

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 07-O-15049-RAP
)	[08-O-11089]
RICHARD GARY TARLOW,)	
)	DECISION AND ORDER OF
Member No. 72889,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **RICHARD GARY TARLOW** (“respondent”) is charged with five counts of misconduct in two matters. The court finds respondent culpable on all five counts. Respondent represented himself in this matter. The State Bar was represented by Supervising Trial Counsel Kimberly Anderson.

II. PROCEDURAL HISTORY

The State Bar of California initiated this proceeding by filing a notice of disciplinary charges (“NDC”) on January 12, 2009. Respondent filed a response to the NDC on January 30, 2009. Trial was held on November 16, 2009. The matter was submitted for decision at the conclusion of trial.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 22, 1976, and was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Credibility Determinations

With respect to the credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g, Evid. Code section 780 [lists of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of the witnesses to be credible.

C. Stipulated Facts

The parties stipulated to the following facts:

1. Respondent Was Not Entitled to Practice Law Between August 19, 2005 and December 29, 2007:

Between in or about June of 2005 and on or about November 14, 2006, respondent's State Bar official membership records address was 23679 Calabasas Road #543, Calabasas, California 91302 (the "Calabasas Road address"),¹ which was a business titled Mail Box Etc.

On June 16, 2005, a Notice of Disciplinary Charges was filed and served on respondent by certified mail, return receipt requested, at the Calabasas Road address in the case entitled *In the Matter of Richard Gary Tarlow*, State Bar Court Case No. 04-O-11880 ("Tarlow I").

Respondent received the Notice of Disciplinary Charges.

¹ In the NDC, paragraph 6 erroneously alleges respondent's State Bar membership records address was 23679 Calabasas Road #543, Calabasas, California 91202, when in fact the correct zip code is 91302.

In July 2005, State Bar Deputy Trial Counsel Jean Cha (“DTC Cha”) called and left two voice mail messages for respondent at his telephone number of (818) 222-1030 and a third message with an employee at the Mail Box Etc. On July 11, 2005 and on July 25, 2005, when DTC Cha dialed respondent’s telephone number of (818) 222-1030, she received a voice mail message stating, “You have reached the law office of Richard Tarlow. If you have received this message it means that I am away from the office, in court or at a deposition or otherwise unavailable. Your message is important to me. Please leave your name and phone number and I will get back to you at the earliest opportunity.” During each message, DTC Cha requested respondent call her to discuss the filing of the NDC in Tarlow I. DTC Cha included her name and telephone number with each message. Respondent received the messages, but did not file a response to the NDC or otherwise communicate with DTC Cha.

On August 2, 2005, the State Bar filed a “Motion for Entry of Default” in Tarlow I and served respondent by certified mail, return receipt requested, at the Calabasas Road address. Respondent received the motion, but did not file a response to the Motion for Entry of Default or otherwise communicate with DTC Cha.

On August 16, 2005, the State Bar Court filed an order in Tarlow I granting the State Bar’s Motion for Entry of Default, entering respondent’s default, and placing respondent on involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), effective August 19, 2005.² A clerk of the State Bar Court served a copy of the order on respondent by certified mail, return receipt requested, at the Calabasas Road address. Respondent received the order.

Between on or about August 19, 2005, and on or about December 28, 2007, respondent was not eligible to practice law. Respondent was suspended from the practice of law in Tarlow I from August 19, 2005 until June 28, 2007, when he began his suspension in the case entitled *In the Matter of Richard Gary Tarlow*, State Bar Court Case Nos. 03-O-01735, 04-O-11883 and 04-

² The NDC erroneously alleges respondent was enrolled inactive on August 16, 2005, but the effective date was in fact August 19, 2005.

O-15067 (Cons.) (“Tarlow II”). Respondent remained suspended in Tarlow II until December 28, 2007.

2. Case No. 07-O-15049 (“The Bohm Matter”)

On or about July 1, 2004, a complaint for compensatory and punitive damages was filed by attorney Lyle Greenberg (“Greenberg”) on behalf of Peter Bohm and his wife, Linda Wallach (the “Bohms”), in the Superior Court of California, County of Los Angeles (“Superior Court”), entitled *Peter Bohm and Linda Wallach v. Advance Microtech Security; Larry Allison; Tribune Company*, Case No. BC317930 (“*Bohms v. AMS*”).

In or about June of 2005, Greenberg informed the Bohms that he would be unable to continue working on *Bohms v. AMS*, and recommended that they employ respondent to represent them.

On or about June 6, 2005, the Bohms employed respondent to represent them in *Bohms v. AMS*. The Bohms agreed to pay respondent \$250 per hour to represent them and gave him a check for \$5,000 for advanced attorney’s fees and costs.

On or about July 15, 2005, the attorney for Advanced Microtech Security (“AMS”) filed and served on respondent at the Calabasas Road address a “Notice of Motion and Motion for Summary Judgment” and a “Separate Statement of Undisputed Material Facts” in *Bohms v. AMS*. Respondent received the documents.

On or about August 4, 2005, the Bohms gave respondent a check for \$750 for advanced attorney’s fees and costs regarding *Bohms v. AMS*. Respondent received the payment.

On or about August 14, 2005, respondent provided the Bohms with a “Billing Statement” stating that respondent earned \$8,323.50 in attorney’s fees and costs (attorney’s fees of \$8,300 and costs of \$23.50) between in or about June of 2005 and on or about August 14, 2005, regarding *Bohms v. AMS*. The statement sought payment of \$3,323.50, i.e., the attorney’s fees and costs of \$8,323.50 less the advanced attorney’s fees and costs of \$5,000. The Bohms received the statement.

Between on or about August 19, 2005, and on or about December 28, 2007, respondent was not eligible to practice law.

On or about August 19, 2005, respondent filed and served a “Request for Dismissal” with prejudice of the actions against two of the defendants, but not against AMS, in *Bohms v. AMS*. The request listed respondent’s name and the Calabasas Road address in the letterhead as the attorney of record for the Bohms. The Superior Court and attorney for AMS received the request.

On or about August 25, 2005, the Bohms gave respondent a check for \$3,323 for attorney’s fees and costs made payable to “Richard Tarlow, Esq.” regarding *Bohms v. AMS*. Respondent received the payment.

On or about August 30, 2005, respondent conducted the deposition of a witness named Robin Bennyworth in *Bohms v. AMS* as the attorney of record for the Bohms.

On or about September 1, 2005, respondent filed and served the following documents in *Bohms v. AMS*: (a) the “Declaration of Richard G. Tarlow in Support of Need for Additional Discovery,” which was signed “under penalty of perjury” by respondent as the “Attorneys for Plaintiffs”; (b) the “Declaration of Linda Wallach aka Linda Bohm”; (c) the “Declaration of Peter Bohm”; (d) “Plaintiff’s Separate Statement of Undisputed Material Facts ...”; (e) “Plaintiff’s Response to Defendant’s Separate Statement of Undisputed Material Facts ...”; (f) “Plaintiff’s Opposition to Defendant ... Motion for Summary Judgment ...”; and (g) “Plaintiff’s Objections to Declaration of Larry Alison.” The documents listed respondent’s name and the Calabasas Road address and they identified respondent as the attorney of record for the Bohms. The Superior Court and attorney for AMS received the documents.

On or about September 5, 2005, the Bohms gave respondent a check for \$4,100 for attorney’s fees and costs made payable to “Richard Tarlow, Esq.” regarding *Bohms v. AMS*. Respondent received the payment.

On or about September 6, 2005, respondent and the attorney for AMS appeared for a “Post-Mediation Status Conference” and an “OSC re Respondent’s Failure to Appeal on July 8, 2005” in *Bohms v. AMS*.

On or about September 8, 2005, respondent conducted the deposition of a defendant named Larry Allison in *Bohms v. AMS* as the attorney of record for the Bohms.

On or about September 9, 2005, the attorney for AMS filed and served on “Richard G. Tarlow, Esq.” at the Calabasas Road address a “Reply in Support of Motion for Summary Judgment, in *Bohms v. AMS*. Respondent received the notice.

On or about September 11, 2005, respondent provided the Bohms with a “Billing Statement” that stated that respondent had earned \$5,428.00 in attorney’s fees and costs (attorney’s fees of \$5,400 and costs of \$28) regarding *Bohms v. AMS* between on or about August 27, 2005 and on or about September 12, 2005. The statement sought payment of \$5,428. The Bohms received the statement.

On or about September 15, 2005, the attorney for AMS filed and served on “Richard G. Tarlow, Esq.” at the Calabasas Road address a “Notice of Settlement” in *Bohms v. AMS*. Respondent received the notice.

On or about September 15, 2005, respondent settled *Bohms v. AMS* with the attorney for AMS for the payment of \$19,000 by AMS to the Bohms.

On or about September 15, 2005, the attorney for AMS filed and served on “Richard G. Tarlow, Esq.” a “Notice of Settlement” in *Bohms v. AMS*. Respondent received the notice.

On or about September 18, 2005, the attorney for AMS mailed a letter to “Richard G. Tarlow, Esq.” confirming the settlement agreement and enclosing a release for the Bohms to sign. Respondent received the letter.

On or about September 19, 2005, respondent mailed a letter to the attorney for AMS on letterhead titled “Law Offices of Richard G. Tarlow.” The letter confirmed the settlement agreement, requested amendment of the release, and was signed by respondent “Attorney at Law.” The attorney for AMS received the letter.

On or about September 26, 2005, respondent signed a “Request for Dismissal” of the entire action with prejudice in *Bohms v. AMS*, which stated that respondent was the attorney of record for the Bohms, and thereafter, mailed the request to the attorney for AMS. The attorney for AMS received the request.

On or about October 17, 2005, respondent signed a “Full Release of All Claims” in *Bohms v. AMS* as “witnessed and approved as to form and content” as the “attorneys for Plaintiff,” and thereafter, mailed it to the attorney for AMS. The attorney for AMS received the release.

On or about November 11, 2005, the Bohms gave respondent a check for \$4,428 for “attorney fees” made payable to “Richard Tarlow, Esq.” regarding *Bohms v. AMS*. Respondent received the payment. Altogether, the Bohms paid respondent \$17,601 regarding *Bohms v. AMS*, including approximately \$5,428.00 in attorney’s fees and costs allegedly earned between on or about August 27, 2005 and on or about September 12, 2005.

Respondent never notified the Bohms, the Superior Court, the attorneys for the other parties in the proceeding, and/or the other parties in the proceeding that he had been suspended from the practice of law on or about August 19, 2005.

3. Case No. 08-O-11089 (“The Buckner Matter”)

On or about February 3, 2005, the case entitled *Donald Buckner v. E.I. du Pont de Nemours and Company, et al*, was removed from the Superior Court of California, County of Kern, to the United States District Court, Eastern District of California (the “District Court”), and assigned case no. 1:05-CV-00156-AWI-SMS (“*Buckner v. du Pont*”). Respondent was the attorney of record for Buckner.

On or about May 18, 2005, attorney Lyle F. Greenberg (“Greenberg”) associated into *Buckner v. du Pont* as co-counsel for Buckner along with respondent.

Between on or about August 19, 2005, and on or about December 28, 2007, respondent was not eligible to practice law.

On or about August 22, 2005, respondent and Greenberg signed and caused a “Stipulation and Order re: Filing of First Amended Complaint ...” to be filed and served in *Buckner v. du Pont*. The stipulation and order listed the names and respective addresses of respondent and Greenberg in the letterhead as the attorneys of record for Buckner. The District Court and the attorneys for other parties in the proceeding received the stipulation.

On or about September 12, 2005, respondent and Greenberg caused a “First Amended Complaint for Personal Injuries ...” to be filed and served in *Buckner v. du Pont*. The complaint listed the names and respective addresses of respondent and Greenberg in the letterhead as the attorneys of record for Buckner. The District Court and the attorneys for other parties in the proceeding received the complaint.

On or about September 14, 2005, respondent and/or Greenberg caused four “Summons in a Civil Case” to be filed and served in *Buckner v. du Pont*. Two summonses stated that answers to the complaint were to be filed on respondent and Greenberg at their respective addresses, and two summonses stated that answers to the complaint were to be filed on respondent. The attorneys for other parties in the proceeding received the summonses.

On or about October 4, 2005, October 28, 2005, December 8, 2005, February 27, 2006, March 8, 2006, March 17, 2006, and April 4, 2006, attorneys for other parties in the proceeding served pleadings on respondent regarding *Buckner v. du Pont* as one of Buckner’s attorneys of record. Respondent received the documents.

On or about October 12, 2005, respondent and/or Greenberg caused two more “Summons in a Civil Case” to be filed and served in *Buckner v. du Pont*. The summonses stated that answers to the complaint were to be filed on respondent. The District Court and the attorneys for other parties in the proceeding received the summonses.

On or about October 12, 2005, respondent and Greenberg signed and caused a “Stipulation for Dismissal of Defendant ...” to be filed and served in *Buckner v. du Pont*. The stipulation listed the names and respective addresses of respondent and Greenberg in the letterhead as the

attorneys of record for Buckner. The District Court and the attorneys for other parties in the proceeding received the stipulation.

On or about October 19, 2005, a “Proof of Services re: Scheduling Conference Order, Etc.” was filed and served in *Buckner v. du Pont*. The proof of service listed the names and respective addresses of respondent and Greenberg in the letterhead as the attorneys of record for Buckner. The District Court and the attorneys for other parties in the proceeding received the proof of service.

On or about November 10, 2005, respondent, Greenberg, and the attorneys for other parties in the proceeding appeared for a hearing in *Buckner v. du Pont* to discuss, inter alia, the scheduling of the case.

On or about December 8, 2005, respondent and Greenberg signed and caused a “Stipulation and Order Continuing Trial and Extending Scheduling Conference Order Dates/Deadlines” to be filed and served in *Buckner v. du Pont*. The stipulation listed the names and respective addresses of respondent and Greenberg in the letterhead as the attorneys of record for Buckner. The District Court and the attorneys for other parties in the proceeding received the stipulation.

On or about February 28, 2006, Greenberg mailed a letter to the State Bar stating that Greenberg had been informed by respondent that respondent had been suspended from the practice of law; and that Greenberg was employing respondent as a paralegal to assist in *Buckner v. du Pont* pursuant to Rules of Professional Conduct, Rule 1-311. The State Bar received the letter.

Neither respondent nor Greenberg ever: (a) filed any document in *Buckner v. du Pont* that stated that respondent had withdrawn as co-counsel of record for Buckner in *Buckner v. du Pont*; (b) notified the District Court or the attorneys for the other parties in the proceeding that respondent had been suspended from the practice of law; or (c) notified the District Court or the attorneys for the other parties in the proceeding that respondent had withdrawn as co-counsel of record for Buckner in *Buckner v. du Pont*.

D. Additional Finding of Facts

Despite repeated attempts by the State Bar and the State Bar Court, to contact respondent by pleadings, letters, and telephone, in both these matters, respondent failed to respond.

Respondent admits that his failure to respond was unprofessional and wrong and has placed him in a terrible position. Respondent's mail was delivered to his State Bar membership records address, which was a commercial mail drop. Respondent's law office was across the street from the mail drop. Respondent rarely checked his mail, and when he did, he rarely read the mail, especially mail from the State Bar.

Respondent testified that at the time of these two matters, he was on survival mode due to problems in his life. Respondent's secretary and office manager, Sandy, had died in the beginning of 2000. Respondent was very close to Sandy and she was his right hand person in the office. In addition, his residence suffered severe smoke damage and respondent and his family were forced to move out of the house for a two-year period from 2001 through 2003. In addition, respondent's father died in 2006. Respondent and his father had a very close relationship. Shortly before the misconduct in these two matters, respondent's daughter, who is now 20 years old, was diagnosed as suffering from Tourette's Syndrome.

Although respondent did not read or answer mail from the State Bar during this time, he was receiving and reading mail regarding his active cases. That mail was also delivered to the same address—respondent's membership records address.

In December 2005, respondent finally realized he had a problem with the State Bar and sought the advice of counsel. On December 20, 2005, respondent met with counsel and was advised of his inactive status. Respondent claims this was the first time he was aware of his inactive status. After being informed of his inactive status by counsel, respondent proceeded to take steps to notify co-counsel and his clients.

The evidence shows that respondent willfully failed to take steps to have his mail picked up at his official membership records address on a regular basis. Also, respondent willfully failed to read mail from the State Bar sent to his official membership records address. Respondent's actions constitute gross negligence. Respondent cannot avoid his responsibility to pick up his mail, and/or read his mail, and then claim his conduct was not willful or that he was not aware of the fact that he was placed on inactive status by the State Bar Court and not entitled to practice law.

While not entitled to practice law, respondent collected an illegal fee in the amount of \$5,428 in the *Bohms* matter.

1. Respondent's Good Character Witnesses

The following two witnesses testified at trial regarding respondent's good character.

Robert K. Tannenbaum, Esq. ("Tannenbaum"), has been an attorney for 41 years and licensed to practice law in California since 1978. Tannenbaum has known respondent and his family for 50 years. Tannenbaum has referred cases to respondent and tried cases as co-counsel with respondent. Tannenbaum believes respondent is a person of integrity, and a good, decent, and kind person. Despite Tannenbaum's awareness of respondent's past misconduct, his opinion of respondent's character remains unchanged.

Lyle Greenberg, Esq. ("Greenberg"), has been licensed to practice law in California for 26 years. Greenberg has known respondent for 26 years and is a social friend. They also worked on cases together. Greenberg believes respondent to be a person of integrity who is trustworthy and loyal. Greenberg is aware of respondent's prior discipline for violating rule 9.20 of the California Rules of Court; yet, his opinion of respondent's character remains unchanged.

The court also received into evidence the following declarations regarding respondent's good character.

Kenneth D. Klein, Esq. (“Klein”), submitted a declaration dated July 27, 2007. Klein has been licensed to practice law in California for 28 years and has been practicing law for over 30 years. Klein has known respondent for 27 years and is a social friend. Since he has known him, respondent has always desired to serve his clients to the best of his ability and acted in a manner befitting a member of the State Bar. Klein stated he believes that respondent is a person of the highest integrity.

Stephanie Chew Grossman (“Grossman”) submitted a declaration dated July 5, 2007. Grossman is a financial advisor licensed in several states, including California. Grossman has known respondent for 27 years and served as his financial advisor. During the past 27 years, Grossman has observed respondent’s great compassion for his clients and the way he carries himself with the highest level of integrity and honesty. Grossman has found respondent to be unselfish, generous, hard-working, and knowledgeable; and she believes that his character is revealed by his dedication to his family.

Leonard Feld, DDS, (“Dr. Feld”) submitted a declaration dated “July 5.”³ Dr. Feld has been a dentist for 30 years, and is licensed in California and Arizona. Dr. Feld has known respondent for 30 years and knows him on a social and professional basis. Dr. Feld stated that he would not hesitate to place the safety and well-being of any member of his family in respondent’s capable hands. Dr. Feld believes that respondent will take the extra step and go the extra mile for a client.

Lyle Greenberg, Esq. (“Greenberg”) submitted a declaration dated July 6, 2007, and—as noted above—testified at trial regarding respondent’s good character.

John L. Sherman, M.D. (“Dr. Sherman”), submitted a declaration dated June 29, 2007. Dr. Sherman has been licensed to practice medicine in California since 1974. Dr. Sherman has

³ The date on Dr. Feld’s declaration did not contain a year.

known respondent since 1981, first on a social basis and later as respondent's family's treating physician. Dr. Sherman believes that respondent is honest to a fault and gives all attorneys a good name. Dr. Sherman attests to respondent's character and can give respondent his unqualified recommendation.

Donna Lane ("Lane") submitted a declaration dated June 29, 2007. Lane has operated a business in California since 1989. Lane has known respondent since 1993, when their sons went to school together. Respondent has represented Lane in a legal matter. Lane found respondent to be professional, consistent, and dependable. Lane attests to respondent's integrity and his character as a family man and a legal professional.

Lee Garson ("Garson") testified at respondent's prior hearing in State Bar Court Case No. 06-N-15111. Garson is president and CEO of a packing material company. Garson has known respondent for 18 years. Garson and respondent are social friends and their children grew up together. Respondent has represented Garson in a legal matter and Garson's family members. Garson believes respondent's reputation in the community is very good.

Corinne Garson ("Mrs. Garson") testified at respondent's prior hearing in State Bar Court Case No. 06-N-15111. Mrs. Garson is a close family friend to respondent and his wife. Mrs. Garson has known respondent for 18 years. Respondent has represented Mrs. Garson and other family members in legal matters. Mrs. Garson believes respondent's reputation for honesty, integrity, and work ethic to be upstanding.

E. Conclusions of Law

1. Case No. 07-O-15049

Count One – Business and Professions Code Section 6068, Subdivision (a) – Failure to Comply with All Laws – Unauthorized Practice of Law

The court finds that there is clear and convincing evidence that respondent willfully failed to comply with the law, in violation of Business and Professions Code section 6068,

subdivision (a),⁴ by appearing before the superior court; conducting depositions, repeatedly filing documents, and repeatedly receiving documents in the *Bohm v. AMS* matter while suspended from the practice of law and not an active member of the State Bar of California, in willful violation of sections 6125 and 6126.

Count Two – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent, due to his grossly negligent conduct, willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by not advising the Bohms; the superior court; the attorneys for the other parties in the *Bohm v. AMS* matter, and the parties in the proceeding that he was not entitled to practice law, thereby misrepresenting his State Bar status.

Count Three – Rule 4-200(A), Rules of Professional Conduct – Unconscionable Fee

The court finds that there is clear and convincing evidence that respondent willfully charged and collected an unconscionable fee, in willful violation of rule 4-200(A), Rules of Professional Conduct,⁵ by charging and collecting at least \$5,428 in attorney’s fees and costs for legal services provided between August 27, 2005 and on or about September 12, 2005, while respondent was suspended from the practice of law.

2. Case No. 08-O-11089

Count Four – Business and Professions Code Section 6068, Subdivision (a) – Failure to Comply with All Laws – Unauthorized Practice of Law

The court finds that there is clear and convincing evidence that respondent willfully failed to comply with the law, in violation of section 6068, subdivision (a), by repeatedly filing and receiving documents in the *Buchner v. du Pont* matter while suspended from the practice of

⁴ All further references to “section/s”, are to this source.

⁵ All further references to “rule/s”, are to this source.

law and not an active member of the State Bar of California, in willful violation of sections 6125 and 6126.

Count Five – Business and Professions Code Section 6106 – Moral Turpitude

The court finds that there is clear and convincing evidence that respondent, due to his grossly neglect conduct, willfully committed an act or acts of moral turpitude, dishonesty or corruption, in violation of section 6106, by not advising the district court in the *Bruckner v. du Pont* matter, the attorneys for the other parties in the proceeding, and the other parties in the proceedings that he was not entitled to practice law, thereby misrepresenting his State Bar status.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

The record establishes the following factors in mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁶ std. 1.2(e).)

Respondent was suffering from emotional difficulties. (Std. 1.2(e)(iv).) The passing of respondent's father caused respondent emotional difficulties. In addition, respondent was the primary care-giver for his daughter, who suffers from Tourette's Syndrome.

Respondent cooperated in the State Bar Court proceeding. (Std. 1.2(e)(v).) Respondent entered into an extensive stipulation of facts and admission of documents in this proceeding and is entitled to mitigation for his cooperation.

Respondent, as noted above, presented character evidence constituting an extraordinary demonstration of good character by a wide range of references in the legal and general communities. (Std. 1.2(e)(vi).) The weight of this evidence, however, is somewhat diminished by the fact that several of respondent's character witnesses were not aware of the present

⁶All further references to "standard/s" or "std." are to this source.

misconduct. Nonetheless, the testimony of respondent's character witnesses warrants some consideration in mitigation.

B. Aggravation

The record establishes the following factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Respondent has a prior record of three disciplines. (Std. 1.2(b)(i).)

On April 18, 2006, the Supreme Court issued an order (S140846) suspending respondent from the practice of law for one year, stayed, with an actual suspension of 30 days and until the State Bar Court grants a motion to terminate his actual suspension pursuant to Rule 205 of the Rules of Procedure of the State Bar of California. Respondent was found to be in violation of rule 3-110(A), section 6068, subdivision (i), and section 6068, subdivision (m). In mitigation, respondent had no prior record of discipline in almost 22 years of practice. In aggravation, respondent committed multiple acts of wrongdoing, harmed the client, and failed to participate in the disciplinary proceeding.

On May 29, 2007, the Supreme Court issued an order (S151375), suspending respondent from the practice of law for two years, stayed, with four years' probation, including 6 months' actual suspension. Respondent was further ordered to pay restitution in the amount of \$14,443 plus interest. In three separate matters, respondent was found culpable of nine counts of misconduct, including violations of rules 4-100(B), 4-100(B)(3) [three counts], and 4-100(A) [two counts], and section 6068, subdivision (m). In mitigation, respondent demonstrated candor and cooperation in stipulating to the misconduct. In aggravation, respondent harmed his clients, committed misconduct involving a trust account, and had a prior record of discipline.

On June 6, 2008, the Supreme Court issued an order (S162329), suspending respondent from the practice of law for two years, stayed, with two years' probation, including a one-year

period of actual suspension. Respondent was found culpable of violating Business and Professions Code section 6103. In mitigation, respondent presented the testimony of nine character witnesses who testified regarding respondent's good character. In aggravation, respondent had a prior record of discipline.

Respondent's misconduct evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Respondent is culpable of five counts of misconduct in two client matters.

Respondent's misconduct significantly harmed the administration of justice. (Std. 1.2(b)(iv).) Respondent's practice of law while he was not entitled caused harm to the administration of justice.

At the conclusion of trial, by oral motion, the State Bar requested that respondent be found culpable for a violation of Business and Professions Code Section 6068, subdivision (j), as uncharged misconduct. The court denies this motion, no good cause having been shown.

V. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 1.7(b), 2.3, 2.6, and 2.7)

Standard 2.3 relates to cases involving an attorney's culpability of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person. The standard states that culpability of such a violation shall result in actual suspension or disbarment.

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 in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Standard 2.6 relates to cases involving an attorney's culpability for the unauthorized practice of law. The standard states that a violation of this section shall result in disbarment or suspension.

Standard 2.7 relates to cases involving an attorney's culpability for a violation of rule 4-200 and calls for an actual suspension of six months.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with standards only where the court entertains "grave doubts" as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91, 92; *In re Nancy* (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.)

The State Bar urges that respondent be disbarred. The court agrees. Based on the facts and circumstances involved in the present matter, the substance and nature of respondent's extensive record of prior discipline, and the lack of compelling mitigating circumstances, the court finds no reasonable justification to deviate from standard 1.7(b).

VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **Richard Gary Tarlow**, State Bar Number 72889, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

The court 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.⁷

VII. COSTS

The court recommends 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.

VIII. 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).)

Dated: January 7, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court

⁷ 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.)