

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 07-O-14519-RAH
)	(08-O-10806; 08-O-13802;
)	08-O-14238; 08-O-14287;
DAVID BURKENROAD)	08-O-14642; 08-O-14844;
)	09-O-10194)
Member No. 110320)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

1. INTRODUCTION

The trial in this matter commenced on July 26, 2010. The Office of the Chief Trial Counsel of the State Bar of California was represented by Ashod Mooradian. Respondent David Burkenroad was represented by Robert Steinberg.

The Office of the Chief Trial Counsel seeks disbarment. For the reasons set forth below, the court agrees.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulated to facts on issues of culpability. Those facts are set forth below.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 12, 1983, and since that time has been an attorney at law and a member of the State Bar of California.

B. Brandy Barrera Matter (Counts 1 through 4)

Findings of Fact

On February 7, 2007, Brandy Barrera and her husband (the Barreras) went to Public Management Services, Inc. (PMSI) seeking representation in three separate legal matters involving personal injury, probate, and immigration, respectively. At PMSI, the Barreras initially met with Robert Mohit, a non-attorney and president of PMSI. Mohit introduced the Barreras to respondent. The Barreras were made to understand that respondent would represent them in their legal matters.

The Barreras' personal injury matter and probate matter were related. The linking fact was that in March 2006, Brandy Barrera's mother and sister were killed in an automobile accident. In the probate matter, a probate action had been filed to distribute Ms. Barrera's deceased relatives' assets. That probate was administered by a friend of Ms. Barrera's deceased mother. Ms. Barrera felt that she was not being properly informed about the assets in probate and/or their distribution. Ms. Barrera made it clear to respondent that she wanted immediate action on the probate, because the administrator was not giving her sufficient information about her mother's assets. The Barreras paid PMSI \$5,000 as advanced legal fees for the probate matter after respondent had drafted the probate petition. Respondent never filed a claim on Ms. Barrera's behalf in her mother's probate.

The Barreras paid PMSI \$1,400 in advanced legal fees and \$155 in costs for the immigration matter. Respondent never deposited the \$155 that the Barreras paid for costs in the immigration matter into his client trust account.

Between February 2007 and May 2007, the Barreras called respondent on multiple occasions to inquire about the status of their legal matters. Sometimes they spoke to respondent and sometimes they spoke to Mr. Mohit. When they called, the Barreras informed respondent

that they wanted prompt action on their legal matters. Despite demands for an accounting by the Barrerras, respondent failed to provide an accounting of any funds. On May 24, 2007, the Barrerras fired respondent and demanded a full refund of the advanced legal fees that they paid. As of trial in this matter, respondent had failed to refund any of the Barrerras' fees.

Conclusions of Law

Count 1. By not performing any services of value for the Barrerras in the personal injury matter, failing to file the petition in the probate matter, and by not completing the paperwork in the immigration matter, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, willfully violating Rules of Professional Conduct, rule 3-110(A).

Count 2. By not depositing the money that the Barrerras paid him for costs in the immigration matter into his client trust account, respondent failed to deposit funds received for the benefit of a client, including advances for costs, in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, willfully violating Rules of Professional Conduct, rule 4-100(A).

Count 3. By never giving the Barrerras an accounting of the advanced fees that he received, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, willfully violating Rules of Professional Conduct, rule 4-100(B)(3).

Count 4. By not refunding any money to the Barrerras, respondent failed to refund promptly any part of a fee paid in advance that had not been earned, willfully violating Rules of Professional Conduct, rule 3-700(D)(2).

C. Rodney Henderson Matter (Counts 5 through 7)

Findings of Fact

On February 28, 2006, Rodney Henderson was arrested and jailed. When they arrested him, the police seized about \$1,375 of Mr. Henderson's cash. The Los Angeles District Attorney (D.A.) sought title to the cash in a forfeiture action. From April 2007 through March 2008, respondent maintained his client trust account at First Federal Bank of California, account no. *****5413 (First Federal CTA).

On November 17, 2006, respondent settled the forfeiture matter with the D.A. The terms of the settlement agreement were that Mr. Henderson would receive \$687.50, plus interest, and that the D.A. would retain the remainder of the seized cash. The D.A. agreed to mail Mr. Henderson's funds to respondent. At this time, and at all times relevant to this matter, Mr. Henderson remained in jail.

On March 29, 2007, the D.A. mailed a settlement check in the amount of \$693.55 to respondent on Mr. Henderson's behalf. Respondent received the settlement check.

After subtracting the money that he was entitled to retain from the settlement check for his legal services, respondent was required to maintain \$306.05 of Mr. Henderson's settlement funds in his First Federal CTA.

The balance in respondent's First Federal CTA fell below \$306.05 on several occasions including, but not limited to, the following:

<u>Date</u>	<u>Balance</u>
June 30, 2007	\$106.15
July 31, 2007	\$106.08
August 31, 2007	\$106.08
September 30, 2007	\$106.08
January 31, 2008	\$0.48
February 29, 2008	\$0.84

On August 1, 2007, Mr. Henderson filed a complaint against respondent with the State Bar. On August 27, 2007, respondent sent a letter to Mr. Henderson asking him to withdraw the State Bar complaint that Mr. Henderson had filed.

Conclusions of Law

Count 5. By not maintaining at least \$306.05 in his First Federal CTA between June 30, 2007 and February 29, 2008, respondent failed to maintain client funds in trust, willfully violating Rules of Professional Conduct, rule 4-100(A).

Count 6. By misappropriating \$305.57 (\$306.05-\$0.48) of Mr. Henderson's settlement funds, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

Count 7. Respondent, while acting as a party, willfully violated Business and Professions Code section 6090.5, subdivision (a)(2), by asking Mr. Henderson to withdraw his disciplinary complaint.

D. Office of Administrative Hearings Matter (Counts 8 and 9)

Findings of Fact

In June 2007, respondent and his paralegal Brian Allen (Allen) represented a student in an action involving a violation of school rules. Allen worked with respondent's authority. The school was represented by a representative of the student's school district (District).

In June 2007, Allen requested that the District refer the student to the Los Angeles Department of Mental Health (DMH) for assessment and possible treatment. A referral to DMH requires that the student's parent sign a form entitled "Consent to Refer, Observe, and Release Information to Los Angeles County Department of Mental Health" (consent form). After the June 14, 2007 meeting, the District realized it did not have the consent form in its file and mistakenly thought that it had misplaced the consent form. The District contacted the student's parents, sent them another consent form, and asked the student's parents to sign the second consent form. Neither Allen nor the student's parents informed the District that the student's

parents already had a consent form. The student's parents did not promptly return an executed version of either the original form or the second consent form.

On September 7, 2007, Allen contacted the District and asked about the DMH referral. In its response, the District told Allen that the consent form had been misplaced. In September 2007, Allen learned that the student's parents had the original consent form. In September 2007, Allen, or the student's parents with Allen's knowledge, sent a copy of the signed consent form to the student's school.

In October 2007, Allen filed a complaint with the California Department of Education (CDE), complaining that the District did not complete the DMH referral in a timely manner. Allen neglected to inform the CDE that he and/or the student's parents did not return the consent form to the District until September 2007, and that from June 14, 2007 through September 2007, Allen, and/or the student's parents, had the original consent form in their possession. On December 17, 2007, the CDE issued a report stating that the District was out of compliance with certain time guidelines and that the District was at fault because it had misplaced the original consent form. Neither Allen nor respondent took any steps to correct CDE's mistaken conclusion that the District had misplaced the original consent form.

On January 8, 2008, respondent filed a due process hearing request on behalf of the student against the District. Respondent filed the due process action before the Office of Administrative Hearings for the State of California (OAH). Respondent's due process hearing request alleged that the District had violated the student's rights by failing to timely complete and submit the DMH referral. Respondent's due process hearing request did not disclose that the student's parents took the consent form home in June 2007, or that respondent did not deliver an executed copy of the consent form to the District until about September 2007. At all relevant times, respondent knew that the parents had never sent in the consent form.

On April 15, 2008, the due process hearing was held. That day the District filed a motion seeking the award of costs and sanctions against respondent and Allen, pursuant to the California Code of Civil Procedure section 128.5. On April 22, 2008, respondent filed a closing argument

in the due process hearing. In his closing argument, respondent stated that the student's parents signed the consent form on June 14, 2007, but respondent failed to inform the court that the student's parents took the consent form home with them and did not return it to the District until September 2007. The fact that the student's parents took the consent form home with them was a material and relevant fact. It directly affected the District's ability to make a timely DMH referral.

In its decision, dated June 4, 2008, the OAH found that the District did not misplace the consent form, but that the student's parents prevented the District from timely completing the DMH referral by taking the original consent form home and then failing to return it to the District until September 2007. It held that the delay in the DMH referral was caused by the student's parents and/or respondent and Allen.

On July 22, 2008, the OAH held a hearing on the motion for costs and sanctions that the District filed in April 2007. The OAH found that the due process complaint was totally and completely without merit, and that it was brought by respondent in bad faith. The OAH imposed sanctions in the amount of \$9,645 against respondent and Allen, jointly and severally, for their bad faith actions and tactics involved in litigating the due process complaint.

Respondent did not report the sanction to the State Bar within 30 days of the time respondent had knowledge of the imposition of any judicial sanctions against him.

Conclusions of Law

Count 8. By filing a due process hearing request and a making a closing argument in the due process hearing that omitted relevant, material facts, respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, willfully violating Business and Professions Code section 6068, subdivision (d).

Count 9. By not reporting the \$9,645 sanction imposed against him by the OAH, respondent failed to properly report sanctions to the State Bar, in writing, within 30 days of the time respondent had knowledge of the imposition of the sanctions, in willful violation of Business and Professions Code section 6068, subdivision (o)(3).

E. Albert J. Gonzales, II, Matter (Counts 10 through 13)

Findings of Fact

In December 2007, and at all times relevant to the events alleged below, respondent represented Albert John Gonzales, II, (Gonzales) in a case entitled *In the Matter of Albert John Gonzales, Sr. Trust*, Los Angeles Superior Court, Case No. VP010917, and all related matters (Gonzales matter). One of the issues in the Gonzales matter involved a parcel of real property located at 14423 Mercado Avenue, La Mirada, California (La Mirada property).

In December 2007, respondent recorded a Notice of Pending Action (lis pendens) against the title of the La Mirada property. In January 2008, opposing counsel in the Gonzales matter filed a motion to expunge the lis pendens. The court set April 15, 2008, as the date for a hearing on the motion to expunge the lis pendens. On April 15, 2008, the superior court held a hearing on the motion to expunge the lis pendens, and, in open court, expunged the lis pendens recorded against the La Mirada property. In addition, the court ordered respondent to get court approval before recording another lis pendens against the La Mirada property. On April 15, 2008, respondent was present in the courtroom when the court made its order, and respondent had actual notice of the court's order.

On April 18, 2008, respondent recorded another lis pendens against the La Mirada property. Respondent did not get prior approval from the court before recording the lis pendens on April 18, 2008.

On May 6, 2008, the superior court held another hearing in the Gonzales matter. In that hearing, the court granted a motion to expunge the lis pendens that respondent recorded against the La Mirada property on April 18, 2008. In this hearing, the superior court cited respondent for contempt of court and set a hearing date on the contempt citation.

On about June 4, 2008, the court conducted the hearing on the contempt citation. Finding that respondent had actual notice of its order prohibiting him from filing a lis pendens on the La Mirada property without prior court approval and that respondent violated that order, the court sanctioned respondent as follows:

- \$1,000.00 levied against respondent only, payable to the clerk of the court; and
- \$30,000.00 levied jointly and severally against Gonzales and respondent, payable to opposing counsel in the Gonzales matter.

Respondent was present when the sanctions were issued by the court and had actual notice of the sanctions issued against him. Respondent did not report either sanction to the State Bar.

On August 13, 2008, respondent filed, on Gonzales' behalf, a Notice of Appeal in the Second Appellate District of the California Appellate Courts, Case No. B209943.

On September 16, 2008, the California Supreme Court entered an order in Case No. S165318 (Supreme Court order), suspending respondent from the practice of law for a period of 30 days. Respondent's suspension was the result of his stipulation to misconduct and level of discipline. On September 16, 2008, the clerk of the Supreme Court properly served a copy of the Supreme Court order upon respondent at his State Bar membership records address. Respondent received the Supreme Court order. Respondent's suspension from the practice of law began on October 16, 2008, pursuant to California Rules of Court, rule 9.18(a), and continued until November 15, 2008.

On October 6, 2008, the Court of Appeal dismissed Gonzales' appeal. On October 21, 2008, respondent presented a motion to vacate the dismissal of Gonzales' appeal (motion to vacate) for filing at the Court of Appeal. On October 22, 2008, the Court of Appeal rejected respondent's attempt to file Gonzales' motion to vacate, because respondent was ineligible to practice law in California. On October 29, 2008, respondent presented a motion for rehearing of Gonzales' motion to vacate for filing at the Court of Appeal. That same day, the Court of Appeal rejected respondent's attempt to file Gonzales' motion for rehearing because respondent was ineligible to practice law in California. Respondent knew, or was grossly negligent in not knowing, that he was suspended from the practice of law from October 16, 2008 to November 15, 2008.

Conclusions of Law

Count 10. By recording a lis pendens against the title of the La Mirada property on April 18, 2008, without obtaining prior court approval, respondent willfully violated or disobeyed a court order 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, willfully violating Business and Professions Code section 6103.

Count 11. By not reporting the sanctions that the court levied against him, and against him and Gonzales, respondent failed to properly report sanctions to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of the sanctions, in willful violation of Business and Professions Code section 6068, subdivision (o)(3).

Count 12. By attempting to file two motions, on behalf of a client, in the Court of Appeal when he was not an active member of the State Bar of California, respondent held himself out as entitled to practice law, and actually practiced law, when he was not an active member of the State Bar in violation of Business and Professions Code sections 6125 and 6126, and thereby failed to comply with the laws of California, willfully violating Business and Professions Code section 6068, subdivision (a).

Count 13. By actually practicing law, when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar, respondent committed an act involving moral turpitude, dishonesty or corruption, willfully violating Business and Professions Code section 6106.

F. UCLA Law Library Matter (Counts 14 and 15)

Findings of Fact

On October 18, 2008, respondent created a disturbance at the UCLA law library and was removed from the library by UCLA police. On October 22, 2008, respondent sent a demand letter to the UCLA library, on his law office letterhead. Respondent's law office letterhead identified respondent as an attorney. Respondent's letter demanded that the UCLA law library

change its rules and reprimand a staff member. Respondent threatened to sue the library if his demands weren't met. Respondent knew, or was grossly negligent in not knowing, that he was suspended from the practice of law from October 16, 2008 to November 15, 2008.

Conclusions of Law

Count 14. By sending a demand letter to the UCLA law library on his law office letterhead, that identified him as an attorney, respondent held himself out as entitled to practice law, when he was not an active member of the State Bar in violation of Business and Professions Code sections 6125 and 6126, and thereby failed to comply with the laws of California, willfully violating Business and Professions Code section 6068, subdivision (a).

Count 15. By knowingly holding himself out as entitled to practice law, when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar, respondent committed an act involving moral turpitude, dishonesty or corruption, willfully violating Business and Professions Code section 6106.

G. Peter Berrocal Matter (Counts 16 and 17)

Findings of Fact

On November 3, 2008, respondent represented Peter Berrocal and Mr. Berrocal's business, the NAZCA Corporation, in a bankruptcy matter. On November 3, 2008, respondent filed a petition for chapter 11 bankruptcy, in the Central District of the United States Bankruptcy Court, on behalf of Mr. Berrocal and NAZCA Corporation, bankruptcy case number 2:08-28574-VK.

Respondent knew, or was grossly negligent in not knowing, that he was suspended from the practice of law from October 16, 2008 to November 15, 2008.

Conclusions of Law

Count 16. By filing a bankruptcy petition, respondent held himself out as entitled to practice law, and actually practiced law, when he was not an active member of the State Bar in violation of Business and Professions Code sections 6125 and 6126, and thereby failed to

comply with the laws of California, willfully violating Business and Professions Code section 6068, subdivision (a).

Count 17. By filing a bankruptcy petition when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar, respondent committed an act involving moral turpitude, dishonesty or corruption, willfully violating Business and Professions Code section 6106.

H. Client Trust Account Violation Matters (Counts 18 through 20)

Findings of Fact

At all times relevant to the events alleged below, respondent maintained a Client Trust Account at Citibank, account no. *****1291 (Citibank CTA). Respondent did not maintain any other client trust account during this time period.

Between October 1, 2008 and October 30, 2008, respondent repeatedly issued checks drawn upon respondent's Citibank CTA against insufficient funds, including but not limited to:

<u>Check no.</u>	<u>Bank Action</u>	<u>Amount</u>	<u>Date Presented</u>	<u>Account Balance</u>
1016	Returned	\$21,275.00	10/15/08	\$4,794.01
1032	Returned	\$175.61	10/27/08	\$431.71
1009	Returned	\$281.34	10/28/08	\$-1,625.29
1028	Returned	\$7.50	10/28/08	\$-1,625.29
1040	Paid	\$6,100.00	10/30/08	\$4,222.48

During the period from October 1, 2008 through October 30, 2008, respondent deposited the salary that he received from his employer into his Citibank CTA and paid personal expenses out of his Citibank CTA. During the period from October 1, 2008 through October 30, 2008, respondent repeatedly issued checks drawn upon his Citibank CTA to pay his personal expenses including, but not limited to, the following:

<u>Date Issued</u>	<u>Check no.</u>	<u>Amount</u>	<u>Payee</u>
10/01/08	3781	\$2,500.00	IRS
10/06/08	1002	\$53.16	Staples
10/10/08	1006	\$23.79	Wheel World
10/10/08	1011	\$15.14	Wheel World
10/11/08	1010	\$322.59	Marathon Car Rental
10/22/08	1032	\$175.61	Verizon Wireless
10/24/08	1009	\$281.71	Marathon Car Rental
10/27/08	1028	\$7.51	The Cleaning Club

Respondent made deposits to, and withdrawals from, the Citibank CTA, as set forth above, for the purpose of preventing creditors from discovering the location of the funds.

Conclusions of Law

Count 18. By repeatedly issuing checks drawn upon his Citibank CTA when he knew or should have known that there were insufficient funds, respondent committed acts involving moral turpitude, dishonesty or corruption, willfully violating Business and Professions Code section 6106.

Count 19. By leaving his fees in the Citibank CTA for withdrawal as needed to pay personal expenses, respondent commingled personal funds in a client trust account, willfully violating Rules of Professional Conduct, rule 4-100(A).

Count 20. By depositing funds into his Citibank CTA, instead of into a business account, for the purpose of secreting those funds from creditors, respondent committed acts involving moral turpitude, dishonesty or corruption, willfully violating Business and Professions Code section 6106.

3. LEVEL OF DISCIPLINE

A. Factors in Aggravation

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)¹

Prior Record of Discipline (Std. 1.2(b)(i))

Respondent's prior record of discipline is an aggravating circumstance. Respondent has been previously disciplined on three separate occasions.

¹ All further references to standard(s) are to this source.

Effective March 2005, respondent was privately reprimanded with conditions in State Bar Court Case No. 04-O-14954 for failing to perform and failing to promptly refund unearned fees. In mitigation, respondent had no prior record of discipline. In aggravation, respondent committed multiple acts of misconduct.

On September 16, 2008, the California Supreme Court issued an order in Case No. S165318 (06-O-14001) suspending respondent from the practice of law for one year, stayed, with two years' probation and a period of actual suspension of 30 days. This discipline involved a single-client matter in which respondent improperly withdrew from representation and violated a court order. In aggravation, respondent: (1) had a prior record of discipline; (2) demonstrated indifference toward rectification of or atonement for the consequences of his misconduct; and (3) caused significant harm. No mitigating factors were identified.

On September 3, 2010, the California Supreme Court issued an order in Case No. S165318 (10-PM-04605) suspending respondent from the practice of law for one year, stayed, with a two-year probationary period, and an actual suspension of one year and until respondent submitted three outstanding probation reports.² This matter involved respondent's failure to comply with the conditions of his previous discipline. Respondent probation violations included failing to timely meet with his probation officer, failing to file three quarterly reports, and failing to timely file another three quarterly reports. In aggravation, respondent committed multiple acts of misconduct, demonstrated indifference toward rectification, and had a prior record of discipline. No mitigation was found.

² The Supreme Court's order in case number S165318 (10-PM-04605) was filed after the State Bar submitted its exhibits in this proceeding. Therefore, the State Bar was precluded from introducing a copy of this order. Due to these unusual circumstances, the court takes judicial notice of the Supreme Court's order in case number S165318 (10-PM-04605). The court has independently obtained a copy of the Supreme Court's order in case number S165318 (10-PM-04605). The court hereby directs the Clerk to mark the Supreme Court's order in case number S165318 (10-PM-04605) as a Court Exhibit A, and to attach Court Exhibit A to this decision.

Multiple Acts (Std. 1.2(b)(ii))

Respondent's misconduct evidences multiple acts of wrongdoing. Respondent is culpable of twenty counts of misconduct in seven different matters.

Significant Harm (Std. 1.2(b)(iv))

Respondent's misconduct caused significant harm to the administration of justice and significant financial harm to his clients.

B. Factors in Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) The court makes the following findings in mitigation.

Emotional Difficulties (Std. 1.2(e)(iv))

Respondent presented the testimony of Dr. M. Brandon French in support of his contention that he suffered from extreme emotional difficulties. Dr. French has a Bachelors degree in English from UCLA, a Ph.D. in English from UC Berkeley, and a Master of Arts degree in Counseling Psychology from Pacifica Graduate Institute.³ Dr. French testified that respondent suffered from bipolar mood disorder. Her diagnosis concluded that he suffered from illusions of grandiosity, flight of thought, explosive speech, and disorganization. She noted that respondent is now beginning to understand his condition, but that he is not yet completely stable. In fact, she disagrees with respondent's current medical regimen, although there was no testimony indicating she was qualified to offer such an opinion.

³ Dr. French also claimed in her testimony that she held a Psy.D. degree from the New Center for Psychoanalysis. Her vita noted that she had a "Doctorate in Psychoanalysis." However, upon cross-examination, she acknowledged that, in fact, she had not completed her dissertation and was only a candidate for the Psy.D. degree. This misrepresentation of her record, especially on such a relevant point as her training in psychology, is of serious concern to the court. Further, Dr. French is a close friend of respondent. Both of these factors call into question the credibility of her testimony.

The court ascribes limited weight in mitigation to the testimony of Dr. French. In addition to the problems with credibility described above, there was no clear and convincing evidence provided that respondent no longer suffers from his emotional or mental difficulties.

Cooperation with the Office of the Chief Trial Counsel (Std. 1.2(e)(v))

Respondent cooperated with the Office of the Chief Trial Counsel of the State Bar by entering into an extensive stipulation of facts. This dramatically reduced the time necessary for trial of the matter. Therefore, respondent is entitled to credit in mitigation for such conduct.

4. DISCUSSION

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*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 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 shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), 2.3, 2.4(b), and 2.6 apply in this matter. The most severe sanction is standard 2.2(a). Standard 2.2(a) sets forth that the sanction for misappropriation is

disbarment, unless the amount misappropriated is insignificant or the most compelling mitigating circumstances predominate, in which case, the discipline imposed must not be less than one year irrespective of mitigating circumstances.

Standard 1.7(b) also applies. It 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 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.) There is no reason to deviate from the standards in this case.

Respondent has been found culpable of multiple acts of moral turpitude, as well as other misconduct. Aggravating factors include prior discipline and harm to his clients and to the administration of justice. Mitigating factors include some evidence of a mental health condition. But he still suffers from this condition.

The Office of the Chief Trial Counsel recommends that respondent be disbarred. Lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case. (Std. 1.7(b).) Moreover, it is evident that respondent’s prior discipline, coupled with his prior probation, has not served to rehabilitate or to deter him from further misconduct. In such circumstances, disbarment is appropriate. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

5. RECOMMENDED DISCIPLINE

This court recommends that respondent David Burkenroad 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.⁴

6. 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.

7. 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

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⁴ 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.)

California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

Dated: February _____, 2011

RICHARD A. HONN
Judge of the State Bar Court