FILED SEPTEMBER 21, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **LOUIS JOHN PERKINS,** **Member No. 140056,** A Member of the State Bar.	)))))))	Case No.: **08-O-14762-PEM** (09-O-10579; 09-O-11506); **10-N-01260-PEM (Consolidated.)** **DECISION & ORDER OF INACTIVE ENROLLMENT**

I. INTRODUCTION

In this contested consolidated matter, respondent Louis John Perkins is found culpable, by clear and convincing evidence, of (1) commingling his personal funds in his client trust account; (2) moral turpitude; (3) failing to cooperate in a State Bar disciplinary investigation; (4) failing to comply with the law; (5) failing to update official State Bar address; and (6) failing to comply with California Rules of Court, rule 9.20 as ordered by the California Supreme Court on November 3, 2009.

In view of respondent's present misconduct and his two prior records of discipline, the court recommends that respondent be disbarred.

II. PERTINENT PROCEDURAL HISTORY

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated the present proceeding by filing the notice of disciplinary charges (NDC) in case number

08-O-14762-PEM (09-O-10579; 09-O-11506) on December 17, 2009, and by filing the NDC in case number 10-N-01260-PEM on March 17, 2010.

Respondent filed a response to the NDC in each case. Thereafter, the court consolidated both cases for all purposes. The trial in the consolidated matter was held on June 29, 2010. The State Bar was represented by Deputy Trial Counsel Susan Chan, and respondent represented himself. On June 29, 2010, following closing arguments, the court took the consolidated matter under submission for decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the testimony and other evidence admitted at trial.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California since that time.

B. Case Number 08-O-14762-PEM (09-O-10579; 09-O-11506)

At all times pertinent to these charges, respondent maintained a client trust account at U.S. Bank (trust account). Between July 2008 and January 2009, respondent issued at least 24 checks drawn on the trust account for his own personal expenses and not related to any client matter. These checks include, but are not limited to, the following:[1]

Date	Check #	Amount	Payee
7/1//08	1280	$ 150.00	Modesto of Stake
8/5/08	1293	1,098.00	Princeton Business Park
8/12/08	1288	82.37	AT&T
8/19/08	1299	196.91	SMUD
8/29/08	1305	250.00	Protectmarriage.com
9/12/08	1307	1,098.00	Princeton Business Park
9/13/08	1301	135.00	Superior Self Storage
10/12/08	1316	264.00	Laguna Creek III

[1] At trial, respondent stipulated that he wrote these checks.

10/10/08	1314	1,098.00	Princeton Business Park
10/25/08	1303	135.00	Superior Self Storage
11/10/08	1331	92.76	AT&T
11/10/08	1323	68.55	SMUD
1/18 /09	1345	130.00	Laguna Creek III

In addition, respondent issued the following six insufficiently-funded checks drawn on the trust account:[2]

Date	Check#	Amount	Balance
11/13/08	1323	$ 68.55	$ -264.50
11/12/08	1330	201.60	-195.95
11/12/08	1331	92.76	-195.95
11/12/08	1332	36.05	-195.95
11/17/08	1333	78.80	-343.30
1/22/09	1346	300.00	-101.30

Respondent has consistently been unauthorized to practice law in this state beginning on October 9, 2008, as follows:

1. Following the entry of respondent's default in State Bar Court case number 07-0-14812, respondent was involuntarily enrolled as an inactive member of the State Bar from October 9, 2008, through December 3, 2009. (Bus. & Prof. Code, § 6007, subd. (e).)[3]

2. Following the entry of respondent's default in State Bar Court case number 08-0-11900, respondent was involuntarily enrolled as an inactive member of the State Bar from January 17, 2009, through December 3, 2009. (§ 6007, subd. (e).)

3. In Supreme Court case number S176241 (State Bar Court case numbers 07-0-14812 and 08-0-11900) the Supreme Court suspended respondent from the practice of law for a minimum of one year beginning on December 3, 2009.

Furthermore, respondent's official membership records address, maintained by the State Bar of California pursuant to section 6002.1 from March 2000 through March 26, 2010, was 3353 Bradshaw Road, #232, Sacramento, California 95827 (Bradshaw address). On February 11, 2009, a State Bar Investigator F. Jacobs (Jacobs) wrote a letter to respondent and sent it to respondent at the Bradshaw address via the United States Postal Service, First Class Mail,

[2] At trial, respondent stipulated that these checks were written against insufficient funds.

[3] All further statutory references are to the Business and Professions Code.

postage paid. On February 18, 2009, the Postal Service returned Jacobs's February 11, 2009 letter undelivered and stamped: "Return to Sender, Not Deliverable, Unable to Forward."

Respondent lost his lease at the Bradshaw address in January 2009. As his forwarding address with the Postal Service, respondent used the address of an acquaintance. Respondent admits, however, that he did not give that forwarding address to the State Bar. Moreover, respondent admits that, after he lost his lease at the Bradshaw address, he did not apprise the State Bar of his new address or of an alternative address where the State Bar could contact him.

On May 8, 2009, Jacobs spoke with respondent at phone number (916) 857-0776. At that time, Jacobs advised respondent of the State Bar's investigation of his trust account practices. Respondent also confirmed with Jacobs that respondent knew that he was on involuntary inactive enrollment.

On May 8, 2009, Jacobs mailed (via the Postal Service with postage paid) a copy of her February 11, 2009 letter to respondent at 4005 Oak Villa Circle, Carmichael, California 95608, which is an address respondent gave to Jacobs. Even though respondent received that copy of Jacobs's February 11, 2009 letter, respondent failed to reply or otherwise respond to the investigation of his trust account practices. Respondent admits that he spoke with Jacobs in May 2009 and that he did not thereafter make any further contact with Jacobs. Respondent credibly testified that he did not contact Jacobs because respondent's "survival" was his priority and ***not*** contact with the State Bar.

Finally, in September 2009, while respondent remained on involuntary inactive enrollment, respondent advertized on the internet at his own Web site at *http://www.perkins-law.com*. At that Web site, respondent solicited and encouraged members of the public to contact "The Law Offices of Louis Perkins" for assistance and information about filing bankruptcy. Respondent admits that he had a client who had no money and, in exchange for

legal services that respondent provided to the client, the client created the Web site for respondent. Respondent also admits that the Web site's address was listed on his business cards. Respondent claims that, after the Web site was created, he never visited the site or ever got any clients from the site. In addition, respondent inaptly claims that the Web site is *not* misleading because it does not affirmatively state that respondent is an active member of the State Bar of California.

Count 1: Commingling (Rules Prof. Conduct, Rule 4-100(A))[4]

In count one, the State Bar charges that respondent willfully violated rule 4-100(A), which proscribes, inter alia, attorney misuse of trust accounts. Respondent admits that he issued the checks drawn on the trust account and identified above from July 2009 through January 2009 for his own personal expenses, not related to any client matter. When respondent deliberately used the trust account for personal purposes not related to any client concern, respondent commingled personal funds in a trust account in willful violation of rule 4-100(A) regardless of whether there were any client funds on deposit in the account at the time. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876.)

Count 2: Moral Turpitude (§ 6106)

Section 6106 provides that an attorney's commission of an act involving moral turpitude, dishonesty, or corruption constitutes grounds for suspension or disbarment. The State Bar alleges that, at the time respondent issued the six insufficiently-funded checks listed *ante*, respondent knew or should have known that there were insufficient funds on deposit to pay those checks and that by issuing those six checks against insufficient funds when he knew or should have known that there were insufficient funds on deposit to pay them, respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

[4] Except with respect to references to California Rules of Court, rule 9.20 set forth *post*, all further references to rules are to the State Bar Rules of Professional Conduct.

An attorney's *continued practice of issuing numerous checks that the attorney knows* will not be honored *because they are insufficiently funded* involves moral turpitude in willful violation of section 6106. (*Bowles v. State Bar* (1989) 48 Cal.3d 100, 109, and cases there cited.) The record here, however, fails to establish that respondent engaged in the continued practice of knowingly issuing numerous insufficiently-funded checks.

First, respondent wrote only six insufficiently-funded checks totaling a little more than $805 (four of the checks were for less that $95, and the remaining two were for only $201.60 and $300, respectively). The State Bar has not shown that respondent's six insufficiently-funded checks are "numerous" under *Bowles v. State Bar, supra*, 48 Cal.3d at page 109. Second, respondent wrote five out of the six checks during a 6-day time period in November 2008, and he wrote the sixth check some two months later in January 2009. That short of a time period does not establish a "continued practice." Third, during the relevant time periods, respondent was often homeless and did not receive his bank statements.

Furthermore, the record does not establish, by clear and convincing evidence, that respondent knew that the six checks were insufficiently funded when he wrote them. In fact, respondent credibly testified that he did not know that the six checks were insufficiently funded when he wrote them and that he believed that they were sufficiently funded. Nor does the record establish, by clear and convincing evidence, that respondent "should have known" that the six checks were insufficiently funded when he wrote them. And, even if respondent "should have known" that the six checks were insufficiently funded, the record would establish only negligence. And negligence, not even that amounting to legal malpractice, does not establish a section 6106 moral turpitude violation. (Cf. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) Even though evil intent is not necessary for a section 6106 moral turpitude violation, "some level of guilty knowledge or *at least gross negligence* is required.

[Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384, italics added.) In that regard, the State Bar has neither charged nor proved that respondent was grossly negligent.

In sum, the record fails to establish the charged section 6106 violation by clear and convincing evidence. Accordingly, count two is dismissed with prejudice.

***Count 3: Failure to Update Membership Address* (§ 6068, subd. (j))**

In count three, the State Bar charges that respondent willfully violated section 6068, subdivision (j), which requires that attorneys "comply with the requirements of Section 6002.1." Section 6002.1, subdivision (a)(1) mandates that each attorney maintain, on the official membership records of the State Bar of California, his or her current office address or, if the attorney does not maintain an office, an address to be used for State Bar purposes. In addition, section 6002.1, subdivision (a), mandates that each attorney notify the State Bar of any change of address within 30 days of the change.

The record clearly establishes that, in willful violation of section 6068, subdivision (j), respondent failed to update his official State Bar membership records address after he vacated the Bradshaw address.

Count 4: Failure to Cooperate in State Bar Investigation (§ 6068, subd. (i))

By failing to respond to the letter that Jacobs mailed to him in May 2009 or to otherwise respond to the investigation of this matter, respondent failed to cooperate in a State Bar disciplinary investigation in willful violation of section 6068, subdivision (i).

Count 5: Failure to Comply with Laws (§ 6068, subd. (a))

In count five, the State Bar charges that respondent willfully violated section 6068, subdivision (a), which requires that attorneys obey the laws of this state and of the United States. More specifically, the State Bar charges that respondent violated his duty, under section 6068,

subdivision (a), to obey the laws of this state by engaging in the unauthorized practice of law (UPL) in violation of sections 6125 and 6126.

The record clearly establishes that respondent engaged in UPL in willful violation of section 6126, subdivision (b) and that respondent thereby failed to obey the laws of this state in willful violation of section 6068, subdivision (a). On the internet in September 2009, while respondent was on involuntary inactive enrollment, respondent advertized and held himself out to the public as practicing or entitled to practice law or otherwise practicing law when he was not an active member of the State Bar of California. As noted *ante*, in May 2009, when Jacobs spoke to respondent, respondent confirmed with Jacobs that respondent was aware of his inactive enrollment status.

Count 6: False or Misleading Solicitation (Rule 1-400(D))

In count six, the State Bar charges that respondent violated rule 1-400(D), which proscribes attorney false and misleading solicitation. Specifically, the State Bar charges that respondent willfully violated rule 1-400(D) because, on the Internet in September 2009, while respondent was on involuntary inactive enrollment, respondent falsely advertised and held himself out to the public as 'Perkins Law" and encouraged members of the public to contact "the law offices of Louis Perkins" for legal assistance. Clearly, respondent's Internet advertisements were false and misleading. However, this court has already relied on respondent's false and misleading Internet advertising as a basis for finding respondent culpable of UPL under section 6068, subdivision (a) in count five *ante.* Thus, count six is clearly duplicative of count five.

The appropriate level of discipline for an act of misconduct does not depend on how many rules or statues proscribe the misconduct; therefore, it is unnecessary, if not inappropriate, to find redundant/duplicative violations. (*In the Matter of Torres, supra*, 4

Cal. State Bar Ct. Rptr. at p. 148; see also *In the Matter of Van Sickle* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 980, 992.) Accordingly, count six is dismissed with prejudice.

C. Case Number 10-N-01260-PEM

On November 3, 2009, the California Supreme Court filed a disciplinary order in case number S176241 (State Bar Court case number 07-0-14812) in which it, inter alia, placed respondent on two years' stayed suspension and one year's actual suspension that will continue until respondent files and the State Bar Court grants a motion to terminate the suspension under Rules of Procedure of the State Bar, rule 205. In that disciplinary order, the Supreme Court also ordered respondent to comply with California Rules of Court, rule 9.20 (rule 9.20) and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order.

The order became effective December 3, 2009 (i.e., 30 days after it was filed) (Cal. Rules of Court, rule 9.18(b)), and it has consistently remained in effect since that time. A copy of the Supreme Court's November 3, 2009 order was properly served upon respondent in the manner prescribed by California Rules of Court, rule 9.18(b) (i.e., at the address the attorney maintains on the State Bar's official membership records).

The deadlines for respondent to perform the acts specified in rules 9.20(a) and 9.20(c) expired on January 2, 2010, and January 12, 2010, respectively. To date, respondent has not filed a rule 9.20(c) compliance declaration with the Clerk of the State Bar Court.

In the context of rule 9.20, the term "willful" does not require bad faith or even actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) In fact, in *Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342, the Supreme Court disbarred the attorney whose failure to keep current his address on the official membership records of the State Bar of

California prevented him from learning that he had been ordered to comply with the predecessor to rule 9.20 until after the compliance deadlines had long past.

The record clearly establishes that respondent willfully violated rule 9.20(c) by failing to file a rule 9.20(c) compliance declaration.[5] (Rule 9.20(d).)

IV. LEVEL OF DISCIPLINE

A. Factors in Mitigation

Respondent did not present any evidence of mitigating factors.

B. Factors in Aggravation

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).)[6]

Respondent has two prior records of discipline. (Std. 1.2(b)(i).) Respondent's first prior record of discipline is the private reproval that the State Bar Court imposed on respondent on October 11, 1998, in case number 99-O-11091 in accordance with a stipulation that respondent entered into in that matter with the State Bar and that the State Bar Court approved on September 19, 2000. That stipulation establishes that, in 1998 and 1999, respondent commingled his personal funds in his trust account and failed to promptly notify one client of his receipt of funds belonging to the client.

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[5] In addition to charging respondent's failure to file a rule 9.20(c) compliance declaration as a willful violation of rule 9.20(c), the State Bar also charges that failure as a willful violation of his duty, under section 6103, to obey court orders requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith do or forebear. Without question, the section 6103 charge is duplicative and redundant of the rule 9.20(c) charge, which is expressly authorized by rule 9.20(d). (Cf. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.) Accordingly, the court declines to find respondent culpable of the charged section 6103 violation. (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148 ["It is generally inappropriate to find redundant charged violations. (Citations.)"].)

[6] All further references to standards are to this source.

Respondent's second prior record of discipline is the Supreme Court's November 3, 2009 disciplinary order in case number S176241 (State Bar Court case number 07-0-14812-PEM, etc.) in which it placed respondent on two years' stayed suspension and one year's actual suspension that will continue until respondent files and the State Bar Court grants a motion to terminate the suspension under Rules of Procedure of the State Bar, rule 205. The Supreme Court imposed that discipline on respondent because, in two client matters, respondent was found culpable of commingling his funds in his trust account; failing to perform legal services competently; failing to return $1,500 in unearned fees; improperly withdrawing from employment; failing to communicate with clients; making a misrepresentation to one client; and failing to cooperate with the State Bar.

Respondent's misconduct involved multiple acts of misconduct. (Std. 1.2(b)(ii).)

Harm to the public and the administration of justice is inherent in UPL. And there is no evidence in the record of any significant harm to the public or the administration of justice that is separate and apart from the harm that is inherent in UPL. Accordingly, no finding in aggravation based on such harm is appropriate. (Cf. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 203; see also *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 240 [the harm to the public and administration of justice that is inherent in the unauthorized practice of law limited the mitigation given for lack of harm].)

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. (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.) Second, the court considers relevant decisional law for guidance. (See *In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. at p. 996; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) However, it is clear that the standards do not address the appropriate level of discipline for a willful violation of rule 9.20. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295.) Instead, rule 9.20(d) does.

In relevant part, rule 9.20(d) provides that an attorney's willful failure to comply with the provisions of rule 9.20 "is a cause for disbarment or suspension and for revocation of any pending probation." Even though rule 9.20(d) provides for the sanctions of suspension and revocation of probation, caselaw makes clear that disbarment is the ordinary and appropriate level of discipline in the absence of compelling mitigating circumstances. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch, supra*, 3 Cal. State Bar Ct. Rptr. at p. 296.)

Among other things, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, cocounsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's suspension and consequent disqualification to act as an attorney. When the attorney fails to file a rule 9.20(c) compliance affidavit, this court cannot determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

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There are no mitigating circumstances, much less compelling mitigating circumstances, that would warrant a departure from the ordinary sanction of disbarment under rule 9.20(d). Furthermore, at least in the present case, disbarment under rule 9.20(d) is consistent with standard 1.7(b), which provides for the disbarment of an attorney who has two prior records of discipline "unless the most compelling mitigating circumstances clearly predominate." Notwithstanding its unequivocal language to the contrary, disbarment is not mandated under standard 1.7(b) even if there are no compelling mitigating circumstances that clearly predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Thus, even under standard 1.7(b), this court must not blindly treat all prior records of discipline as equally aggravating. Instead, this court must apply standard 1.7(b) "with due regard to the nature and extent of the respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

In addition, when considering the applicability of standard 1.7(b), this court places "great weight on whether or not there is a 'common thread' among the various prior disciplinary proceedings or a 'habitual course of conduct' which justifies disbarment. [Citation.]" (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.) Notably, in each of the three proceedings, respondent was found culpable of improperly commingling his personal funds in his trust account. Regrettably, this fact strongly suggests that respondent is, for whatever reason, either unwilling or unable to conform his conduct to the strictures of the profession.

V. DISCIPLINE RECOMMENDATION

The court recommends that respondent **LOUIS JOHN PERKINS** 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.

VI. RULE 9.20 AND COSTS

The court further recommends that Louis John Perkins 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.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that LOUIS JOHN PERKINS be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: September ___, 2010.

PAT E. McELROY
Judge of the State Bar Court