

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: **07-O-14371-PEM**
) (08-O-12979; 08-O-14700;
SCOTT EUGENE GILPIN) 09-O-13861; 09-O-14613)
)
Member No. 133782) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
A Member of the State Bar.) **ENROLLMENT**

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on June 28, 2010. Respondent **Scott Eugene Gilpin** is charged with 16 counts of misconduct including allegations that he misappropriated client trust funds. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Mark Hartman. Respondent did not timely participate in these proceedings.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on March 30, 2010. On that same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of

Procedure”).¹ The NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable or for any other reason.

As respondent did not file a response to the NDC, on May 20, 2010, the State Bar filed and properly served on respondent a motion for the entry of respondent’s default.²

When respondent failed to file a written response within ten days after service of the motion for the entry of his default, on June 8, 2010, the court filed an order of entry of default and involuntary inactive enrollment.³ A copy of said order was properly served on respondent at his membership records address. This copy was not subsequently returned to the court by the U.S. Postal Service as undeliverable or for any other reason.

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision.⁴

On August 25, 2010—73 days after service of notice of the entry of default—respondent filed a motion to set aside the entry of default. In this motion, respondent acknowledged that he learned of the NDC in June 2010. The State Bar opposed the motion to set aside the entry of default based on respondent’s failure to establish, by clear and convincing evidence, the requirements of rule 203(c)(2) of the Rules of Procedure. On September 2, 2010, the court issued an order denying respondent’s motion to set aside the entry of default.

¹ Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

²The motion also contained a request that the court take judicial notice of all of respondent’s official membership addresses. The court grants this request.

³Respondent’s involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

⁴Exhibit 1 attached to the State Bar’s May 20, 2010 motion for the entry of respondent’s default and Exhibits 1-2 attached to the State Bar’s June 16, 2010 brief regarding culpability and discipline are admitted into evidence.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

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).)

Respondent was admitted to the practice of law in California on June 16, 1988, and has been a member of the State Bar of California at all times since that date.

B. The Karzai Matter

1. Findings of Fact

On or about the year 2000, Mahmood Karzai ("Karzai") and his former partner, Fahkoor Popal (now deceased), hired respondent to handle several lawsuits and other legal matters concerning their company, Commodius, LLC. ("Commodius").⁵

On or about July 17, 2002, respondent filed suit on behalf of Commodius against the City of Oakland, entitled *Mahmood Karzai and Fahkoor Popal (d.b.a., Commodius, LLC) v. City of Oakland*, case no. 2002-058267, filed in the Alameda County Superior Court ("*Karzai v. Oakland*"). Respondent represented the plaintiffs throughout the suit, which resulted, in or about September 16, 2006, in a \$14,126 stipulated judgment in favor of the City of Oakland. A subsequent memorandum of costs, filed by the City of Oakland on November 27, 2007, added \$2,395.00 to the cost of the suit.

In addition to litigating on behalf of Commodius and Karzai, Karzai hired respondent to handle the payments of various financial obligations of Commodius. Karzai's assistant and the registered agent for Commodius, Robert Sharp ("Sharp"), communicated with respondent and forwarded payments to him on Karzai's behalf.

⁵ Commodius was a Maryland company, but owned a parcel of real property in Oakland, California.

On or about January 4, 2008, Sharp wired \$5,600 to respondent on behalf of Karzai, when respondent requested the funds after claiming dire financial difficulties. These funds were not otherwise designated and are presumed to be for respondent's attorney fees.

Thereafter, Sharp made the following payments to respondent for payment to third parties, as noted:

i) On or about September 18, 2008, Sharp paid respondent the sum of \$317.86, by way of check number 1491, for payment of a permit extension on the parcel of real property owned by Commodius. On or about September 24, 2008, respondent deposited these funds into his general account at Citibank ("general account"). This account was not an attorney client trust account. Thereafter, respondent withdrew the remaining funds in the general account, resulting in a balance of -\$32.71 in the general account on or about September 26, 2008. Respondent spent the \$317.86 in funds on matters unrelated to Karzai and/or Commodius.

ii) On or about September 24, 2008, Sharp paid respondent \$2,291.06 for the payment of property taxes (fire abatement) on behalf of Commodius. Respondent appropriately paid the property taxes to the City of Oakland on behalf of Commodius.

iii) On or about September 30, 2008, Sharp paid respondent \$18,284.70 to satisfy the judgment in *Karzai v. Oakland*. On or about October 2, 2008, respondent deposited the \$18,284.70 into his general account, and thereafter spent the funds on matters unrelated to Karzai and/or Commodius. As of November 4, 2008, the balance in respondent's general account was \$226.49. A review of respondent's general account shows payments for personal matters from the funds including, but not limited to, the following payees: Classified Flea Market, AOL Service, Kaneesha Boutique, ATM withdrawals, and Jong Ga House (a restaurant).

iv) On or about December 8, 2008, Sharp paid respondent \$5,027.21 to satisfy a lien against the real property owned by Commodius. On or about December 12, 2008, respondent

deposited these funds in his general account and thereafter spent these funds on matters unrelated to Karzai and/or Commodius. As of January 27, 2009, the balance in respondent's general account was -175.38. A review of respondent's general account shows payments for personal matters from the funds including, but not limited to, the following payees: HSBC Card Services, ATT Phone payment, Pacific Gas and Electric, and AOL service.

Sharp, on behalf of Karzai, made numerous efforts to contact respondent and confirm that the intended payments had been made. Sharp contacted respondent's office manager, Mary Ann Sadoon ("Sadoon") as follows:

- i) On or about January 21, 2009, Sharp emailed Sadoon and requested bills and receipts for the payments;
- ii) On or about March 3, 2009, Sharp emailed Sadoon and again requested this information for his tax records; and
- iii) On or about April 16, 2009, Sharp emailed Sadoon and again requested receipts for the paid taxes.

Respondent, through Sadoon, received Sharp's requests for information regarding the payments. Sadoon sent an email to Sharpe, dated April 15, 2009, in which she promised to provide the information; however, she subsequently failed to do so. Respondent did not advise Sharp of his misappropriation of the Karzai funds.

2. Conclusions of Law

a. Count One - Business and Professions Code, Section 6106 [Moral Turpitude - Misappropriation]⁶

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. "There is no doubt

⁶ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]' [Citations omitted.]" (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) By misappropriating \$23,629.77 in funds received for the benefit of Karzai and Commodius, respondent willfully committed acts involving moral turpitude, dishonesty or corruption in violation of section 6106.

b. Count Two - Rules of Professional Conduct, Rule 4-100(A)⁷ - [Failure to Maintain Client Funds in Trust]

Rule 4-100(A) provides, in part, that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account. Respondent willfully violated rule 4-100(A) by failing to maintain Karzai's and Commodius' funds in a client trust account.

c. Count Three - Rule 3-110(A) [Failure to Perform]

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by willfully failing to pay third parties as directed by his client.

d. Count Four - Section 6068, Subdivision (m) [Failure to Communicate]

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 Sharp's requests of January 21, 2009, March 3, 2009, and April 16, 2009, respondent failed to respond to the reasonable status inquiries of a client in a matter in which he agreed to perform legal services, in willful violation of section 6068,

⁷ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

subdivision (m). And by failing to advise Sharp that he had misappropriated the funds in question, respondent failed to inform his client of significant developments in a matter in which he agreed to perform legal services, in willful violation of section 6068, subdivision (m).

C. Respondent's Client Trust Account

1. Findings of Fact

From at least April 1, 2007 until November 28, 2008, respondent maintained an attorney-client trust account at Citibank ("CTA"). On or between June and July, 2008, Citibank notified the State Bar of the following insufficient funds ("NSF") transactions in respondent's CTA:

i) On or about June 16, 2008, respondent issued check no. 1103 to Ishtar Sadoon for \$200. The bank rejected this check due to NSF. On or about June 16, 2008, respondent's CTA had a balance of -2,858.75.

ii) On or about July 18, 2008, respondent conducted a web transaction for a debit of \$537.66, payable to T-Mobile. The bank rejected this transaction as NSF. On or about July 18, 2008, respondent's CTA had a balance of -462.41.

iii) On or about July 22, 2008, respondent conducted a web transaction for a debit of \$282.40 payable to PG&E. The bank rejected this transaction as NSF. On or about July 22, 2008, respondent's CTA had a balance of -237.15.

iv) On or about July 29, 2008, respondent conducted a web transaction for a debit of \$537.66, payable to T-Mobile. The bank rejected this transaction as NSF. On or about July 29, 2008, respondent's CTA had a balance of -522.37.

As to each of these transactions, Citibank, at or near the time the transaction was presented for payment, notified respondent—in writing—of the NSF transaction, and notified respondent of the NSF fee. Citibank sent the NSF transaction notices to respondent at P.O. Box

16099, Oakland, California 94610-6099. Respondent received the notices and was aware of their contents.

The State Bar subpoenaed respondent's CTA for the period April 1, 2007 through November 28, 2008. Within this time period, respondent issued additional overdrafts in checks and/or electronic transactions ("web"), when he knew or should have known that there were insufficient funds in the account to cover these checks and electronic funds transactions. In addition to the above-noted transactions of June 16, 2008; and July 18, 22, & 29, 2008, respondent issued the following checks or web transactions against insufficient funds:

<u>Check No.</u>	<u>Amount</u>	<u>Balance</u> ⁸	<u>Payee</u>
1022	\$1,600.00	-306.81	Ishtar Shadoon
web	\$166.00	-502.81	Capital One
web	\$417.39	-108.21	Tribute
web	\$244.00	-382.21	Capital One
web	\$328.00	-710.21	Capital One
1076	\$2,040.00	-2,810.21	Fred Burton
1077	\$2,102.00	-4,912.21	Rosetta Burton
web	\$51.59	-4,391.80	HSBC Services
1062	\$2,000	-783.00	Harry Soo Hoo

Respondent knew, or should have known that there were insufficient funds in his CTA to honor the aforementioned transactions.

The State Bar's review of the records subpoenaed also revealed that respondent issued checks or web transactions for numerous personal matters, from his CTA, including, but not limited, to the following checks and/or web payments:

<u>Check #/web</u>	<u>Amount</u>	<u>Payee</u>
web	\$521.43	Capital One
web	\$407.56	Macy's
web	\$430.00	Capital One
web	\$117.51	Capital One
web	\$609.82	Capital One
web	\$247.94	HSBC Card Srvcs
web	\$514.00	Capital One

⁸ The balance in respondent's CTA when the check or web transaction was presented for payment.

web	\$300.00	HSBC Card Srvc
1024	\$1620.00	Foodvale Market
1023	\$789.00	Classified Flea Market
web	\$263.88	T-Mobile Services
web	\$352.00	Capital One
web	\$508.00	Capital One
web	\$119.00	Juniper Bank Credit Card
web	\$201.26	HSBC Card Srvc
web	\$103.00	Capital One
web	\$190.84	T-Mobile Services
web	\$350.00	Capital One
web	\$200.00	T-Mobile Services
web	\$818.04	AT&T
web	\$230.99	HSBC Card Srvc
web	\$100.00	HSBC Card Srvc
web	\$100.00	HSBC Card Srvc
web	\$363.03	T-Mobile Services
1096	\$200.46	PG&E
1100	\$128.74	PG&E
web	\$136.00	T-Mobile Services
1107	\$282.40	PG&E

Respondent also deposited client funds in his CTA. On or about April 10, 2007, respondent deposited \$12,500 in funds on behalf of client P.H. On or about April 26, 2007, respondent deposited \$8,147.00 in funds and attributed \$7,897 to client P.Z. On or about May 21, 2007, respondent deposited \$19,040.00 on behalf of client S-C.

2. Conclusions of Law

a. Count Six - Section 6106

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) By repeatedly issuing checks or web transactions drawn upon his CTA when he knew, or was grossly negligent in not knowing, that the checks and web transactions were issued against insufficient funds, respondent committed acts involving moral turpitude, in willful violation of section 6106.

b. Count Seven - Rule 4-100(A)

By using his CTA as a personal account, and by depositing or commingling his personal funds with client funds, respondent willfully violated rule 4-100(A).

D. The Rucker/Sande Matter

1. Findings of Fact

On or about March 15, 2008, the State Bar Membership Billing Services sent a Final Delinquent Notice to respondent at his official membership records address, maintained by the State Bar pursuant to section 6002.1 (“official address”). In this notice, the State Bar notified respondent that he would be suspended from the practice of law—effective July 1, 2008—if he failed to pay his membership fees before five p.m. on June 30, 2008. Respondent received the Final Delinquent Notice and was aware of its contents.

On or about June 12, 2008, the California Supreme Court entered an order (S164208) suspending respondent from the practice of law—effective July 1, 2008—as a result of his failure to pay membership fees. Pursuant to this order, respondent was suspended from the practice of law from July 1, 2008 through July 20, 2008. On or about June 12, 2008, the State Bar Membership Billing Services Department served a copy of this order on respondent at his official address. Respondent received the Notice of Entry of Order of Suspension for Non-Payment of Fees and was aware of its contents.

Respondent knew or should have known he was suspended from the practice of law from July 1, 2008 through July 21, 2008.

On or about July 7, 2008, Harvey Sande (“Sande”) hired respondent on behalf of his friend, Titus Rucker (“Rucker”). Rucker, who lived in South Carolina, had a court appearance scheduled in California on July 7, 2008. Sande, on behalf of Rucker, hired respondent to

represent Rucker at the hearing scheduled for July 7, 2008, in *Rucker v. Rucker*, case no. 07350181, filed in the Alameda County Superior Court.

Respondent failed to advise Sande of his suspension from the practice of law. Instead, respondent held himself out to Sande as able to practice law when he was not entitled to do so.

On or about July 7, 2008, Sande paid respondent the sum of \$600.00 to make the court appearance on behalf of Rucker. Respondent was not authorized to receive these funds because he was suspended.

On or about July 7, 2008, respondent appeared on behalf of Rucker in *Rucker v. Rucker*. Respondent represented Rucker (the plaintiff) at the hearing. During the hearing, respondent held himself out as entitled to practice law, and practiced law on behalf of Rucker.

At the time respondent appeared in court on behalf of Rucker, respondent was suspended from the practice of law as a result of his failure to pay membership fees.

On or about July 15, 2008, Marva Hickman—one of the *Rucker v. Rucker* defendants—wrote a letter advising the superior court of respondent's suspended status and complaining of other matters related to the suit.

Respondent paid his State Bar membership fees and was subsequently reinstated to the practice of law on July 21, 2008.

On or about July 23, 2008, the superior court ordered that respondent and Titus Rucker each file and serve a declaration related to issues in the litigation on or before August 25, 2008. The court clerk duly served a copy of this order and Marva Hickman's letter on respondent at 3515 Grand Ave., 2nd Floor, Oakland, California 94610. Respondent received the superior court's order and was aware of its contents.

Respondent failed to file the declaration—as ordered by the superior court—by August 25, 2008, or at anytime thereafter.

On or about November 13, 2008, Sande requested that respondent refund the \$600 that was paid to respondent while he was suspended from the practice of law. Sande notified respondent of his request by suing respondent in small claims court—*Sande v. Gilpin*, case no. RS08420038, filed in the Alameda County Superior Court.

On or about November 19, 2008, Douglas Taylor, on behalf of Sande, served respondent with a copy of the Plaintiff's Claim and Order for small claims court. Taylor served respondent via substituted service, by leaving a copy of the pleadings with respondent's secretary at his address, 3515 Grand Ave., 2nd Floor, Oakland, CA 94610. Respondent received the pleadings in the small claims matter and was aware of their contents.

On or about January 13, 2009, the small claims court entered a judgment in favor of Sande for \$600 in principal and \$95 in costs. On or about January 13, 2008, the small claims court clerk duly served a copy of the judgment, by mail, on respondent at 3515 Grand Ave., 2nd Floor, Oakland, CA 94610. Respondent received a copy of the judgment.

Respondent failed to refund the \$600 in fees to Sande or otherwise honor the small claims judgment.

On or about June 5, 2009, Sande obtained an Application and Order for Appearance and Examination against respondent ("OEX") for Enforcement of the Judgment, ordering respondent to appear on July 6, 2009, for an examination for enforcement of the judgment. On or about June 24, 2009, Douglas Taylor, on behalf of Sande, served a copy of the OEX and supporting documents via substituted service, by leaving a copy of the pleadings with respondent's secretary at his address, 3515 Grand Ave., 2nd Floor, Oakland, CA 94610. Respondent received the OEX and supporting documents in the small claims matter and was aware of their contents.

Respondent failed to appear at the OEX on July 6, 2009, as ordered by the court. On or about that same day, the court issued a bench warrant against respondent.

2. Conclusions of Law

a. Count Eight - Section 6068, Subdivision (a) [Failure to Comply with Laws]

Section 6068, subdivision (a), provides that it is the duty of an attorney to support the Constitution and laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney. By appearing on behalf of Rucker in *Rucker v. Rucker*, respondent held himself out as entitled to practice law and actually practiced law while he was not entitled to practice, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

b. Count Nine - Section 6106

By misrepresenting to the Alameda County Superior Court that he was entitled to practice law when he was not an active member of the State Bar, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

c. Count Ten - Section 6103 [Failure to Obey a Court Order]

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.” By failing to file a declaration as ordered by the superior court on July 23, 2008, respondent failed to abide by an order of the court requiring him to do or forbear an act connected with or in the course of respondent’s profession which he ought in good faith to do or forbear, in willful violation of section 6103.

d. Count Eleven - Section 6106

By representing to Sande that he was entitled to practice law when he was suspended, and not entitled to practice law, respondent committed an act of moral turpitude, in willful violation of section 6106.

e. Count Twelve - Rule 3-700(D)(2) [Failure to Refund Unearned Fee]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund the \$600 to Sande, respondent failed, upon termination of his services, to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

f. Count Thirteen - Section 6068, subdivision (b) [Failure to Maintain Respect for the Court]

Section 6068, subdivision (b), provides that it is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers. The State Bar alleged that respondent willfully violated section 6068, subdivision (b), by failing to appear on July 6, 2009 as ordered by the court. The court finds that said conduct has been more appropriately charged as a failure to obey a court order. (See Count Fourteen.) Therefore, Count Thirteen is dismissed with prejudice.

g. Count Fourteen - Section 6103

By failing to appear for the OEX on July 6, 2009, as ordered by the court, respondent violated an order of the court requiring him to do or forebear an act connected with or in the course of his profession which he ought in good faith to do or forebear, in willful violation of section 6103.

E. Failure to Cooperate—The Sharp/Karzai Complaint

1. Findings of Fact

On or about June 23, 2009, Sharp made a complaint to the State Bar on behalf of Karzai. The State Bar thereafter opened an investigation of the Sharp/Karzai complaint, case no. 09-O-13861.

On or about August 31, 2009, State Bar Investigator Willis Shalita (“Shalita”) wrote and mailed a letter to respondent at his official address. In his letter, Shalita advised respondent of the Sharp/Karzai complaint and requested a response by September 11, 2009.

Respondent received Shalita’s letter of August 31, 2009. Respondent failed to respond to this letter or otherwise respond to the State Bar’s investigation of the Sharp/Karzai complaint.

On or about September 15, 2009, Shalita wrote and mailed a second letter to respondent at his official address. In his letter, Shalita again advised respondent of the Sharp/Karzai complaint and requested a response by September 21, 2009.

Respondent received Shalita’s letter of September 15, 2009. Respondent failed to respond to this letter or otherwise respond to the State Bar’s investigation of the Sharp/Karzai complaint.

Shalita also sent respondent emails on August 28, 2009, and again on December 7, 2009. Respondent received these emails, but failed to respond.

2. Conclusion of Law

a. Count Five - Section 6068, Subdivision (i) [Failure to Cooperate]

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By failing to respond to Shalita’s letters and emails, and by failing to otherwise respond to the State Bar investigation

of the Sharp/Karzai complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

F. Failure to Cooperate—The Sande Complaint

1. Findings of Fact

On or about July 22, 2009, Sande made a complaint to the State Bar regarding respondent. The State Bar opened an investigation, case no. 09-O-14613, based upon Sande's complaint.

On or about September 24, 2009, Shalita wrote and mailed a letter to respondent at his official address. In this letter, Shalita advised respondent of the Sande complaint and requested a response by October 5, 2009.

Respondent received Shalita's letter of September 24, 2009. Respondent failed to respond to this letter, or otherwise respond to the State Bar's investigation of the Sande complaint.

2. Conclusion of Law

a. Count Fifteen - Section 6068, Subdivision (i)

By failing to respond to Shalita's September 24, 2009 letter, and by failing to otherwise respond to the State Bar investigation of the Sande complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

G. Failure to Cooperate—The Rucker Complaint

1. Findings of Fact

On or about October 17, 2008, the defendant in the *Rucker v. Rucker*, Harold Rucker, made a complaint to the Alameda County District Attorney's Office regarding respondent's

unlicensed status. The district attorney forwarded the matter to the State Bar and the State Bar opened an investigation, case no. 08-O-14700, based upon Harold Rucker's complaint.

On or about March 3, 2009, Shalita wrote and mailed a letter to respondent at his official address. In his letter, Shalita advised respondent of the Harold Rucker complaint and requested a response by March 16, 2009.

Respondent received Shalita's letter of March 3, 2009. Respondent failed to respond to this letter or otherwise respond to the State Bar's investigation of the Harold Rucker complaint.

2. Conclusion of Law

a. Count Sixteen - Section 6068, Subdivision (i)

By failing to respond to Shalita's March 3, 2009 letter, and by failing to otherwise respond to the State Bar investigation of the Harold Rucker complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

III. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁹ Since respondent did not timely participate, the court has been provided no basis for finding mitigating factors.

B. Aggravation

The court finds three factors in aggravation. (Std. 1.2(b).)

1. Prior Record of Discipline

Respondent has twice been disciplined in the past. (Std. 1.2(b)(i).)

⁹ All further references to standard(s) are to this source.

Effective March 9, 2002, respondent was privately reprovved with conditions in State Bar Court Case Nos. 00-O-14262 (01-O-00461; 01-O-03413) for writing checks against insufficient funds in his client trust account. In aggravation, respondent's misconduct involved trust funds and evidenced multiple acts of wrongdoing. In mitigation, respondent did not cause harm and made restitution. In addition, respondent cooperated with the disciplinary investigation and proceedings.

Effective November 13, 2003, respondent was publicly reprovved with conditions in State Bar Court Case No. 03-H-01478 for failing to comply with all the provisions of his private reprovval. In aggravation, respondent had a prior record of discipline. In mitigation, respondent was suffering from physical disabilities and cooperated with the disciplinary investigation and proceedings.

2. Multiple Acts of Wrongdoing

Respondent committed multiple acts of wrongdoing ranging from failing to cooperate with a State Bar investigation to the misappropriation of client funds. (1.2(b)(ii).)

3. Significant Harm

Respondent's misconduct resulted in financial harm to his clients. (Std. 1.2(b)(iv).) Said harm involved the misappropriation of \$23,629.77 belonging to Karzai and Commodius.

IV. 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single

disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

Due to respondent's prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

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.) 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.)

The State Bar urges that respondent be disbarred. The court agrees. The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

"In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to

exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client's money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit." (*Howard v. State Bar, supra*, 51 Cal.3d 215, 221.)

Here, respondent committed misconduct in three different client matters, including the misappropriation of over \$23,600. Based on respondent's egregious misconduct, his failure to timely participate in the present proceedings, and the factors in aggravation as well as the lack of mitigation, the court finds no reason to deviate from the standards. Therefore, it is recommended that respondent be disbarred.

V. Recommended Discipline

The court recommends that respondent **Scott Eugene Gilpin** 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.

The court further recommends that respondent 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.¹⁰

VI. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

¹⁰ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Costs

It is 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.

Dated: September _____, 2010

PAT McELROY
Judge of the State Bar Court