

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **07-O-13418-RAH** (08-O-10531);
) 09-N-10077 (Cons.)
MARK MITCHELL GEYER,)
) **DECISION AND ORDER OF**
Member No. 64122,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)
)

I. Introduction

In this consolidated default matter, respondent **Mark Mitchell Geyer** (respondent) is charged with seven counts of misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of all of the charges, which included (1) failure to competently perform legal services; (2) failure to communicate; (3) an act of moral turpitude; (4) failure to return unearned fees; (5) failure to maintain funds in a client trust account; (6) misappropriation of \$122,232.88; and (7) failure to comply with California Rules of Court, rule 9.20, as ordered by the California Supreme Court.

In view of respondent’s misconduct, his four prior records of discipline and other evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent. On February 17, 2010, the NDC was filed and properly served, via certified mail, return receipt requested, on respondent at his official membership records address. The State Bar did not receive the signed returned receipt; but, the NDC was not returned to the State Bar for any reason. Additionally, deputy trial counsel (DTC) Bitu Shasty, the DTC assigned to this matter, stated in her declaration, made under penalty of perjury and submitted with the State Bar's Notice of Motion and Motion for Entry of Default in this proceeding, that on March 1, 2010, she met with respondent to discuss the NDC and that he had received a copy of the NDC.

On February 17, 2010, the State Bar also sent a courtesy copy of the NDC to respondent at his official membership records address by regular first class mail. The NDC was not returned for any reason.

Respondent did not file a responsive pleading to the NDC, as required. (Rules Proc. of State Bar, rule 103.)

On March 16, 2010, the State Bar filed a motion for entry of default. The motion was properly served on respondent at his official address by certified mail, return receipt requested.¹ The motion advised respondent, among other things, that the State Bar would seek his disbarment if he were found culpable of the alleged misconduct. Respondent did not file a response to the motion for entry of default.

On April 5, 2010, the court entered respondent's default. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e), on April 8, 2010. A

¹ Pursuant to Evidence Code section 452, subdivision (h), the court grants the State Bar's request that the court take judicial notice of respondent's official membership records address history.

copy of the Order of Entry of Default and Order of Involuntary Inactive Enrollment was sent to respondent at his official membership records address through the United States Postal Service by certified mail, return receipt requested.

The matter was submitted for decision on April 15, 2010, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 27, 1975, and has been a member of the State Bar of California at all times since that date.

B. The Williams Matter (Case No. 07-O-13418)

On or about September 15, 2005, Steven Williams (Williams) and Tiffini Hughes (Hughes) employed respondent to represent them in claims arising from their purchase of residential real estate in or about June 2005.

On or about October 13, 2005, respondent filed a civil action against multiple defendants on behalf of Williams and Hughes in the Los Angeles County Superior Court, case No. PCO37630 (the Williams case). The defendants in the Williams case included the sellers of the property, Narvinder Grewal and Pritpal Grewal (the Sellers); the sellers' agents, Kellar-Davis, Inc. and Martin Kovacs (the Sellers' Agents); the agents for Williams and Hughes, Bob Khalsa and Realty Link, Inc., dba Century 21 Palmieri (the Buyers' Agents), and the property inspector, Cal-Pacific Inspection Services, Inc., (the Property Inspector).

On or about December 16, 2005, counsel for the Property Inspector filed a motion to compel contractual arbitration. On or about April 7, 2006, respondent filed written opposition to the motion to compel arbitration. On or about April 11, 2006, the court granted the motion.

Thereafter, on or about December 7, 2006, respondent represented Williams and Hughes at the arbitration hearing with the Property Inspector. The arbitrator rendered a decision in favor of the Property Inspector on or about December 12, 2006. On or about February 22, 2007, counsel for the Property Inspector filed a motion to confirm the award and served respondent. Respondent received the motion; but, he did not file any opposition. On April 18, 2007, the court granted the motion without opposition.

On or about June 29, 2007, counsel for the Property Inspector filed a motion for attorney fees and served respondent. Respondent received the motion, but filed no opposition. On or about July 24, 2007, the court granted the motion without opposition, awarding attorney fees in the amount of \$29,238.50 against Williams and Hughes. Respondent did not inform Williams and Hughes about the motion to confirm the arbitration award and for attorney fees; nor did he advise them as to their options regarding the results of the arbitration award in favor of the Property Inspector.

On or about February 2, 2006, counsel for the Buyers' Agents served interrogatories, requests for production, and requests for admission of facts on respondent in the Williams case. Respondent received the discovery requests. However, he did not respond to the discovery. Nor did respondent inform Williams or Hughes about the discovery requests.

On or about April 27, 2006, counsel for the Buyers' Agents filed motions to compel, to deem facts admitted, and to impose sanctions for failure to respond to discovery. Respondent was served with the motions and received the motions. But, respondent did not inform Williams and Hughes of the motions. Nor did respondent file any response to the motions or appear at the

hearing on the motions. On or about July 5, 2006, the court granted the motions and awarded sanctions of \$1,200 against Williams, Hughes, and respondent. Thereafter, on or about July 7, 2006, a notice of the ruling was served on respondent, which ruling respondent received. Respondent did not inform Williams and Hughes of the ruling.

On or about December 5, 2006, counsel for the Buyers' Agents filed a motion for summary judgment based upon the facts deemed admitted and served respondent. Respondent, who received the motion, did not file any opposition thereto. On or about March 9, 2007, the court granted the motion for summary judgment in favor of the Buyers' Agents without opposition. On March 14, 2007, counsel for the Buyers' Agents served notice of the ruling on respondent. Respondent received the ruling, but did not inform Williams and Hughes of the summary judgment in favor of the Buyers' Agents.

In or about December 2006, counsel for the Sellers served interrogatories and requests for admission on respondent in the Williams case. Respondent received the discovery requests. Respondent provided incomplete responses to the discovery directed to Williams and did not respond to the discovery directed to Hughes.

On or about March 27, 2007, counsel for the Sellers filed motions to compel discovery, to deem facts admitted by Hughes, and to impose sanctions. Respondent was served with the motions and received the motions. But, respondent did not inform Williams and Hughes about the motions. Nor did respondent respond to the motions or appear at the hearing on the motions.

On or about June 1, 2007, respondent prepared a response by Hughes to a request for admissions without informing her. Respondent attached a verification to the response and signed Hughes' name to the verification without her knowledge, authorization or consent. On or about June 4, 2007, respondent sent the response to counsel for the Sellers.

On or about June 11, 2007, the court granted the Sellers' motions compelling responses to discovery, deeming facts admitted, and awarding sanctions of \$1,280 against Williams, Hughes, and respondent. On or about June 13, 2007, counsel for the Sellers served notice of the ruling on respondent. Respondent received the ruling, but did not inform Williams and Hughes about the order compelling discovery, deeming facts admitted, and imposing sanctions against them.

In or about January 2007, counsel for the Sellers' Agents served interrogatories on respondent in the Williams case. Respondent received the interrogatories. However, he did not inform Williams or Hughes about the interrogatories. Nor did respondent respond to the interrogatories.

On or about March 19, 2007, counsel for the Sellers' Agents filed a motion to compel and for sanctions, which was served on respondent. Respondent received the motion. Respondent, however, did not file any opposition to the motion. Thereafter, on or about July 3, 2007, the court granted the motion, ordering Williams and Hughes to respond to discovery by July 12, 2007, and sanctioning Williams, Hughes, and respondent in the amount of \$2,000. On or about July 7, 2007, counsel for the Sellers' Agents served respondent with notice of the ruling. Respondent received the notice, but did not inform Williams and Hughes of the order. Respondent did not provide discovery responses pursuant to the order to compel.

On or about July 13, 2007, counsel for the Sellers' Agents filed a motion for terminating sanctions against Williams and Hughes, based on respondent's failure to provide the discovery responses, despite the order to compel. Respondent was served with the motion and received the motion. But, he did not inform Williams and Hughes. Nor did respondent file any response to the motion or appear at the hearing on the motion. On or about July 26, 2007, the court granted the motion for terminating sanctions, dismissing the claims against the Sellers' Agents. On or

about July 26, 2007, counsel for the Sellers' Agents served respondent with notice of the ruling. Respondent received the ruling.

Throughout his representation of Williams and Hughes, respondent repeatedly assured them that their case was being competently handled. Respondent did not inform them that he had been served with discovery in the Williams case, that he had failed to respond fully to discovery requests, that he had been served with motions to compel and deem facts admitted, that he had not responded to the motions, and that the court had granted the motions and imposed sanctions. Respondent did not inform his clients when the trial was set for August 6, 2007, in the Williams case.

In or about the final week of July 2007, respondent contacted Williams and Hughes and informed them that he could not represent them at trial in their case and that they needed to obtain new counsel. During the course of respondent's representation, he had requested and had received from Williams and Hughes advance fees totaling approximately \$50,000. Respondent did not earn at least \$27,500 of the fees received from Williams and Hughes. Upon his withdrawal from employment, respondent did not refund to Williams and Hughes any of the fees they had paid to him.

On or about August 1, 2007, Williams and Hughes employed Gregory B. Gershuni (Gershuni) to represent them. On or about August 6, 2007, Gershuni filed an ex parte motion to continue the trial date. The court granted the motion, continuing the trial to on or about December 10, 2007. On or about September 4, 2007, Gershuni filed a motion for relief from the court's orders imposing terminating sanctions, deeming facts admitted against Williams and Hughes, and sanctioning them for failure to respond to discovery. Attached to the motion was respondent's declaration, signed on or about August 2, 2007, which acknowledged that he had failed to respond to discovery, failed to respond to motions, failed to prepare for trial and failed

to inform Williams and Hughes of the orders in the Williams case or the scheduling of the trial until they had obtained new counsel.

In or about November 2007, Williams and Hughes dismissed their remaining claims in the Williams case.

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))²

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

By failing to respond to the motions to confirm the arbitration award and for attorney fees brought by the Property Inspector in the Williams case, or advise his clients, Hughes and Williams, of their options regarding the result of the arbitration award in favor of the Property Inspector; by failing to respond to discovery, motions to compel discovery and for sanctions, and for summary judgment by the Buyers' Agents in the Williams case; by failing to fully respond, or in some instances not respond at all to discovery, to the Sellers' motions to compel discovery and impose sanctions, and by failing to appear at the hearing on the Sellers' motions; by failing to respond to discovery, motions to compel discovery and for terminating sanctions brought by the Sellers' Agents in the Williams case; and by failing to prepare for trial, respondent intentionally, recklessly and repeatedly failed to perform with competence in willful violation of rule 3-110(A).

Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))³

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

² References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

³ References to section(s) are to the provisions of the Business and Professions Code, unless otherwise indicated.

significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing his clients, Williams and Hughes, of the discovery propounded on them, the motions to compel, the resulting orders and imposition of sanctions, and the scheduling of the trial, respondent failed to keep clients reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of section 6068, subdivision (m).

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

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

At the time respondent signed Hughes' name to the verification to the response for requests for admissions and sent the discovery response and verification to the Sellers, respondent knew or was grossly negligent in not knowing, that Hughes had not reviewed the discovery response and had not given consent to respondent to sign her name to the verification. By signing Hughes' name to the verification to the response to the requests for admissions without Hughes' knowledge of the response and without her providing respondent with authorization and consent to sign the verification, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count 4: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent, who did not earn at least \$27,500 of the \$50,000 advance fee that Williams and Hughes had paid him, did not upon his withdrawal from employment refund any of the \$50,000 advance fee. By failing to refund the \$27,500 in unearned fees, respondent failed to

promptly refund a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

C. The Polcyn Matter (Case No. 08-O-10531)

Commencing in December 1999, respondent represented Laura Polcyn (Polcyn) in a marital dissolution proceeding filed in the Los Angeles County Superior Court, case No. PD026003 (the Polcyn case).

In or about October 2004, the residence owned by Laura Polcyn and Glen Polcyn (the Polcyns) was sold, and the proceeds in the sum of \$133,522.88 were disbursed by the escrow holder to respondent in trust for the Polcyns. On or about November 3, 2004, respondent deposited the \$133,522.88 received on behalf of the Polcyns in a client trust account (CTA) with Washington Mutual Bank, account No. xxx-xxx8230 (respondent's CTA).⁴

Respondent was required by court order to maintain the funds received on behalf of the Polcyns in trust pending determination of the court regarding disbursement of the funds.

In or about April 2007, Beverly Polcyn, the mother of Glen Polcyn, obtained a judgment against the Polcyns in the Los Angeles County Superior Court, case No. BC350014, in the sum of approximately \$180,000. Beverly Polcyn obtained the judgment, based on allegations that she had loaned money to the Polcyns during their marriage, which loan they had failed to repay.

On or about September 25, 2007, respondent filed his declaration signed under penalty of perjury with the court in the Polcyn case. In his declaration, respondent provided an accounting for the funds received on behalf of the Polcyns, indicating that, less sums disbursed to or on behalf of the parties as authorized by the court, the sum of \$122,232.88 remained. At that time, the balance in respondent's CTA was approximately \$37,562.06.

⁴ The complete account number has been omitted due to privacy concerns.

On or about October 25, 2007, Steven W. Weinshenk (Weinshenk), counsel for Beverly Polcyn, served respondent with an order to appear for a debtor's examination. On or about November 26, 2007, respondent failed to appear for the examination, and the court issued a bench warrant.

On or about January 14, 2008, respondent appeared for the debtor's examination and gave Weinshenk a check (check No. 5159) drawn upon respondent's CTA and made payable to Beverly Polcyn in the sum of \$122,232. At that time, the balance in respondent's CTA was \$332.15. Weinshenk attempted to negotiate check No. 5159, but it was returned unpaid due to insufficient funds in respondent's CTA.

Count 5: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit."

In or about October 2004, the proceeds of the sale of the Polcyns' residence, amounting to \$133,522.88, were disbursed to respondent to be held in trust for the Polcyns. On November 3, 2004, respondent deposited the funds into his CTA. He was required by the court order to maintain the funds received on behalf of the Polcyns in trust pending determination of the court regarding disbursement of the funds. On September 25, 2007, respondent filed with the court in the Polcyn case his declaration, signed under penalty of perjury, stating that less sums disbursed to or on behalf of the parties as authorized by the court, the sum of \$122,232.88 remained.

Respondent, therefore, had a fiduciary duty to hold in his CTA at least \$122,232.88 of entrusted funds belonging to the Polcyns pending order of the court.

But, as of September 25, 2007, the balance in respondent's CTA was \$37,562.06. And, on January 14, 2008, the balance in respondent's CTA fell to \$332.15.

By not maintaining, between approximately September 25, 2007, and January 14, 2008, at least \$122,232.88 on behalf of Polcyns in his CTA, respondent willfully failed to maintain client funds in a trust account in violation of rule 4-100(A).

Count 6: Misappropriation (Bus. & Prof. Code, § 6106)

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

Here, as set forth, *ante*, respondent had a fiduciary duty to hold in his CTA at least \$122,232.88 of entrusted funds. But, after he deposited the funds into his CTA, the balance fell below \$122,232.88 to approximately \$37,562.06 on or about September 25, 2007. And, on or about January 14, 2008, the balance fell as low as \$332.15. Therefore, because the balance in respondent's CTA fell below the \$122,232.88 of entrusted funds to \$332.15 on or about January 14, 2008, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

D. Violation of California Rules of Court, Rule 9.20 (Case No. 09-N-10077)

On October 7, 2008, the California Supreme Court filed Order No. S165773 (State Bar Court case No. 00-O-10746 et al.) (Supreme Court Order). The Supreme Court Order included a requirement that respondent comply with California Rules of Court, rule 9.20,⁵ by performing

⁵All references to rule 9.20 are to the current California Rules of Court.

the acts specified in subdivisions (a) and (c) within 30 days and 40 days, respectively, after the effective date of the Supreme Court Order.

On or about October 7, 2008, the Clerk of the California Supreme Court properly served upon respondent a copy of the Supreme Court Order imposing discipline and directing respondent to comply with rule 9.20.

California Rules of Court, rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

The Office of Probation mailed a letter to respondent on October 30, 2008, which respondent received. Included in that letter was a reminder to respondent of his obligation to comply with rule 9.20, the deadline for filing the rule 9.20 affidavit, and a copy of the Supreme Court Order.

As the Supreme Court Order became effective on November 6, 2008, respondent was obligated to comply with subdivision (a) of rule 9.20 no later than December 6, 2008, and was ordered to comply with subdivision (c) of rule 9.20 no later than December 16, 2008.

Respondent, however failed to timely file with the clerk of the State Bar Court an affidavit of compliance with rule 9.20, as required by California Rules of Court, rule 9.20(c).

Respondent did not file his rule 9.20 affidavit until December 30, 2008.⁶

Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. It is not necessarily even dependent

⁶ Although it is alleged in paragraph 59 of the NDC that respondent filed his Rule 9.20 declaration of compliance “[o]n or about December 30, 2007,” that date contained in paragraph 59 contains a typographical error. The court, therefore, takes judicial notice of its records in case No. 00-O-10746 (S165773). Specifically, the court takes judicial notice of respondent’s Rule 9.20 Compliance Declaration, which shows that it was filed on December 30, 2008.

on showing the respondent's knowledge of the Supreme Court's order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.)

Respondent did not file an affidavit in compliance with rule 9.20 with the Clerk of the State Bar Court by December 16, 2008, as required by the Supreme Court Order. The fact that respondent eventually complied with his obligations under rule 9.20 does not avoid culpability for being late in that compliance. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.)

Therefore, the court concludes that the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S165773.⁷

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,⁸ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

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

⁷ Specifically, rule 9.20(d) provides that a suspended attorney's willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

⁸ Future references to standard(s) or std. are to this source.

Respondent has previously been disciplined for misconduct in four instances, which is an extremely serious aggravating factor.⁹ (Std. 1.2(b)(i).)

1. On January 21, 1992, respondent was privately reprovved with conditions for violating Business and Professions Code sections 6068, subdivision (a) and 6103. Respondent stipulated that his violation of Title 26, United States Code 7203 in the underlying criminal matter, arising from his failure to withhold and pay to the IRS all of the deductions required by law from the gross income of two employees, did not involve moral turpitude, but did involve other misconduct warranting discipline. (State Bar Court case No. 90-C-1312.)
2. On November 30, 1993, respondent was publicly reprovved and placed on probation for two years with conditions. Respondent stipulated to violating former rule 3-310(D) of the Rules of Professional Conduct by representing the spouse of his former client in a dissolution of marriage action without obtaining the informed written consent of the former client and violating rule 1-110 by failing to pass the California Professional Responsibility Exam within the time specified by the terms of his private reprovval. (State Bar Court case Nos. 92-O-10056; 93-H-11185 (cons.))
3. On October 8, 1998, respondent was suspended for 30 days, execution stayed, and placed on probation for one year. Respondent stipulated to violating rule 4-100(B)(3) by failing to account for fees and violating Business and Professions Code section 6103, by not obeying a court order to pay sanctions for disobedience to a prior court order compelling respondent to comply with discovery. (Supreme

⁹ The court takes judicial notice of respondent's prior record of discipline. Certified copies of each of respondent's four priors were submitted by the State Bar as trial exhibits in case Nos. 03-O-05008, 04-O-12467, 04-O-12746, 05-O-03466, 05-O-03558, 05-O-04582, 06-O-10068, 06-O-10422, 06-O-10424, and 06-O-13266 (consolidated).

Court case No. 071362; State Bar Court case Nos. 96-O-01751; 96-O-07884
(cons..)

4. On November 6, 2008, respondent was suspended for three years and ordered to remain suspended until he complies with standard 1.4(c)(ii), execution stayed, and placed on probation for five years with conditions, including a nine-month actual suspension. Additionally, respondent was ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Amended Decision, filed on June 11, 2008. Respondent was further ordered to comply with rule 9.20 (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. Respondent's misconduct included violating: (1) section 6068, subdivision (k) by failing to comply with probation conditions; (2) rule 3-110(A) by failing to competently perform legal services; (3) section 6068, subdivision (m) by failing to respond to client inquiries; (4) rule 3-700(D)(1) by failing to promptly release client files upon termination of employment at the request of the client; (5) section 6002.1 by failing to timely report his change of address to the membership records office of the State Bar; and (6) rule 3-700(d)(2) by failing to promptly return unearned fees. (Supreme Court case No. 165773; State Bar Court case Nos. 00-O-10746; 00-O-14654; 01-O-01709; 02-O-15397 (cons..))

Respondent committed multiple acts of wrongdoing by failing to competently perform legal services, failing to communicate with a client, committing an act of moral turpitude, failing to return unearned fees, failing to maintain client funds, misappropriation, and violating rule 9.20. (Std. 1.2(b)(ii).)

Respondent misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) His clients have been deprived of their funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has not yet reimbursed his clients with their funds.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is 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 1.6(a), 1.7(b), 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that if the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances clearly predominate. Here, there is no mitigation.

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.

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 moral turpitude and intentional dishonesty toward a court or a client 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.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in

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

The State Bar urges disbarment. The court agrees.

In *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, the attorney committed professional misconduct or was actually suspended as a result of that misconduct, including client abandonments, probation violations and failure to file timely the affidavit required by rule 955 of the Rules of Court, during 18 of the 26 years of his practice. As a result, the Review Department found that he had ample opportunity to conform his conduct to the ethical requirements of the profession, but has repeatedly failed or refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate.

Here, like the attorney in *Rose*, respondent repeatedly committed misconduct during 20 of the 35 years of his practice. This is respondent's fifth disciplinary proceeding. He has been given multiple opportunities to reform and to rehabilitate. Probation and suspension have proven inadequate to prevent continued misconduct. And, no compelling mitigation has been shown.

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.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that this will not happen again. Instead of rectifying his misconduct, respondent has failed to participate in this disciplinary proceeding.

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 the offense, the serious aggravating

circumstances, in particular, respondent's extensive prior disciplinary record, and the lack of any mitigating factors, the court recommends disbarment.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Mark Mitchell Geyer** 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. **Steven Williams and Tiffini Hughes** in the amount of \$27,500 plus 10% interest per annum from August 1, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Steven Williams and Tiffini Hughes, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
2. **Laura Polcyn and Glen Polcyn** in the amount of \$122,232.88 plus 10% interest per annum from August 1, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Laura Polcyn and Glen Polcyn, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

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

C. California Rules of Court, Rule 9.20

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

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 rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March _____, 2011

RICHARD A. HONN
Judge of the State Bar Court

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.)