

**FILED**

AUG 24 2010

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**REVIEW DEPARTMENT OF THE STATE BAR COURT  
IN BANK**

In the Matter of

**THEODORE CARL LUEBKEMAN,**

Member of the State Bar.

**No. 10-Q-03797****RECOMMENDATION ON  
RESIGNATION**

On April 15, 2010, Theodore Carl Luebkekan, State Bar number 98836, submitted his resignation with disciplinary charges pending. In light of the grounds set forth in rule 9.21(d) of the California Rules of Court,<sup>1</sup> we recommend that Luebkekan's resignation not be accepted. We make this recommendation based on the following grounds: (1) the Hearing Department of the State Bar Court filed a default decision on July 1, 2010, recommending Luebkekan's disbarment based on his misappropriation of \$35,570 in client funds and his failure to comply with rule 9.20 as ordered in a prior discipline case; (2) Luebkekan has not repaid the misappropriated funds; (3) Luebkekan has failed to comply with rule 9.20 as required in this resignation matter; and (4) the acceptance of Luebkekan's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

**I. BACKGROUND**

Luebkekan was admitted to practice law in California on October 12, 1981, and has one prior imposition of discipline. The misconduct underlying the prior discipline involved, among other things, Luebkekan's misappropriation of \$2,200 of client funds, which he repaid. By order filed August 11, 2009, the Supreme Court suspended him from the practice of law for

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<sup>1</sup> All further references to rules are to these rules unless otherwise noted.

two years, stayed execution of the suspension, and placed him on probation for two years subject to conditions, including six months' actual suspension. (Supreme Court order S173693; State Bar Court case no. 05-0-04973.) Luebkekan was also ordered to comply with 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.

In late 2009 and early 2010, the Office of the Chief Trial Counsel (State Bar) filed disciplinary charges against Luebkekan for failing to comply with rule 9.20 as ordered in the prior discipline case, and misappropriating \$35,570 in client funds, failing to maintain client funds in trust and failing to promptly pay funds to a client. (State Bar Court case nos. 07-O-13629; 09-N-18672.) Luebkekan did not file an answer to the charges, his default was entered and he was placed on involuntary inactive status.

After his default was entered, Luebkekan filed his resignation with charges pending. On June 10, 2010, the State Bar filed a report regarding Luebkekan's resignation, recommending that it be declined. (Rules Proc. of State Bar, rule 658(b).) Luebkekan did not file a response to the report.

On June 22, 2010, as required under the resignation rules, the parties filed a stipulation to facts and conclusions of law in the pending discipline cases. (Rules Proc. of State Bar, rule 658(b).) Luebkekan admitted in the stipulation that he misappropriated \$35,570 in client funds, has not repaid any of the money and has failed to comply with rule 9.20. Notwithstanding the stipulation, the State Bar continues to recommend that the resignation not be accepted.

On July 1, 2010, the hearing judge filed her default decision in the pending disciplinary cases and recommended disbarment. It does not appear that the hearing judge's decision incorporated or relied on the stipulation. Rather, she relied on the allegations in the notices of

disciplinary charges that were deemed admitted upon the entry of Luebke­man's default. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

## **II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)**

We have considered Luebke­man's resignation in light of the grounds set forth in rule 9.21(d). Below is a summary of the relevant information as to each ground:

### **1. Whether the preservation of testimony is complete.**

Perpetuation of testimony is unnecessary since the hearing judge's July 1, 2010 decision and the June 22, 2010 stipulation cover all disciplinary matters pending against Luebke­man.

### **2. Whether Luebke­man committed the unauthorized practice of law after he submitted his resignation.**

The State Bar reports that there is no evidence that Luebke­man continued to practice law or that he held himself out as entitled to practice law since he tendered his resignation.

### **3. Whether Luebke­man performed the acts specified by rule 9.20(a)-(b).**

The State Bar reports that it has no "direct evidence" showing whether Luebke­man performed the acts required by rule 9.20(a)-(d) after the filing of his resignation. However, the State Bar notes that past experience has demonstrated that if Luebke­man did not perform the required acts, his clients, opposing counsel or the courts would have notified the State Bar. It has not received any such complaints.

### **4. Whether Luebke­man provided proof of compliance with rule 9.20(c).**

Luebke­man did not file the affidavit of compliance with rule 9.20 in this resignation matter and the time to do so has expired.

### **5. Whether the Supreme Court has filed a disbarment order.**

The Supreme Court has not filed a disbarment order.

**6. Whether the State Bar Court has filed a decision recommending disbarment.**

On July 1, 2010, the Hearing Department of the State Bar Court filed a decision in the pending disciplinary matters recommending Luebkehan's disbarment.

**7. Whether Luebkehan previously resigned or has been disbarred and reinstated to the practice of law.**

Luebkehan has not previously resigned or been disbarred.

**8. Whether Luebkehan entered stipulation with the State Bar as to facts and conclusions of law regarding the pending disciplinary matter.**

Luebkehan entered into a stipulation to facts and conclusions of law regarding the pending disciplinary matters, which was filed on June 22, 2010.

**9. Whether the acceptance of Luebkehan's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.**

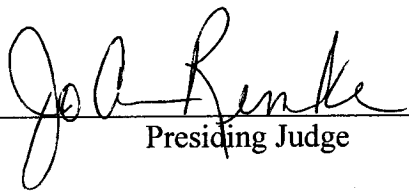
We find that the acceptance of Luebkehan's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession. As set forth in the hearing judge's decision recommending disbarment, and as Luebkehan admitted in the stipulation, he committed serious professional misconduct by misappropriating over \$35,000 from his client and by failing to comply with rule 9.20. Further, Luebkehan has not repaid any of the misappropriated funds and has again violated rule 9.20 by failing to file his affidavit of compliance with the rule in this resignation proceeding. Each of these acts of misconduct alone warrants disbarment in all but the most extenuating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656 [misappropriation generally warrants disbarment unless clearly extenuating circumstances are present]; *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [disbarment is generally appropriate sanction for willful violation of rule 9.20].)

We also find the timing of Luebke's resignation to be troubling. He did not file his resignation until after his default had been entered in the pending discipline cases and did not stipulate to his misconduct until shortly before the hearing judge's decision was filed. The Supreme Court has declined to accept an attorney's resignation where the pending misconduct warranted disbarment and the resignation was tendered at the last minute. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 103, fn. 5.)

The legal profession is harmed immeasurably by an attorney's unexplained and unreimbursed theft of over \$35,000. As the Supreme Court has often stated, misappropriation of client funds is a grievous breach of an attorney's professional ethics that not only harms the individual client, but also endangers public confidence in the legal profession. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128.) To allow Luebke to resign under these circumstances would undermine public confidence in the disciplinary system and the legal profession.

### III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Theodore Carl Luebke, State Bar number 98836.

  
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Presiding Judge

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 24, 2010, I deposited a true copy of the following document(s):

**RECOMMENDATION ON RESIGNATION FILED AUGUST 24, 2010**

in a sealed envelope for collection and mailing on that date as follows:

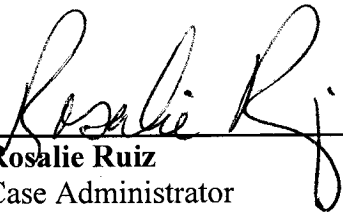
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**THEODORE C. LUEBKEMAN**  
**2701 DIEKAMP FARM TRL**  
**SAINT CHARLES, MO 63303**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**SUSAN CHAN, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 24, 2010.

  
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**Rosalie Ruiz**  
Case Administrator  
State Bar Court