

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 08-O-14736 (09-O-12339)
)	09-O-11664 (Cons.)
OSCAR CRUZ PARRA)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 59883)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
A Member of the State Bar.)	

I. INTRODUCTION

In this disciplinary matter, Hugh G. Radigan appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Oscar Cruz Parra did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and that he be ordered to make specified restitution.

II. SIGNIFICANT PROCEDURAL HISTORY

A. Case nos. 08-O-14736 (09-O-12339)

The Notice of Disciplinary Charges (NDC) was filed on October 6, 2009, and was properly served on respondent on that same date at his official membership records address, by

certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt indicates that the NDC was received on October 8, 2009.

On October 14, 2009, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on November 16, 2009.²

B. Case no. 09-O-11664

The NDC was filed on October 14, 2009, and was properly served on respondent on that same date at his official address, by certified mail, return receipt requested. The return receipt indicates that the NDC was received on October 16, 2009.

On October 22, 2009, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on November 30, 2009.

C. Both Cases

Respondent did not appear at the November 16, 2009 status conference. On November 18, 2009, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. The order indicated, among other things, that the cases had been consolidated and that the November 30, 2009 status conference date was vacated.

Respondent did not file a responsive pleading to the NDCs. On January 21, 2010, a motion for entry of default was filed. It had been properly served on him at his official address by certified mail, return receipt requested on January 19, 2010. The motion advised him that

¹Future references to section are to the Business and Professions Code.

²The court judicially notices its records which indicate that none of the correspondence sent to respondent by the State Bar Court was returned as undeliverable by the United States Postal Service. (Evid. C. §452, subd. (d)(1).)

minimum discipline of disbarment or significant actual suspension would be sought if he was found culpable. Respondent did not respond to the motion.

On February 18, 2010, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. The return receipt, signed by "Sari Cantero," indicates the order was received on February 22, 2010.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing on March 15, 2010. The State Bar properly served a brief on respondent at his official address on Friday, March 12, 2010. The brief, however, was not filed until Tuesday, March 16, 2010, at the San Francisco office of the State Bar Court. Accordingly, the court, on its own motion, vacates the March 15 submission date. The matter stands submitted as of March 16, 2010.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar³, rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

³ Future references to the Rules of Procedure are to this source.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 18, 1974, and has been a member of the State Bar at all times since.

B. Case no. 08-O-14736 (The Ceballos Estate Matter)

1. Facts

On January 30, 2001, respondent filed a petition for probate in the matter entitled *In the Matter of the Estate of Mary Louise Ceballos*. (Los Angeles County Superior Court, case number BP065872.) His client, Karen Blanco, was the administrator for the estate.

In early 2003, respondent informed Blanco that he could not locate two heirs of the estate, Joan and Dale Laskey. Respondent instructed Blanco to transfer \$80,369.82 from the estate's accounts (to which Blanco was the sole signatory) into his client trust account, while he tried to locate the Laskeys. Blanco did so. The court had not issued any order that the \$80,369.82 be removed from the estate's accounts as respondent instructed.

On March 3, 2003, respondent deposited the \$80,369.82 check into his client trust account (CTA). Before the deposit, the balance in the CTA was \$2,378.56 and, after, it was \$82,748.38. None of the \$2,378.56 already on deposit was related to the estate.

On March 10, 2003, the court issued an order that the estate assets of \$212,199.43 be distributed as follows: \$ 5,737.44 each to Karen Blanco and to respondent; \$40,184.91 each to Charles Ceballos, Yolanda Ceballos, Joan Laskey and Dale Laskey; \$26,803.33 to Ronald Ceballos; and \$13,381.58 to American Research Bureau.

The \$212,199.43 in estate assets were distributed as ordered from the estate's account, except for the \$80,369.82 reserved in the CTA for the Laskeys.

On March 6, 2003, respondent began issuing checks from the CTA to himself and to others not related to the estate against the \$80,369.82 belonging to the Laskeys, without the

consent or knowledge of Blanco or the Laskeys and without an order by the court in the action.

Beginning on March 6, 2003, the balance in the CTA repeatedly dipped below the \$80,369.82 that should have remained in an interest-bearing account for the benefit of the Laskeys, until the balance fell to negative \$1.50 on November 30, 2008 without any payment to the Laskeys. Respondent intentionally misappropriated \$80,369.82 for his own use and purposes.

In February 2008, respondent informed Blanco that he was still attempting to locate the Laskeys; that he asked the Daily Journal Corporation (DJC) to search for an address for them; and that he would ask the DJC to publish a notice to them if they could not be found. He also informed her that he would advise her of the outcome of these efforts.

Respondent never contacted Blanco with the status of the matter. On November 5, 2008, Blanco left respondent a telephone message asking for the status. He never contacted her with the status; never distributed \$80,369.82 to the Laskeys; never closed the action pending with the court; and essentially abandoned the matter, thereby exposing Blanco to liability for not completing her duties.

On November 12, 2008, the State Bar opened an investigation pursuant to a complaint filed by Blanco regarding allegations of misconduct by respondent in this matter. On March 17, April 7 and 17 and July 2, 2009, a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Blanco complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid.⁴ None was returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not answer them.

2. Conclusions of Law

⁴The April 7, 2009 letter was also sent to two alternate addresses for respondent in Pasadena, California and Arizona.

a. Count 1 - Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misappropriating \$80,369.82 belonging to the Laskeys. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

b. Count 2 - Rule of Professional Conduct,⁵ Rule 4-100(A)(Maintaining Client Funds in Trust Account)

Rule 4-100(A) of the Rules of Professional Conduct requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining \$80,369.82 of the estate's funds for distribution to the Laskeys in the trust account.

c. Count 3 - Rule 3-110(A) (Competence)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not contacting Blanco with the status of the matter; not distributing \$80,369.82 to the Laskeys; not closing the action pending with the court; and by abandoning the matter, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

d. Count 4 - Section 6068, subd. (i) (Not Participating in Disciplinary

⁵Future references to rule are to this source.

Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar investigator's letters of March 17, April 7 and 17 and July 2, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Blanco case in wilful violation of 6068, subdivision (i).

C. Case no. 09-O-12339 (The Bradford Estate Matter)

1. Facts

On November 4, 2003, respondent filed, in pro per, a petition for probate in the matter entitled *In the Matter of the Estate of Paul S. Bradford*. (Los Angeles County Superior Court, case no. BP082357.) Cecilio and Lourdes Jauregui were the named beneficiaries of the estate and respondent was the named executor for the estate in the decedent's will.

On December 17, 2003, the court appointed respondent as the executor for the estate.

On January 12, 2004, respondent opened an account for the estate at Citizens Business Bank with a deposit of \$164,684.93.

On June 26, 2006, respondent falsely represented under penalty of perjury in a final accounting filed with the court that he had disbursed \$35,152.05 from the account for estate-related expenses between January 16, 2004 and June 23, 2006. Specifically, respondent falsely represented that he issued check numbers 102, 107, 111, 114, 116, 117, 118, 119, 123, 124, 125, 130, 132, 133, 134, 141, 142, 159, and 176 to third parties for estate-related expenses and that the sum of the checks issued was \$14,311.45.⁶ In reality, he had issued those checks, totaling

⁶The actual estate-related expenses paid from the account between January 2004 and June 2006 was \$19,227.61. While respondent represented in his accounting that check numbers 172, 174,

\$144,006, to his accounts and to cash for his own use and purposes between February 2004 and February 2006 as follows:

Check #	Amount Represented	Actual Check Amount	Payee As Represented
102	\$1,532	\$15,000	USAA Insurance
107	\$ 56.00	\$ 5,000	L.A. Superior Court
111	\$1,795.35	\$20,000	IRS
114	\$ 705.84	\$ 5,000	Franchise Tax Board
116	\$ 953.45	\$ 5,000	IRS
117	\$ 378.93	\$10,000	Franchise Tax Board
118	\$ 236.45	\$10,006	USAA Insurance
119	\$ 435.00	\$ 1,500	USAA Insurance
123	\$ 375.00	\$ 5,000	L. A. County Tax Collector
124	\$ 561.23	\$ 5,000	L. A. County Tax Collector
125	\$ 56.00	\$ 8,000	L. A. County Superior Court
130	\$ 267.00	\$ 1,000	USAA Insurance
132	\$ 80.95	\$ 5,000	USAA Insurance
133	\$1,500	\$ 2,000	IRS
134	\$ 91.36	\$ 3,000	IRS
141	\$1,500	\$ 5,000	IRS
142	\$1,500	\$ 8,000	IRS
159	\$1,500	\$ 500	IRS
176	\$ 786.89	\$30,000	IRS
Total	\$14,311.45	\$144,006	

On October 6, 2006, respondent filed a request for payment of \$17,392.24 as his statutory compensation from the estate and of \$713.89 as reimbursement of expenses made from his personal funds. On February 22, 2007, the court ordered that these payments be made; that \$35,000 be withheld by respondent for the payment of any and all additional taxes assessed against the estate by the IRS; and that the remaining assets be distributed to the beneficiaries, including but not limited to \$80,170.24 and income trust shares and stock certificates. Respondent did not comply with the court's February 22, 2007 order by not distributing the remaining assets.

177, 179, 181, 185, 188 and 189, totaling \$1,613.31, were issued from the account for estate-related expenses, those checks did not clear the account as of December 14, 2007.

Between March 30 and September 26, 2007, respondent disbursed an additional \$7,500 from the estate account to his account, as follows: Check no. 195 for \$1,500; nos. 197 and 199 for \$2,000 each; and nos. 198 and 202 for \$1,000 each.

The ending balance in the estate account was \$232.57 on September 26, 2007 and \$196.22 on December 14, 2007.

On June 17, 2008, the beneficiaries filed a motion to compel the distribution of the estate assets; a request that the court issue and order to show cause re contempt against respondent for not complying with the court's February 22, 2007 order; and a request for an order imposing sanctions against respondent.

On August 26, 2008, during the hearing on the motion and in order to conceal his misappropriation of estate funds, respondent misrepresented to the court that the funds in question were in a bank account under his control when the funds had already been withdrawn. Respondent further represented to the court that no final disbursement was made because the IRS had not provided a release for taxes owed by the estate. Based upon respondent's representations, the court continued the hearing to November 18, 2008. Respondent received notice of the hearing.

After the August 26, 2008 hearing, the beneficiaries, the Jaureguis, learned that IRS had not sent a release because respondent had not filed a 2003 tax return for the decedent. The beneficiaries filed the 2003 tax return and paid taxes due to IRS as well as to the Franchise Tax Board. Respondent did not release to the beneficiaries the \$35,000 withheld, but not paid, for taxes.

On November 18, 2008, respondent did not appear for the hearing in the action. The court suspended respondent as the executor for the estate. Respondent received notice of the suspension.

Respondent misappropriated \$151,506 (\$144,006 + \$7,500) belonging to the estate.

On July 28, 2004, respondent represented to the court, under penalty of perjury, in an inventory and appraisal that the appraised value of the account was \$164,684.93, when he knew that the balance in the account was only \$70,259.66. This representation regarding the value of the account was misleading and was made to conceal his misappropriation of estate funds.

On June 26, 2006, respondent falsely represented to the court, under penalty of perjury, in a final account that the balance in the account as of June 23, 2006 was \$133,276.38, when he knew that the balance in the account was only \$3,355.12. He did so to conceal his misappropriation of estate funds.

On May 8, 2009, the State Bar of California opened an investigation concerning a complaint submitted by the Jaureguis against respondent regarding his handling of the estate. On July 2 and 27, 2009, a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Jaureguis' complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. None was returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not answer them.

2. Conclusions of Law

a. Counts 5 & 6 - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by misappropriating \$151,506 belonging to the estate and by making the false and misleading representations to the court on July 28, 2004, June 26, 2006 and August 26, 2008. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

b. Count 7 - Section 6068, subd. (d) (Employing Means Inconsistent with the Truth)

Section 6068, subd. (d) requires an attorney from employing, for the purpose of maintaining the causes confided to him, those means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

There is clear and convincing evidence that respondent wilfully violated section 6068, subdivision (d) by making the false and misleading representations to the court on July 28, 2004, June 26, 2006 and August 26, 2008. However, as the same facts support both this violation and the ones in count 6 above (making the false and misleading representations to the court), the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of section 6068, subdivision (d). (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155.)

c. Count 8 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not responding to the State Bar investigator's letter of July 2 and 27, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Jaureguis' complaint in wilful violation of 6068, subdivision (i).

D. Case no. 09-O-11664 (The Rodriguez Matter)

1. Facts

On December 29, 2000, respondent filed a petition for probate on behalf of his clients, Ernest and Belen Rodriguez. (*In the Matter of the Estate of Angelina Walters*, Los Angeles County Superior Court, case no. BP065460.) Belen Rodriguez was the estate's administrator.

On July 2, 2003, the court granted respondent's request that \$15,000 be withheld in his CTA for payment of any taxes that may be assessed by the IRS against the estate for a period not to exceed 18 months. The court ordered that the \$15,000 be deposited into respondent's CTA until a settlement was reached with IRS or for the period for prompt assessment which expired on May 4, 2004 and that it earn interest at the rate paid by Union Bank of California for the period that the funds were on deposit. It also ordered that at the expiration of the 18-month assessment period on May 4, 2004, a supplemental final account be filed setting forth the payment of any taxes and the request for distribution to the heirs of any sums remaining after payment of federal taxes.

On July 18, 2003, Rodriguez issued a \$15,000 check payable to respondent's CTA pursuant to the court's July 2, 2003 order.

On July 18, 2003, respondent deposited the \$15,000 check into his CTA. Before the deposit, the CTA's balance was \$25,012.38, and after, it was \$40,012.38. None of the \$25,012.38 already on deposit was related to the estate.

Without disbursing any funds to the IRS or on behalf of the estate, the balance in the CTA fell below \$15,000 as follows:

Date	Balance
02-18-04	\$10,446.24
04-23-04	\$ 5,425.18
05-05-04	\$ 4,425.18
05-06-04	\$ 3,825.18
05-18-04	\$ 2,825.18
05-21-04	\$ 1,825.18
06-01-04	\$ 1,313.98
06-04-04	\$ 713.98

On November 23, 2004, respondent deposited \$158,000 unrelated to the estate into the CTA.

On November 30, 2004, respondent filed an accounting with the court representing that the IRS was entitled to \$5,000 only and, after payment to the IRS, the balance of funds available to distribute was \$10,000. Respondent had not paid \$5,000 to IRS from the CTA.

On December 8, 2004, check number 1181 to Rodriguez for \$5,000 was paid from the CTA, leaving a balance of \$10,000 that should have remained in the CTA for the estate.

On May 2, 2005, check number 1211 to Rodriguez for \$5,000 was paid from the CTA, leaving a balance of \$5,000 that should have remained in the CTA for the estate.

Without disbursing the remaining \$5,000 belonging to the estate from the CTA, the balance in the CTA fell from \$4,425.18 on May 5, 2004 to negative \$1.50 on November 30, 2008.

Respondent intentionally misappropriated \$14,457.69 (\$15,000 - \$542.31) belonging to the estate for his own use and purposes between February 18 and August 3, 2004.

Respondent intentionally misappropriated the remaining \$5,000 belonging to the estate for his own use and purposes between May 5, 2004 and November 30, 2008.

On July 2, 2003, the court ordered that \$16,004.11 on deposit in the estate's account at Bank of America be paid to 15 heirs of the estate in equal shares of \$1,066.94.

On April 7, 2005, the court approved respondent's request for an order of final distribution of the estate's assets. Pursuant to the order, the remaining \$10,000 from the \$15,000 withheld in the CTA to pay taxes was to be paid as follows: \$5,000 to Rodriguez, and \$5,000 to be paid to the 15 heirs in equal shares of \$333.33.

In June 2007, respondent filed receipts from three heirs for the distributions of \$1,066.94.

On May 30, 2008, respondent filed a petition to excuse the filing of other receipts for final distribution of the estate assets. Respondent averred that 14 of the 15 heirs of the estate accepted their distribution of \$1,066.94 from the estate assets, but no other receipts for the

distributions were returned. Respondent also averred that one heir refused to accept the \$1,066.94 distribution.

On June 10, 2008, respondent filed notice of a hearing on his petition set for July 10, 2008. At the July 10 hearing, the court requested that respondent file copies of the negotiated checks with the court and forward a check payable to the County Treasurer for the one heir that never cashed his \$1,066.94 check. The court continued the hearing to August 7, 2008. Respondent received a copy of the minute order of July 10, 2008.

The court continued the hearing from August 7 to September 4, 2008 and from September 4 to October 2, 2008. Respondent received notice of the continuances.

On October 2, 2008, the court denied respondent's petition without prejudice. Respondent had filed no other receipts or cancelled checks with the court, including but not limited to proof of payment of the \$5,000 to the 15 heirs from the CTA.

Respondent took no further action to close the estate.

Having heard nothing from respondent about the status of the matter since June or July 2008 approximately, Ernest Rodriguez made three telephone calls to respondent's office in January 2009 on his behalf and on behalf of Rodriguez and left messages for respondent asking for the status of the matter. Respondent did not respond to the messages and did not provide the status of the matter to the Rodriguezes.

On January 30, 2009, the State Bar of California opened an investigation concerning a complaint submitted by Ernest and Belen Rodriguez against respondent regarding his representation. On April 17 and July 2, 2009, a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Rodriguezes' complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. None was

returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not answer them.

2. Conclusions of Law

a. Count 1 - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by misappropriating \$14,457.69 belonging to the estate between February 18 and August 3, 2004, and by misappropriating \$5,000 belonging to the estate between May 5, 2004 and November 30, 2008. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

b. Count 2 - Rule 4-100(A)(Maintaining Client Funds in Trust Account)

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining \$15,000 in the CTA for the estate between July 18, 2003 and August 3, 2004, and by not maintaining \$5,000 in the CTA for the estate between May 5, 2004 to November 30, 2008.

c. Count 3 - Rule 3-110(A) (Competence)

By not closing the estate, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

d. Count 3 - Section 6068, subd. (m) (Communication)

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not returning the Rodriguezes' calls regarding the status of the case, respondent did not respond promptly to their reasonable status inquiries wilful violation of section 6068, subdivision (m).

e. Count 4 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not responding to the State Bar investigator's letters of April 17 and July 2, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Rodriguezes' complaint in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁷, std. 1.2(b).)

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

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Respondent exposed Blanco to liability as administrator of the estate for not completing her duties. Courts and the public were harmed because respondent's misconduct required repeated court proceedings which unduly consumed court time and taxpayer funds.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been

⁷Future references to standard or std. are to this source.

provided no basis for finding mitigating factors other than no prior discipline in nearly 29 years of practice when the misconduct commenced, a significant mitigating factor.

C. 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 shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive; however, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.2(a) and (b), 2.3, 2.4(b) and 2.6 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful 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 one-year “minimum discipline” set forth in the standard “is not faithful to the teachings of [the Supreme] court's decisions” and “should be regarded as a guideline, not an inflexible mandate.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety.

(*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of misappropriating approximately \$251,333.51 of estate funds and engaging in other misconduct over a period of about six years. Aggravating factors include multiple acts of misconduct and harm to clients, public and the administration of justice. The sole, but very significant, mitigating factor is respondent's blemish-free discipline record in nearly 29 years prior to the commencement of the misconduct.

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because the amount misappropriated is not insignificantly small and the most compelling mitigating circumstances do not clearly predominate. (Std. 2.2(a).) The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent Oscar Cruz Parra be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is recommended that respondent make restitution to the following clients 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):

1. to Joan Laskey in the amount of \$40,184.91 plus 10% interest per annum from March 10, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Joan Laskey, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Dale Laskey in the amount of \$40,184.91 plus 10% interest per annum from March 10, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Dale Laskey, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Cecilio and Lourdes Jauregui in the amount of \$144,006 plus 10% interest per annum from February 1, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Cecilio and Lourdes Jauregui, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
4. to Cecilio and Lourdes Jauregui in the amount of \$7,500 plus 10% interest per annum from March 30, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Cecilio and Lourdes Jauregui, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
5. to the Estate of Angelina Walters, Los Angeles County Superior Court, case no. BP065460, in the amount of \$14,457.69 plus 10% interest per annum from November 30, 2008 (or to the Client Security Fund to the extent of any payment

from the fund to the Estate of Angelina Walters, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

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

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VI. 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. It is further recommended that Oscar Cruz Parra be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment be enforceable as provided for under Business and Professions Code section 6140.5.

VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June _____, 2010

PAT McELROY
Judge of the State Bar Court

