

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 08-O-10644-PEM
)	(08-O-13708; 08-O-14522)
MARYELLEN LAUMBACH)	
)	DECISION AND ORDER OF
Member No. 141093)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on December 22, 2009. Respondent **Maryellen Laumbach** is charged with 9 counts of misconduct including allegations that she misappropriated trust funds in two separate matters. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Wonder J. Liang. Respondent initially represented herself, but failed to appear at trial.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on June 1, 2009. 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

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

On or about September 3, 2009, respondent filed an answer to the NDC. After the filing of her answer, respondent failed to participate in these proceedings and trial was ultimately scheduled for November 24, 2009.

On November 24, 2009, respondent failed to appear for trial. Due to respondent's failure to appear for trial, the court issued an order of entry of default and involuntary inactive enrollment on November 24, 2009.² A copy of said order was properly served on respondent at her membership records address, and was subsequently returned to the State Bar Court by the U.S. Postal Service as undeliverable. Following the filing of the State Bar's discipline brief,³ this matter was submitted for decision.

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, 1989, and has been a member of the State Bar of California at all times since that date.

B. The Prasad Matter

1. Findings of Fact

At all relevant times respondent maintained a client trust account at Wells Fargo Bank ("client trust account").

On or about November 11, 2000, Narendra Prasad ("Prasad"), husband, married Kim Li Chan ("Chan"), wife.

² Respondent'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.

³ The court grants the State Bar's accompanying motion for late filing.

On December 31, 2003, Prasad filed in pro per a petition for dissolution of marriage in the matter *Prasad v. Chan*, Sacramento County Superior Court, Case No. 03FL08031 (“the dissolution matter”).

Prior to on or about August 12, 2004, Prasad employed respondent to represent him in his dissolution matter. On August 12, 2004, the court issued an order permitting the parties to sell the marital residence and ordered that any funds in dispute be deposited into a trust account until the dispute was resolved.

On or about November 18, 2004, escrow on the marital residence closed and Financial Title Company issued a check in the amount of \$100,020.92 payable to the “Law Offices of Maryellen Laumbach in trust for Narendra Prasad and Kim Li Chan” (“the Financial Title Company check”). At the time that escrow closed, a dispute existed between Prasad and Chan regarding distribution of the marital residence proceeds.

On or about April 13, 2005, respondent opened a Wells Fargo trust account for the purpose of holding the marital residence proceeds until the dispute between Prasad and Chan regarding the distribution of those funds was resolved. Respondent titled the account “Law Office of Maryellen Laumbach in trust for Narendra Prasad and Kim Li Chan” (“the Prasad/Chan trust account”).

On or about April 13, 2005, respondent deposited the Financial Title Company check into the Prasad/Chan trust account. Between on or about April 13, 2005 and on or about October 4, 2006, respondent made authorized distributions of \$34,403 from the Prasad/Chan trust account.

As of on or about September 27, 2006, respondent maintained \$68,373.22 in the Prasad/Chan trust account for the benefit of Prasad and Chan.

On or about October 4, 2006, respondent transferred the remaining balance of \$68,373.22 from the Prasad/Chan trust account into the client trust account without the knowledge or

permission of Prasad and Chan. Respondent was obligated to maintain the Prasad/Chan trust account funds of \$68,373.22 in a trust account until paid out for the benefit of Prasad or Chan. Respondent transferred the balance of the Prasad/Chan trust account funds into the client trust account so that she could utilize the Prasad/Chan trust account funds for her own personal use and benefit and not for the use and benefit of Prasad and Chan.

On or about October 19, 2006, the court issued a judgment in the dissolution matter and the dispute between Prasad and Chan regarding the distribution of the marital residence proceeds was resolved. At the time that the court issued the dissolution judgment, respondent was obligated to distribute the \$68,373.22 to Prasad and Chan.

On or about November 2, 2006, the balance in the client trust account was \$56,520.36. As of on or about November 2, 2006, respondent had used \$11,852.86 of Prasad and Chan's funds for her own personal use and benefit, and not for the use and benefit of Prasad or Chan. As of on or about November 2, 2006, respondent misappropriated \$11,852.86 from Prasad and Chan.

On or about November 6, 2006, respondent provided Prasad with client trust account check number 1628 in the amount of \$36,063.36, which represented Prasad's portion of \$68,373.22. After providing Prasad with his funds, respondent should have continued to maintain at least \$32,309.86 in the client trust account for the benefit of Chan.

As of on or about November 10, 2006, the balance in the client trust account was \$16,857.00. As of on or about November 10, 2006, respondent had used \$15,452.86 of Chan's funds for her own personal use and benefit, and not for the use and benefit of Chan. As of on or about November 10, 2006, respondent had misappropriated \$15,452.86 of Chan's funds.

On or about June 11, 2007, Chan's attorney, Cary Petersen ("Petersen"), filed a complaint with the State Bar against respondent claiming that respondent had failed to release Chan's portion of the proceeds from the sale of the marital residence.

As of on or about June 19, 2007, the balance in the client trust account was \$4,222.45. As of on or about June 19, 2007, respondent had used \$28,087.41 of Chan's funds for her own personal use and benefit and not for the use and benefit of Chan. As of on or about June 19, 2007, respondent has misappropriated \$28,087.41 from Chan.

On or about June 20, 2007, respondent deposited \$30,000 in her client trust account on behalf of another client, the Estate of Florence Turner ("Florence Turner's estate"). Florence Turner's estate was entitled to all of the \$30,000. Respondent was obligated to maintain \$30,000 in the client trust account until paid out for the benefit of Florence Turner's estate.

On or about June 20, 2007, the balance in the client trust account was \$34,222.45. As of on or about June 20, 2007, respondent should have maintained in the client trust account \$32,309.86 for the benefit of Chan and \$30,000 for the benefit of Florence Turner's estate, for a total of at least \$62,309.86.

On or about July 12, 2007, respondent received a telephone call from State Bar investigator Willis Shalita indicating that Petersen had filed a complaint alleging that respondent had failed to provide Chan with her funds. During the telephone call, respondent indicated that she would provide Chan with her funds.

On or about August 27, 2007, the balance in the client trust account was \$33,302.45. As of on or about August 27, 2007, respondent had used \$29,007.41 of Chan's funds for her own personal use and benefit and not for the use and benefit of Chan. As of on or about August 27, 2007, respondent had misappropriated \$29,007.41 from Chan.

On or about August 27, 2007, respondent provided Chan with trust account check number 1868 in the amount of \$32,329.29, which represented Chan's remaining portion of the proceeds from the sale of the marital residence. Respondent paid Chan with funds that were deposited for the benefit of Florence Turner's estate.

2. Conclusions of Law

a. Count One (A) - Rules of Professional Conduct, Rule 4-100(A)⁴ - [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 Chan's funds in a client trust account.

b. Count One (B) - Business and Professions Code, Section 6106 [Moral Turpitude - Misappropriation]⁵

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 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 funds received for the benefit of Prasad and Chan, respondent willfully committed an act involving moral turpitude, dishonesty or corruption in violation of section 6106.

⁴ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

⁵ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

C. The Turner Matter

1. Findings of Fact

On or about June 26, 1991, Florence Turner loaned money to CON Construction, Inc. The loan was secured by a deed of trust.

On or about June 13, 2000, Florence Turner died. On or about June 13, 2000, Eric Turner, son of Florence Turner, employed respondent to represent him regarding the distribution of Florence Turner's estate.

On or about May 25, 2001, Eric Turner was appointed personal representative of Florence Turner's estate.

Prior to in or about August 2005, CON Construction had failed to repay the \$30,000 loan. In or about August 2005, respondent filed a lawsuit on behalf of Florence Turner's estate entitled *Estate of Florence Turner, et al. v. CON Construction, Inc. et al.*, Sacramento County Superior Court, Case No. 05AS03353.

On or about May 15, 2007, Eric Turner and CON Construction settled their lawsuit by CON Construction agreeing to pay \$30,000 to Florence Turner's estate.

On or about June 20, 2007, CON Construction provided respondent with a check for \$30,000 made payable to "Eric Turner Executor of Estate of Florence Turner and his attorney Maryellen Laumbach."

On or about June 20, 2007, respondent deposited the CON Construction check into her client trust account. Eric Turner, in his capacity as the personal representative of Florence Turner's estate, was entitled to all of the funds paid by CON Construction. Respondent was obligated to maintain the \$30,000 in her client trust account from the date she received the funds until she paid them out for the benefit of Florence Turner's estate.

After depositing the CON Construction check on or about June 20, 2007, the balance of the client trust account was \$34,222.45. Of the funds on deposit in the client trust account, \$30,000 belonged Florence Turner's estate.

Between on or about June 20, 2007 and on or about November 5, 2007, Eric Turner was unable to reach respondent to discuss his case or to obtain the CON Construction funds.

On or about August 27, 2007, respondent provided Chan with trust account check number 1868 in the amount of \$32,329.29, which represented Chan's remaining portion of the proceeds from the sale of the marital residence. Respondent paid Chan with funds that were deposited for the benefit of Florence Turner's estate.

On or about August 27, 2007, the balance in the client trust account was \$573.16. As of on or about August 27, 2007, respondent has used at least \$29,426.84 of Florence Turner's estate's funds to pay Chan and not for the use and benefit of Florence Turner's estate. As of on or about August 27, 2007, respondent had misappropriated at least \$29,426.84 from Florence Turner's estate.

On or about September 28, 2007, the balance in the client trust account was \$184.44.

On or about November 5, 2007, Eric Turner terminated respondent. On or about that same day, Eric Turner employed attorney Greta Curtis ("Curtis") to represent him in his capacity as personal representative of Florence Turner's estate.

On or about November 5, November 8, and November 14, 2007, Curtis wrote respondent letters requesting that respondent return Eric Turner's client file and provide Eric Turner with the \$30,000 from the CON Construction settlement. Respondent received the November 5, November 8, and November 14, 2007 letters soon after they were sent, but failed to respond to them. Respondent also failed to return Eric Turner's client file and failed to provide Eric Turner with the \$30,000.

As of June 1, 2009, respondent had not forwarded to Eric Turner any funds from Florence Turner's estate.⁶ Respondent misappropriated \$30,000 from Florence Turner's estate. As of June 1, 2009, respondent also failed to provide Eric Turner with his client file.⁷

2. Conclusions of Law

a. Count Two (A) - Rule 4-100(A) [Failure to Maintain Funds in Trust]

Respondent willfully violated rule 4-100(A) by failing to maintain Florence Turner's estate's funds in a client trust account.

b. Count Two (B) - Section 6106 [Moral Turpitude - Misappropriation]

By misappropriating \$30,000 from Florence Turner's estate, respondent committed an act of moral turpitude, dishonesty and corruption, in willful violation of section 6106.

c. Count Two (C) - Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive. Respondent willfully violated rule 4-100(B)(4) by failing to promptly pay out the funds belonging to Florence Turner's estate, as requested by the client.

d. Count Two (D)⁸ - Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property. By failing to release Eric Turner's file, at the request of Curtis, respondent failed to release promptly, upon termination of employment, to her client, at the request of the client, all the client's papers and

⁶ The NDC was filed on June 1, 2009. There is no indication in the record that respondent has since produced any portion of the funds from Florence Turner's estate.

⁷ There is no indication in the record that respondent has since provided Eric Turner with his client file.

⁸ The NDC identifies this count as "Count Two (C)." This appears to be a typographical error. For the purposes of this decision, the court will instead identify this count as "Count Two (D)."

property, in willful violation rule 3-700(D)(1).

D. The Jones/Marsh Matter

1. Findings of Fact

In or about July 2005, Richard Jones (“Jones”) and Betty Marsh (“Marsh”), husband and wife, employed respondent to represent them regarding a fraudulent real estate transaction.

On or about April 26, 2006, respondent filed the matter *Betty Marsh and Richard Jones v. Sunrise Valley Land LLC et al.*, Sacramento County Superior Court Case No. 06AS01741 (“the real estate litigation”). Between on or about April 26, 2006 and on or about April 29, 2008, respondent represented Jones and Marsh in the real estate litigation.

On April 29, 2008, respondent filed a motion to compel discovery. On May 19, 2008, the court denied the motion to compel discovery because of defects in respondent’s notice of the motion to compel. The court enumerated the errors and instructed respondent to re-file the motion to compel discovery without the errors.

On or about May 19, 2008, respondent learned that the court had denied the motion to compel discovery due to defects in the notice of the motion. Thereafter, respondent failed to inform Jones or Marsh that the court denied the motion to compel discovery due to defects in the notice of the motion. Respondent also failed to re-file the motion to compel discovery.

On or about May 19, 2008, respondent ceased performing legal services for Jones or Marsh. As a result, respondent constructively terminated her representation of Jones and Marsh.

On or about June 17, 2008, Jones telephoned respondent to obtain a status update on his matter. The telephone number was disconnected.

On or about August 2, 2008, Jones sent respondent a letter by certified mail, return receipt requested, to respondent’s State Bar official membership records address requesting that respondent provide him with a status update on his matter.

On or about August 20, 2008, the United States Postal Service returned the letter to Jones marked unclaimed because respondent had failed to respond to the first notice of certified mail on August 5, 2008, and the second notice of certified mail on August 12, 2008.

Respondent failed to obtain permission from the Sacramento County Superior Court to withdraw from employment. As of November 2008, respondent remained as attorney of record in the real estate litigation matter.

2. Conclusions of Law

a. Count Three (A) - Rule 3-700(A)(1) [Improper Withdrawal]

Rule 3-700(A)(1) states that if permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission. By failing to file a motion to withdraw or otherwise seek permission to withdraw from the Sacramento County Superior Court in the real estate litigation, respondent failed to obtain the permission of a tribunal before withdrawing, in willful violation of rule 3-700(A)(1).

b. Count Three (B) - 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 and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A), by willfully failing to perform any further services for Jones and Marsh after May 19, 2008.

E. Failure to Cooperate

1. Findings of Fact

a. The Turner Complaint

On or about January 18, 2008, the State Bar opened an investigation in matter 08-O-10644, the Turner matter.

On or about March 19, 2008, State Bar Investigator Crystal Velazco (“Velazco”) wrote to respondent regarding respondent’s conduct in the Turner matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing it for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

Velazco’s letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Turner matter on or before April 2, 2008. On or about April 2, 2008, respondent requested an extension of time in which to respond to the March 19, 2008 letter.

On or about April 2, 2008, Velazco wrote respondent a letter indicating that respondent had been granted an extension until April 16, 2008, to respond to the March 19, 2008 letter.

On or about April 16, 2008, respondent wrote Velazco a letter requesting an additional one-week extension to respond to the March 19, 2008 letter. On or about April 17, 2008, Velazco wrote respondent a letter indicating that respondent had been granted an extension until April 23, 2008, to respond to the March 19, 2008 letter. Respondent received this letter soon after April 17, 2008.

On or about May 5, 2008, Velazco wrote another letter to respondent regarding respondent’s conduct in the Turner matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing it for collection by the United States Postal Service in the

ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

The May 5, 2008 letter informed respondent that unless respondent provided a response to the March 19, 2008 letter as soon as possible, respondent would be charged with violating Business and Profession Code section 6068, subdivision (i). Soon after May 5, 2008, respondent received the letter, but failed to respond to it.

b. The Jones/Marsh Complaint

On or about June 20, 2008, the State Bar opened an investigation in matter 08-O-13708, the Jones/Marsh Matter.

On or about October 20, 2008, State Bar Investigator Amanda Gormley (“Gormley”) wrote to respondent regarding respondent’s conduct in the Jones/Marsh matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing it for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

Gormley’s letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Jones/Marsh matter on or before November 10, 2008. Soon after October 20, 2008, respondent received the letter, but failed to respond to it.

On or about November 10, 2008, Gormley wrote another letter to respondent regarding respondent’s conduct in the Jones/Marsh matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance

with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing it for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter.

The November 10, 2008 letter enclosed a copy of the October 20, 2008 letter and requested that respondent respond in writing by November 25, 2008. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Soon after November 10, 2008, respondent received the letter, but failed to respond to it.

c. The Prasad Complaint

On or about November 17, 2008, the State Bar opened an investigation in matter 08-O-14522, the Prasad Matter.

On or about December 10, 2008, Gormley wrote to respondent regarding respondent's conduct in the Prasad matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing it for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

Gormley's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Prasad matter on or before December 30, 2008. Soon after December 10, 2008, respondent received the letter, but failed to respond to it.

On or about December 31, 2008, Gormley wrote another letter to respondent regarding respondent's conduct in the Prasad matter by placing the letter in a sealed envelope correctly addressed to respondent at her address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class

mail, postage prepaid, by depositing it for collection by the United States Postal Service in the ordinary course of business on or about the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

The December 31, 2008 letter enclosed a copy of the December 10, 2008 letter and requested that respondent respond in writing by January 12, 2009. Soon after December 31, 2008, respondent received the letter, but failed to respond to it.

2. Conclusions of Law

a. Count Four - 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 provide a response to the allegations of the Turner, Jones/Marsh, and Prasad complaints, respondent failed to cooperate and participate in disciplinary investigations pending against her, 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 participate, the court has been provided no basis for finding mitigating factors.

B. Aggravation

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

1. Prior Record of Discipline

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

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

On March 3, 2003, the California Supreme Court issued an order (S111656) suspending respondent from the practice of law for one year, stayed, with a two-year probationary period including a 30-day actual suspension. This discipline stemmed from respondent's misconduct in two client matters. Said misconduct included failing to perform legal services competently, failing to communicate, and failing to cooperate in a State Bar investigation. In mitigation, respondent had no prior record of discipline. In aggravation, respondent's misconduct resulted in significant harm.

2. Multiple Acts of Wrongdoing

Respondent committed multiple acts of wrongdoing ranging from failing to perform to the misappropriation of client funds. (1.2(b)(ii).)

3. Significant Harm

Respondent's misconduct resulted in extensive financial harm to her client and an opposing party. (Std. 1.2(b)(iv).) Said harm included the misappropriation of \$29,007.41 belonging to Chan, and \$30,000 belonging to Florence Turner's estate.

4. Failure to Participate

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).)

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.

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 intentionally misappropriated money in two different matters. In addition, respondent failed to repay \$30,000 in outstanding client funds and failed to participate in the present proceedings. The court finds absolutely no reason to deviate from the standards, and therefore recommends that respondent be disbarred.

V. Recommended Discipline

The court recommends that respondent **Maryellen Laumbach** be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys in this state.

It is recommended that respondent make restitution to the Estate of Florence Turner in the amount of \$30,000 plus 10% interest per annum from June 20, 2007 (or to the Client Security Fund to the extent of any payment from the fund to the Estate of Florence Turner, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation.

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

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

¹⁰ Respondent is required to file a rule 9.20(c) affidavit even if she 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).)

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: March _____, 2010

PAT McELROY
Judge of the State Bar Court