June 20, 2007 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Attorney Auspitz, in accordance with Business and Professions Code section 6140.5).

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

VI. Rule 9.20 and Costs

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

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

VII. Order Of Involuntary Inactive Enrollment

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

Dated: February ____, 2010.

LUCY ARMENDARIZ
Judge of the State Bar Court