

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 08-O-11557-DFM
	)	
<b>RAYMOND D. KITLAS</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
<b>Member No. 69075</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT ORDER</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

Respondent is charged here with willfully violating (1) rule 4-100(A) of the Rules of Professional Conduct<sup>1</sup> (failure to maintain client funds in trust account); (2) section 6106 of the Business and Professions Code<sup>2</sup> (moral turpitude); (3) rule 4-100(B)(3) (failure to render accounts of trust funds); and (4) section 6103 (failure to obey court order). The court finds culpability on all counts and recommends disbarment, as set forth below.

**PERTINENT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) in this matter was filed by the State Bar of California on April 16, 2009. On May 13, 2009, Respondent filed his response to the NDC. On the same day, May 13, 2009, the initial status conference was held in the case and a trial date of October 19, 2009, with a three-day estimate, was scheduled.

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<sup>1</sup> Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

<sup>2</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

On September 23, 2009, Respondent filed a motion for a continuance of the trial, citing the unavailability of his defense counsel due to a conflicting trial date in Superior Court. No opposition to that motion was filed by the State Bar. Thereafter, on September 30, 2009, the matter was reassigned to the undersigned. A telephonic status conference was then held and a new trial date of January 12, 2010, was scheduled.

Trial was commenced as scheduled on January 12, 2010 and was completed on January 13, 2010. At that time the matter was submitted for decision. The State Bar was represented at trial by Deputy Trial Counsel Larry DeSha. Respondent was represented by Daniel Marshall.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on the stipulation of undisputed facts filed by the parties and on the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 25, 1976, and has been a member of the State Bar at all relevant times.

#### **Case No. 08-O-11557 (Ruttan)**

On July 12, 2006, Robyn Farris (“Farris”) sued Marietta Ruttan (“Ruttan”) and Michael Snellen (“Snellen”) in a quiet title action for a real estate parcel which had been the home of Snellen’s father. At the time of the filing the lawsuit, Ruttan held a recorded deed to a two-thirds interest in the property and Snellen held a recorded deed to a one-third interest in the property.

The lawsuit alleged that Ruttan had obtained her deed by fraud against Snellen’s father, and Farris requested that the deed be cancelled, which would revert Ruttan’s two-thirds ownership interest to a trust that previously held title prior to the conveyance to Ruttan. The

lawsuit further alleged that the trust instrument provided that the two-thirds interest was to go to Farris, who requested a new deed to that effect.

Farris's attorney served process no later than November 9, 2006, but he never recorded a *lis pendens* against the property.

Ruttan and Snellen sold the property, and escrow closed on March 29, 2007. They received the proceeds by one check for \$220,397.15, which they deposited into an interest-bearing checking account in both of their names pending resolution of Farris's lawsuit. Any check drawn on the account required both signatures.

On August 3, 2007, Ruttan hired Respondent to defend her in the lawsuit. She paid Respondent an advance of \$2,500 for fees and \$500 for costs. The fee agreement was not executed until August 8, 2007. It called for Respondent to be paid \$300 per hour for his services. Respondent promptly deposited the check for \$500.00 into his Client Trust Account ("CTA").

On August 24, 2007, Ruttan paid Respondent an additional \$2,500 for his fees.

On August 30, 2007, the court issued a temporary protective order which froze the joint account of Ruttan and Snellen until further order of the court. A hearing for a preliminary injunction was initially set for October 5, 2007, but the hearing did not actually take place until November 2, 2007.

In September 2007, the parties agreed that Snellen would be dismissed from the lawsuit in exchange for a payment of \$100,000 to Snellen from the proceeds in the bank account and his waiver of any remaining interest in the proceeds from sale of the property. Ruttan and Farris further agreed to obtain a court order for Respondent to hold the balance of the sale proceeds until further order of the court.

On September 19, 2007, the parties and their attorneys, including Respondent, executed a stipulation containing the terms cited above. This agreement included an express agreement by Respondent that “The balance of the proceeds [after the \$100,000 payment to Snellen] shall be deposited in the attorney/client trust account of Attorney Raymond Kitlas to remain there until further court order.”<sup>3</sup> That same day, Ruttan and Snellen signed one check payable to Snellen for \$100,000.00, which Snellen kept, and they signed another check for \$121,822.00, payable to Respondent. Ruttan gave the second check to Respondent that same day, who then held it until after the court has authorized the funds to be released from the frozen account.

On September 27, 2007, the court signed an order reflecting the above stipulation. The order specified that Snellen would get the \$100,000; that Respondent would hold the balance of the funds in his CTA “to remain there until further court order”; that Snellen was dismissed from the lawsuit; and that Snellen had released any interest in the funds held by Respondent.

On September 28, 2007, Respondent, after learning that the order attached to the stipulation had been signed by the court, went to his CTA bank and deposited the check for \$121,822.00 (Ruttan funds) into his CTA. This raised the CTA balance from the original balance of \$20.32 to \$121,842.32.

Beginning on the very same day that he deposited the Ruttan funds into his CTA, September 28, 2007, Respondent began withdrawing those funds from the account, although there was a stipulation and court order prohibiting him from doing so. Respondent’s initial withdrawal was a cash withdrawal in the amount of \$2,500 on September 28, 2007. Thereafter, the withdrawals were generally in the form of checks signed by Respondent, made payable to himself, and subsequently personally endorsed by him.

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<sup>3</sup> This language also appeared in the written settlement agreement between Snellen and Ruttan, signed by Respondent in addition to the settling parties.

Between September 28, 2007, and November 1, 2007, Respondent issued and cashed the following checks, all made payable to himself, from the funds he had previously deposited in his CTA pursuant to the court's September 27, 2007 order:<sup>4</sup>

<u>CHECK NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
4120	10/2/07	\$10,000.00
4121	10/9/07	\$6,000.00
4122	10/16/07	\$2,500.00
4123	10/19/07	\$5,000.00
4124	10/22/07	\$3,000.00
4125	10/25/07	\$2,000.00
4126	10/29/07	\$2,000.00
4127	10/31/07	\$3,000.00

The check dated October 2, 2007 had "Smith Carter Retainer" typed in the memo portion of the face of the check. The check dated and deposited on October 19, 2007, also contained the notation "Smith Carter." The October 31 check had a memo notation, "C & G." There was no evidence during the trial of this matter that Respondent had received any retainer or other funds on any "Smith Carter" or "C & G" matter during this time period or at all. Instead, other than the original balance of \$20.32, the only money contained in the CTA during the period from September 28, 2007 to December 11, 2007, was the Ruttan fund.

On November 2, a hearing was scheduled on Farris's requests to be allowed to amend her complaint and for a preliminary injunction regarding the proceeds of the prior sale. On November 1, the day before the scheduled hearing, the court issued a tentative ruling on the issues. In this tentative decision, the court indicated its intent to grant the request to amend but

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<sup>4</sup> No funds from any other client or source were deposited into the CTA during the period from September 28, 2007 to December 11, 2007, other than nominal interest on the balance.

to deny the request for a preliminary injunction. In explaining its reasons for denying the requested preliminary injunction, the court noted, *inter alia*, that it understood that no money had been taken from the CTA and that it was basing its decision, in part, on that fact:

First, it does not appear that Defendant [Ruttan] is attempting to dispose of the funds in the account. Nor does it appear that she has threatened to withdraw, or otherwise transfer, the funds. ...

Moreover, the threat of “irreparable harm” must be imminent as opposed to a mere possibility of harm some time in the future: “An injunction cannot issue in a vacuum based on the proponents’ fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity. [Citation omitted.]

In this case, it appears that the harm is not imminent. Plaintiff cites to a letter he claims to have attached as “Exh. \_\_\_\_” to his declaration from Attorney Kitlas to Attorney Wininger. However, no such letter is attached. What is attached as Exhibit F is a letter from Charles W. Salter (Defendant Snellen’s attorney) to E. David Wininger. That letter does not demonstrate that the funds in the account are likely to be dissipated; rather, the letter states that the “sale proceeds will be kept in a trust account pending a settlement agreement between the parties or an Order of the Court, whichever shall first occur.” See Wininger Decl., Exhibit F.

Unbeknownst to the court, at the time of this tentative ruling, the balance of funds remaining in the CTA had actually been reduced by Respondent from the original \$121, 822 to \$85,822.32.

On November 2, 2007, a hearing was held on plaintiff Farris’s motions. Respondent was present. Notwithstanding the court’s prior tentative decision, Respondent did not disclose to the court the true status of the CTA.<sup>5</sup> The court then denied Farris’s motion for a preliminary injunction and vacated its temporary protective order of September 27, 2007. This Order was signed later by the court on November 16, 2007.

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<sup>5</sup> During the trial of the instant matter, Respondent explained this failure by stating that it was not in his client’s best interests for him to do so.

Between November 1 and November 16, 2007, Respondent issued and cashed the following additional checks on the CTA, all made payable to himself, further reducing the amount of the Ruttan funds on deposit there:

4128	11/2/07	\$5,000.00
4129	11/5/07	\$2,000.00
4130	11/9/07	\$2,000.00
4132	11/16/07	\$5,000.00

On November 16, 2007, the balance of the CTA was down to \$71,822.32. Between November 17, 2007 and November 27, 2007, Respondent wrote himself four more checks from his CTA, as follows:

4131	11/21/07	\$2,000.00
4133	11/23/07	\$2,000.00
4134	11/23/07	\$1,000.00
4135	11/26/07	\$2,000.00

After the hearing on November 2, Respondent and Ruttan understood that the court's anticipated formal order would have the effect of allowing the Ruttan funds to be withdrawn from the CTA, notwithstanding the prior temporary protective orders and the September stipulation.<sup>6</sup> As a result, Ruttan began requesting that her funds be released to her. As previously noted, the formal order was signed by the court on November 16. On November 26, Ruttan sent an email to Respondent, requesting to come by his office that day to pick up a check. In response, Respondent indicated that she could not, stating, "I have not received the signed order. I will follow up today with the court and call you."

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<sup>6</sup> The State Bar did not dispute this contention, but rather agreed with it during the instant trial. Accordingly, it is accepted by the court for purposes of this decision.

On the following day, November 27, 2007, the CTA balance was \$64,822.32. At that time Respondent gave Ruttan a check (Check No. 4136) for \$61,822.00.<sup>7</sup> He told her that he was only willing to release to her half of the funds because the judge had not yet signed the order to release the funds. At no time after this date did Respondent ever pay any additional portion of the Ruttan funds to Ruttan.

On the next day, Wednesday, November 28, 2007, Ruttan sent an email to Respondent, making clear that she was expecting and demanding to have an immediate release of the remaining “half” of her money:

Thank you for the check for half of my money even though you said the judge hadn't signed the order to release the funds. I expect that by Friday you will have the order signed and will have a check for the other half of my money.

Respondent received this email but provided no written response either disputing Ruttan's belief that she was entitled to the other half of the funds, informing her that virtually no funds still remained in the CTA, or reminding her of any modification to the original hourly fee agreement that would entitle him to take any portion of the funds.<sup>8</sup>

Within the next several days, Ruttan learned directly from the court that the order had previously been signed by the judge. She then confronted Respondent and demanded that her monies be immediately paid to her. Respondent responded by stating that he was not going to pay her any additional funds.

Ruttan then quickly made arrangements to replace Respondent with a new attorney. That new attorney then also requested Respondent to provide Ruttan with an accounting and a

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<sup>7</sup> In contrast to earlier checks, the notation on the memo portion of this check read, “Farris v Ruttan.”

<sup>8</sup> When asked during the instant trial about his failure to provide a written response to this email, Respondent attributed his failure, in part, to the fact that the following day, November 29, 2007, was “Thanksgiving.” In that regard, this court takes judicial notice of the fact that Thanksgiving is celebrated in the United States on the fourth Thursday of every November. In 2007, Thanksgiving was on November 22, 2007, not the 29<sup>th</sup>.

refund of her funds. Despite this request, Respondent neither paid Ruttan any additional money nor provided her with an accounting. Ruttan then complained to the State Bar.

During the two-week period after Ruttan's email of November 28, despite Ruttan's clear statement that she believed all additional funds being held by Respondent should be paid to her, Respondent wrote himself four more checks from his CTA, as follows:

4137	11/29/07	\$1,500.00
4138	11/30/07	\$500.00
4139	12/4/07	\$500.00
4140	12/8/07	\$400.00

At the time this last check was withdrawn from the account, the balance in the account had been reduced to \$100.32.

On March 21, 2008, the State Bar wrote a letter to Respondent, advising him of Ruttan's charges that he had withheld funds owed to her and had failed to provide an accounting. This letter asked for a written response by April 3, 2008, and directed Respondent to "[p]lease provide Ms. Ruttan a complete accounting of all funds you held in trust." Despite this letter, Respondent continued to fail to provide an accounting to Ruttan. Instead, on April 3, 2008, Respondent sent a letter to the State Bar, merely reporting that Ruttan had received a check for \$61,822 on December 5, 2007 [sic] "representing the sums recovered, less costs and attorneys fees." There was no other information provided as to what those specific fees and costs were.

After Respondent had been replaced as counsel in the Farris dispute, that dispute was resolved in Farris's favor and a judgment entered against Ruttan of approximately \$121,000. Although Ruttan still had available to her the "half" of the Ruttan funds previously transferred to her, she did not have sufficient additional funds to pay the remainder of the judgment. As a

result, she was forced to sell her home and various personal effects (such as jewelry) to satisfy the judgment.

**Count 1 - Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]**

Rule 4-100(A) of the Rules of Professional Conduct requires that all funds received or held for the benefit of a client by an attorney or law firm, including advances for costs and expenses, shall be deposited and maintained in a designated client trust account. The same ethical duties apply with regard to funds held by an attorney as a fiduciary for a non-client. (*In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185, 191; *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632, and cases cited therein.)

In September 2007, Respondent entered into a written agreement with Ruttan, Farris, and Farris's attorney that he would receive the Ruttan funds and hold them in his CTA until further order of the court. That agreement was then augmented with a court order to enforce it. Notwithstanding both this agreement and the court order, Respondent, on receiving the funds, immediately began to withdraw them from the trust account. Such conduct constituted a willful violation by him of his duty under rule 4-100(A) to maintain those funds in a client trust account.<sup>9</sup>

Respondent contends, in both his testimony and argument, that he was entitled to withdraw the funds based on a 50% (plus \$5,000) contingency fee agreement purportedly agreed to by Ruttan after his representation of her had commenced, replacing the initial hourly fee agreement. For all of the reasons discussed below, that contention by Respondent does not avoid his culpability for violating his duties under rule 4-100(A).

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<sup>9</sup> The conduct underlying this violation is essentially the same as that underlying the finding, below, that respondent is culpable of the more serious misconduct of committing acts of moral turpitude (misappropriation) in willful violation of section 6106. Accordingly, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

In the first instance, this court finds that no such contingency agreement ever existed, especially one that would have allowed Respondent to pay himself half of his client's funds while he was still defending the Farris action. Ruttan testified credibly and emphatically that no such contingency agreement was ever agreed to by her, and her testimony is corroborated by her written communications and actions at the time. In contrast Respondent's testimony was not credible and lacked candor. It was also not corroborated by any contemporaneous writing introduced at trial.

In addition, Respondent's contention, that he was withdrawing funds from the account based on a contingency fee agreement entitling him to take 50% of the funds as a fee, is belied by the manner in which he withdrew the funds. If there had been such a contingency agreement, Respondent would have had a duty to withdraw all of those funds within the earliest reasonable time after his interest in the deposited funds became fixed. (Rule 4-100(A)(2).) That is not what Respondent did. Instead he withdrew the funds in small increments over a period of several months. Moreover, he attempted to disguise those withdrawals at various times by writing false notations on the checks to indicate that the withdrawals reflected fees earned in other matters. If Respondent actually believed at the time that he was entitled to withdraw the funds as a fee in the Ruttan matter, there would have been no reason to put any misleading notations on the checks.

Respondent's contention is further belied by his conduct in concealing the withdrawals from his client. His statements to the client in late November about the court having not yet signed the order releasing the funds were inaccurate and inconsistent with his own conduct in withdrawing funds for himself. Similarly, his failure to report his withdrawals to the client at the time he was making them, or at any time afterward, was inconsistent with any good faith belief by him at the time that he was entitled to the funds.

Further, even if there had been a contingency fee agreement entitling Respondent to collect a fee by Ruttan, this did not entitle him to withdraw surreptitiously the funds from his CTA. “An attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it even though he may be entitled to reimbursement for his services.” (*Crooks v. State Bar* (1970) 3 Cal.3d 346, 358; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 588.) Respondent’s conduct became even more egregious when he continued to secretly withdraw funds in late November after Ruttan had communicated to him, both verbally and in writing, her belief that she was entitled to all of the funds. (*In the Matter of Davis, supra.*)

Finally, this court would emphasize that, even if there had been a contingency fee agreement, Respondent would still be culpable of a willful violation of 4-100(A) for the withdrawals he made before the court released the funds in November. Until the court released the funds to Ruttan in November, Respondent was holding the funds pursuant to (1) a stipulation entered into by both Ruttan and Farris, stating that he would hold the funds in the account until a further order of the court, and (2) a court order to the same effect. His duty to honor that agreement and order ran both to his client and to Farris. His actions in repeatedly withdrawing funds prior to the court’s order in November violated that obligation and constituted repeated willful violations of rule 4-100(A).

### **Count 2 – Section 6106 [Moral Turpitude]**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney’s fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

Here, Respondent knowingly and intentionally took funds owned by his client and converted them to his own use and benefit. He did this without notifying the client of what he was doing and, at times, in violation of both a stipulation signed by him and a court order requiring him to leave the funds in his client trust account. In November he even made affirmative misrepresentations to the client to avoid having to advise the client of his prior actions. Such conduct by Respondent constituted an intentional and knowing misappropriation by him of his client's funds and other acts of moral turpitude, all in willful violation of section 6106. (*Lipson v. State Bar* (1991) 53 Cal. 3d 1010, 1020-1021; *McKnight v. State Bar* (1991) 53 Cal. 3d 1025, 1033-4; *Bate v. State Bar* (1983) 34 Cal.3d 920, 923; *In re Freiburghouse* (1959) 52 Cal.2d 514, 516.)

**Count 3 – Rule 4-100(B)(3) [Failure to Render Accounts of Trust Funds]**

Rule 4-100(B)(3) of the Rules of Professional Conduct requires attorneys to render appropriate accounts of all funds of a client coming into the possession of the attorney. Respondent deposited Ruttan's funds into his CTA and then failed to ever provide her with an accounting of how those funds had been maintained and withdrawn, notwithstanding numerous requests for such an accounting made by Ruttan, her new attorney, and the State Bar on Ruttan's behalf. This continuing failure by Respondent to render an appropriate accounting constitutes a willful violation by him of his obligations under rule 4-100(B)(3).

**Count 4 – Section 6103 (Failure to Obey a Court Order)**

Section 6103 prohibits an attorney from willfully disobeying or violating an order of the court requiring him to do an act connected with or in the course of his profession which he ought in good faith to do. In the court's order of September 27, 2007, Respondent was obligated to maintain the Ruttan funds in his client trust account "until further order." Notwithstanding this order, to which Respondent had stipulated and agreed and of which he was aware, he immediately

commenced a series of unauthorized withdrawals from the account, beginning the very day that he first deposited the Ruttan funds into the account. By the time that the court held the November 2 hearing, at which time it indicated it was vacating the prior protective order, Respondent had reduced the Ruttan funds by approximately \$36,000, through nine separate withdrawals.

Respondent's conduct constituted knowing and intentional violations by him of the court's order of September 27, 2007, and a willful violation by him of his obligations under section 6103.

### **Aggravating Circumstances**

The State Bar bears the burden of proving 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).)<sup>10</sup>

#### **Multiple Acts of Misconduct**

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

#### **Significant Harm**

Respondent's misconduct significantly harmed his client. He misappropriated \$59,900 of the Ruttan funds from his client trust account, and he has failed to return any of those funds. This misappropriation then caused Ruttan to be forced to sell her own home and personal effects to pay the judgment subsequently owed by her to Farris. (Std. 1.2(b)(iv).)

#### **Dishonesty**

Respondent's misconduct was surrounded by bad faith, dishonesty, and concealment. Among other things, he concealed his improper transfers of funds and his many violations of the September 27 order from both the court and the parties in conjunction with the November 2 hearing of Farris's request for a preliminary injunction in November. He also misrepresented to

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<sup>10</sup> All further references to standard(s) are to this source.

his client that there was not yet a signed order in late November in order to delay having to address her demands for a distribution of her funds. (Std. 1.2(b)(iii).)

### **Lack of Insight & Remorse**

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent fails to demonstrate any realistic recognition of or remorse for his wrongdoings and instead continues to assert that his conduct was proper. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

### **No Prior Discipline**

Respondent had practiced law in California for 31 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent’s tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.2(e)(i).)

### **Cooperation**

Respondent entered into an extensive stipulation of facts and stipulated at trial to the admission of most exhibits into evidence. He is entitled to some measure of mitigation for that cooperation. (Std. 1.2(e)(v).) However, the weight given by the court to that mitigating conduct is reduced significantly by the fact that this cooperation came only on the eve of trial and by Respondent’s lack of candor during the trial. (*In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 105.)

### **Extreme Emotional/Physical Difficulties**

During closing argument, counsel for Respondent claimed mitigation credit for passing reference by Respondent during his testimony that he had filed bankruptcy during the course of Ruttan's subsequent civil lawsuit against him because of financial problems caused by his several back surgeries and by physical difficulties of his wife.

The court declines to offer any mitigation credit based on this passing reference by Respondent. There was no evidence offered by Respondent that the problems existed during the time that the misconduct was occurring or that these problems were directly responsible for any of his misconduct. Nor was there any evidence that any of the problems has been resolved. In the absence of such evidence, providing mitigation credit for such a vague and unconvincing passing comment is unwarranted and inappropriate. (Std. 1.2(e)(iv).)

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys.

The primary purposes of attorney 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is "not bound to follow the standards in talismanic fashion. As the final

and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' [Citations.]" (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in Standard 2.2(a), which provides: "Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

Misappropriation of client funds has long been viewed as a particularly serious ethical violation. It breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. (*McKnight v. State Bar, supra*, 53 Cal. 3d at p. 1035; *Kelly v. State Bar* (1988) 45 Cal. 3d 649, 656.)

The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar, supra*; see

*Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.)

The major mitigating factor here is Respondent's long history of practice without prior discipline. The court views that factor as generally worthy of significant credit. In this instance, however, the mitigating effect is more than offset by the serious nature of the misconduct, by the substantial harm cause by it, and by Respondent's continued attitude of denial and lack of remorse. *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 82-83.)

Disbarment has frequently been imposed on attorneys with no prior record of discipline in cases of a single misappropriation. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost \$7,900 from his law firm and was disbarred. Like here, the attorney there had sought to justify his conduct by falsely claiming a contingency fee agreement, had continued to acknowledge the impropriety of his conduct, and had made no effort at reimbursement. The Supreme Court emphasized each of these factors in ordering disbarment. In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately \$29,000 in law firm funds over an 8-month period. In *In the Matter of Blum, supra*, 3 Cal. State Bar Ct. Rptr. 170, an attorney with no prior record of discipline was disbarred for misappropriating approximately \$55,000 from a single client. In *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511, disbarment was ordered for misconduct involving misappropriation of nearly \$ 40,000 and misleading the client for a year, although the attorney had no prior discipline. (See also *In re Abbott* (1977) 19 Cal.3d 249 [criminal conviction by longtime attorney with no priors of theft of \$29,500 from client warranted disbarment].)

Respondent here misappropriated nearly \$60,000 from his client, funds that were protected from such conduct by a court order and a written stipulation signed by Respondent just days before his misappropriations commenced. He then concealed his conduct from both the

client and the court and then allowed the court to make an important ruling based on its explicit reliance on facts known by Respondent to be untrue. Respondent remains unrepentant regarding his conduct, has made no effort to return any of the funds, and sought at trial to justify his conduct by making a false claim of a contingency fee agreement. Under such the circumstances disbarment is necessary to protect the public, the courts, and the profession. (See *Chang v. State Bar, supra.*)

### **RECOMMENDED DISCIPLINE**

#### **Disbarment/Restitution**

This court recommends that **Raymond Kitlas** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

It is further recommended that Respondent make restitution to the following individual within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291): to Marietta Ruttan in the amount of \$59,900 plus 10% interest per annum from November 28, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Ruttan, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

#### **Rule 9.20**

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.<sup>11</sup>

**Costs**

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

**VI. ORDER OF INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Raymond Kitlas** be involuntarily enrolled as an inactive member of the State Bar of California effective three court days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c).)<sup>12</sup>

Dated: March \_\_\_\_\_, 2011

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>11</sup> 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.) In addition to being punished as a crime or as contempt, an attorney's failure to comply with rule 9.20 is, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

<sup>12</sup> Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)