FILED SEPTEMBER 12, 2012

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: **11-O-14208, 11-O-15070-DFM**
RENE WILLIAM SANZ,	)	**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**
Member No. 175351,	)	

A Member of the State Bar.

INTRODUCTION

Respondent Rene William Sanz (Respondent) is charged here with nine counts of misconduct, involving two different client matters. The counts include allegations of willfully violating (1) rule 4-100(A) of the Rules of Professional Conduct[1] (failure to deposit client funds in trust account) [two counts]; (2) rule 4-100(B)(4) (failure to pay client funds promptly); (3) section 6106 of the Business and Professions Code[2] (moral turpitude - misappropriation) [two counts]; (4) rule 3-110(A) (failure to act with competence) [two counts]; (5) section 6106 (moral turpitude – false statement); and (6) rule 3-700(D)(2) (failure to return unearned fee).

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct.

[2] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

Respondent has stipulated to many of the underlying facts and to culpability for three of the nine counts. The court finds culpability and recommends discipline as set forth below.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on March 7, 2012. On April 6, 2012, Respondent filed his response to the NDC. The response admitted many of the underlying facts but denied culpability for all of the nine counts.

On April 18, 2012, the initial status conference was held in the case. At that time the case was scheduled to commence trial on June 12, 2012.

On June 8, 2012, this court entered an order trailing the actual commencement of trial until June 13, 2012, due to the fact that this court would be engaged on June 12 in conducting a previously scheduled trial. Trial was then commenced on June 13 and completed on June 15, 2012. The matter was submitted at that time. The State Bar was represented at trial by Deputy Trial Counsel Anthony J. Garcia. Respondent was represented at trial by Michael E. Wine.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the extensive stipulation of undisputed facts filed by the parties, the concession of culpability by Respondent to certain of the counts at trial, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 12, 1994, and has been a member of the State Bar of California at all times since that date.

Background Regarding Respondent's Relationship with Nancy De Duling

The charges in this matter generally arise out of Respondent's actions in allowing Nancy De Duling to operate an office in his name with little or no supervision by Respondent. Ms. De

Duling is not an attorney but instead had operated a translation and interpreting business in the San Fernando Valley for a number of years.

Respondent was primarily a criminal defense attorney, who was anxious to have access to clients and business in the San Fernando Valley. In 2009 he reached some sort of a general agreement with De Duling whereby he would open a law office in Van Nuys utilizing the office in which De Duling was already operating her own business and using De Duling and her employees to run his business. Signs stating that the office had become the Law Offices of Rene W. Sanz & Associates were posted on the premises; De Duling was provided with letterhead and business cards indicating that she was employed by Respondent as his bilingual paralegal; and she was given authority to sign up new clients, handle matters on behalf of those clients, and accept money from them.

De Duling and her employees answered the phone for Respondent's office and acted as though they were working for him. When prospective clients came into the office, they would be interviewed by De Duling, who would also obtain a relevant history and then accept individuals as Respondent's clients by having those individuals sign a fee agreement on Respondent's behalf. De Duling was also authorized by Respondent to take in money from the clients and to issue receipts for the funds. De Duling continued to run her own business out of the same office.

Respondent's principal interest in opening the San Fernando Valley office was to generate criminal defense clients for himself. Because prospective clients in that geographic area were frequently Spanish-speaking, Respondent viewed De Duling, who was bilingual and operated a translation service, as a potentially lucrative source of business.

De Duling had been conducting short sales, foreclosure avoidance, and loan modification work for a number of years. Respondent had very little interest in becoming personally involved in those types of cases. Nonetheless, he regarded them as a potential good source of future

criminal defense work. As a result, he authorized De Duling to accept such clients in the name of his law firm. Respondent looked primarily to De Duling to handle such matters – with little or no supervision or involvement by him. Adding to De Duling's near-complete autonomy in Respondent's office was the fact that Respondent came into the office only 1-3 times a week, if at all, because of his busy criminal defense court calendar.

After Respondent's new office was up and running, Respondent did little to nothing in the way of auditing how client files and client money were being handling, leaving such issues almost exclusively to De Duling. Although he had indicated that there were some procedures that he wished De Duling and her people to follow, he exercised little or no diligence in seeing whether those procedures and safeguards were actually being followed. As will be set out in greater detail below, they were not.

As will be discussed below, Respondent's lack of supervision of the Van Nuys office continued even after he started receiving complaints by clients about how their matters were being handled, including allegations that their funds were being mishandled, requests for an accounting, and demands that funds be returned. When clients demanded that he personally meet or discuss with them the status of their matters, he too frequently responded by ignoring the requests or referring the inquiries to De Duling. Somewhat incredibly, Respondent continued to allow De Duling to continue using his name and letterhead even after the disciplinary charges were filed in this matter, alleging significant misconduct and misappropriation by De Duling, including falsification of a court document. (See, e.g., Exh. B-1.)

Against that general backdrop, the court now turns to discuss the specific allegations asserted in the two client matters involved in the pending disciplinary proceeding.

Case No. 11-O-14208 (Rivota/Nixon Matter)

On or about September 16, 2009, Lisa Rivota (Rivota) and Ryan Nixon (Nixon) went to

the Law Office of Rene Sanz, located at 6323 Van Nuys Boulevard, Van Nuys, CA to hire an attorney to modify their home loan. At Respondent's office, Rivota and Nixon met with Nancy De Duling (also known as Nancy Cueva), a non-attorney. During the meeting, which did not include Respondent, Rivota and Nixon hired Respondent to modify their home loan and agreed to pay $2,500 in advance legal fees for Respondent's legal services. That same day, Rivota and Nixon delivered $1,500 to De Duling as partial payment for the legal fees.

When Rivota and Nixon met with De Duling, their lender was Bank of America. Their monthly mortgage payment was $3,119.12, and they were already two months in arrears. De Duling advised Rivota and Nixon that they should seek to have the loan reduced to approximately $2,400 and directed them to begin delivering their monthly mortgage payments to De Duling in the amount of $2,400, rather than make payments directly to the bank. Rivota and Nixon were advised that this tactic would assist Respondent's office in securing a loan modification by the bank.

Between October 2, 2009, and February 16, 2011, Rivota and Nixon delivered a total of $38,400 to Respondent's law office as follows:

Date	Amount	Payee
10/02/2009	$2,400.00	Rene Sanz or N. Cueva
11/11/2009	$2,400.00	Rene Sanz or Nancy Cueva
12/15/2009	$2,400.00	Rene Sanz or Nancy Cuervas [sic]
01/25/2010	$2,400.00	Rene Sanz or Nancy Cueva
02/28/2010	$2,400.00	Rene Sanz or Nancy Cueva
03/15/2010	$2,400.00	Rene Sanz or Nancy Cueva
04/09/2010	$2,400.00	Rene Sanz or Nancy Cueva
05/24/2010	$2,400.00	Rene Sanz or Nancy Cueva
06/15/2010	$2,400.00	Rene Sanz or Nancy Cueva
08/01/2010	$2,400.00	Rene Sanz or Nancy Cueva
09/01/2010	$2,400.00	Rene Sanz or Nancy Cueva
10/01/2010	$2,400.00	Nancy Cueva or Rene Sanz
11/01/2010	$2,400.00	Rene Sanz or Nancy Cueva
12/01/2010	$2,400.00	Rene Sanz or Nancy Cueva
01/01/2011	$2,400.00	Rene Sanz or Nancy Cueva
02/16/2011	$1,800.00	Rene Sanz or Nancy Cueva

Date	Amount	Payee
02/16/2011	$600.00	[cash]
TOTAL	**$38,400.00**	

Each of the monthly payments from Rivota and Nixon, except one, was made by issuing a check in the amount of $2,400 payable to Rene Sanz or Nancy Cueva. The payment for the month of February 16, 2011, was made by a combination of a check in the amount of $1,800 and $600 cash. Rivota and Nixon delivered each monthly payment to De Duling, aka Cueva. Respondent's law office received each monthly payment listed in the preceding chart.

Each check that Rivota and Nixon delivered to Respondent's law office was cashed. None of these funds were deposited into Respondent's client trust account (CTA).

On July 16, 2010, a letter was sent by Respondent's office to Rivota and Nixon, reporting that efforts were being made by Respondent's office to secure a loan modification for them. This letter was on Respondent's stationary and was signed by "Nancy C. De Duling for RENE W. SANZ, ESQ." The letter began with the line, "Attached please find a copy of the letter and the receipt of the US Express Mail we sent Bank of America on the date agreed." The attached letter purported to be a letter on Respondent's letterhead to the Bank of America, confirming a conversation of July 1, 2010, with a representative of the Home Retention Department, requesting consideration of a loan modification, and forwarding a good faith payment of $2,400. This letter was also signed by De Duling, as "Bilingual Paralegal" for Respondent.

Rivota and Nixon continued to make payments to Respondent's office for the balance of 2010 and into 2011, believing that efforts were continuing to secure the desired loan modification. In the interim, the Bank of America was moving forward with pending foreclosure efforts against their home.

During the early part of 2011, when no loan modification had yet been formalized, Rivota and Nixon began to become increasingly uncomfortable with the situation. They made a number

of efforts to discuss their case with Respondent, by asking that De Duling schedule a meeting for them with Respondent and by seeking to contact him directly by phone. None of these efforts were successful.

On or about April 1, 2011, De Duling sent an e-mail to Rivota and Nixon, stating that De Duling had spoken to Bank of America regarding their loan modification and that she (De Duling) had offered the bank a "considerable lump sum payment for the arrearages" to help finalize the loan modification. De Duling told Rivota and Nixon that she did not mention "the amount of $38,000 because they might ask for less." Based on De Duling's e-mail, Rivota believed that Respondent was holding $38,400 of Rivota and Nixon's money in Respondent's CTA and that Respondent was prepared to deliver their money to Bank of America. In fact, none of Rivota and Nixon's money was being held in a trust account or any other place.

On or about April 16, 2011, De Duling sent an e-mail to Rivota and Nixon. In the e-mail, De Duling stated that Bank of America would accept the total of Rivota and Nixon's funds that were being held by De Duling and/or Respondent. Specifically she said "they will be happy to take the total sum we are holding of your funds." In the same e-mail, De Duling assured Rivota and Nixon that they can have their money back if they terminate Respondent's employment. Based on De Duling's communication, the clients continued to believe that Respondent was holding $38,400 of their money and that Respondent would be able to return those funds to them if they fired him. In fact, none of Rivota and Nixon's money was being held in a trust account or any other place.

On April 27, 2011, Nixon and Rivota sent by certified mail a lengthy letter to Respondent, addressed to his Wilshire Boulevard office address in Los Angeles (rather than the Van Nuys address). In this letter they complained of Respondent's lack of involvement in the case and urgently requested a meeting with him because their home was now scheduled to be

sold on May 18-20, 2011. In this letter, they provided a lengthy history of what they understood had happened on their matter over the prior 18 months:

> We have a case with your firm and have been working with Nancy Cueva De Duling on a Loan Modification and Bankruptcy case. We have had some serious concerns regarding our case as we have been in this process for 18 months and a Foreclosure with Bank of America [is] looming.
>
> We have been attempting to speak to you for approximately two months with no results. We have not been given the opportunity to meet with you either. We have made numerous, and I do mean numerous phone calls to each of your offices asking to be able to meet with you and only being met with a response that you are very busy in court and they will have you call us.
>
> To date, we have not been able to speak to you. When we began this process with Nancy a year and a half ago, we were not aware that she was not a partner with your firm, only a paralegal. This was an error on our part for not properly investigating this, however, we were told that for a loan modification we would provide a check to your firm in the amount we feel that we can pay to our lender on a monthly basis and in turn your firm would send a check from your firm to Bank of America. We were told that if the bank cashed the check then our modification would have been approved. When our modification was denied based on our income, 16 months later, we were told we could try for another program.
>
> We moved forward with this and in turn received a notification of default and a sale date for our home. We consulted with Nancy Cueva and she said the only way we can save the home would be a Bankruptcy (Chapter 13). We agreed that we would move forward with that in order to save our home. The fee was paid and the case was filed on an emergency basis per Nancy. She then asked to meet to get paperwork together and sign them. I called to set up a time and my call was not returned for three days. At that point we needed to file an extension to the court because the credit counseling requirement wasn't met within the time allowed. Nancy said she would be doing that portion for some reason. She asked me to sign a form and fax back to her to attach to the extension request.
>
> We were then told that the case was dismissed due to a miscommunication in the court. Nancy said that because Bank of America had sent us a new statement only asking for the amount we requested in our modification, we didn't really need to go forward with the Bankruptcy if we chose not to. Now we have hired your firm to handle this modification as we do not know the laws regarding the modification and required legal guidance to get through this. Upon hearing that we didn't need to go forward with the bankruptcy we chose to keep the option open as Nancy said we could and only revert back to that process if necessary.
>
> Now we are getting "sale dates" on our home and Nancy has been out of the country for close to two months and we have nobody communicating with us. One of our concerns is that Nancy has stated that Bank of America doesn't know you have $38,400.00 of our

> money that we have paid in good faith toward our mortgage. We are concerned that this has put us in a bad place to get the modification completed. At this point the bank does not know the bankruptcy has been dismissed so the case is still in that department and they will not communicate with us directly. You can understand why we do not want to tell them about the dismissal, we would like to avoid the sale of our home. We keep hearing that it's expected that a package will come with a modification, however, we have been hearing that for 18 months.
>
> When we have spoken to Nancy or E-mailed her regarding meeting with you, she becomes explosive and seems to take the request personally. Where do we go from here if we are unable to speak to you and resolve this issue?
>
> We are requesting a meeting with you by this certified letter as it has become ridiculous with calling your offices with no response. We want to meet with you in person to discuss this matter as soon as possible. (Exh. 9, pp. 1-3.)

Respondent received this letter. Despite the information that it conveyed regarding the activities of De Duling, the clients' complaints and concerns, the pendency of a foreclosure sale on their home, and the continued (and now urgent) requests to meet with him personally, he made no effort to contact them. That was true even though he discovered, upon investigation, that De Duling had taken the clients' file out of his office.

On May 9, 2011, and again on or about May 23, 2011, Rivota and Nixon sent certified letters to Respondent, complaining about his failure to respond to their certified request for a meeting, concluding that he had abandoned their case, notifying Respondent that they were terminating his employment, and demanding that he return within 10 days the $38,400 in funds that he was supposed to be holding on their behalf. (Exh. 9, pp. 4-6.)

Respondent received the May 9 letter on May 11 and "flipped his lid." De Duling was initially unavailable, and he knew that he did not have the clients' money. However, he still did not seek to contact the clients. Instead, he waited to discuss the matter with De Duling. When she assured him that everything "was good", he took no further steps to follow up on the matter, including failing to return the clients' money to them.

On or about July 7, 2011, Bank of America returned a check to Rivota and Nixon in the

amount of $2,400 that it had previously received. The check was issued from Respondent's general account maintained at Citibank and was dated July 14, 2010.

Rivota and Nixon lost their home as a result of the foreclosure action, including all of the equity that they had built up in it. Given the loss of their equity and the negative impact of the botched transaction on their credit, they do not believe that they will ever be able to purchase another home. They are now living in a trailer inherited from Rivota's mother.

To date, only $26,400 of the $38,400 that Rivota and Nixon gave to Respondent's office has been returned to them by either De Duling or Respondent.

Rivota and Nixon then filed a complaint with the State Bar. In response to an inquiry by a State Bar investigator, Respondent sent a letter to the State Bar on November 21, 2011, claiming that all of the funds paid by Rivota and Nixon to his office had been turned over to the Bank of America.[3] As proof of that fact, he provided copies of two cashier's checks, one for $7,600 and the other for $9,600. The checks purported to have been purchased by Nancy Cueva, were both made payable to the Bank of America, and referenced the Rivota and Nixon loan. (Exh. 12.) Both checks have now proven to be forgeries. Respondent testified that they were given to him by De Duling. At the time of the trial, he had still not reported her to the police.

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

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account. The failure of a member to maintain in a client trust account funds received and held for the client constitutes a basis for discipline.

Over a period of one year and four months, De Duling, on behalf of Respondent, received

[3] In this letter, Respondent also took credit for the legal work purportedly done on behalf of Rivota: "I filed her bankruptcy to protect her house. I successfully negotiated her mortgage down to the amount they requested: $2,400.00. As far as I know, they are still living in the house that we worked so hard to save for them." The letter is dated November 21, 2011. The foreclosure sale of Rivota and Nixon's home took place on November 14, 2011. (Exh. 10, p. 1.)

and negotiated 16 checks, and accepted six hundred dollars in cash from Rivota and Nixon. None of these funds were deposited into Respondent's client trust account (CTA).

Respondent stipulated at trial, and this court finds based on clear and convincing evidence, that Respondent's failure to have the Rivota/Nixon funds deposited and maintained in a client trust account constituted a willful violation by him of rule 4-100(A). [4]

Count 2 - Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive.

As noted, Rivota and Nixon demanded in a letter to Respondent on May 9, 2011, that their $38,400 in entrusted funds be returned by Respondent to them within 10 days. He did not do so. Although $26,400 of the $38,400 has slowly been returned to them over time, $12,000 remained outstanding, and long overdue, at the time of the trial of this matter.

Respondent argues that he cannot be found culpable of a violation of rule 4-100(B)(4) because the funds were not in his possession at the time that the demand for a refund was made. That contention is without merit. The funds were delivered by Rivota and Nixon to a designated representative of Respondent's law office, who had both apparent and actual authority to receive money on Respondent's behalf from his clients. Respondent was aware of the clients. His presentation to the State Bar, without protest or disavowal, of cashier's checks purportedly purchased by De Duling and forwarded to the Bank of America to pay the Rivota/Nixon loan shows that he was aware that De Duling was receiving and handling funds entrusted by those

[4] 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.)

clients. Since the return of the funds has been returned, Respondent has purportedly been coordinating with De Duling to get the funds returned. While Respondent testified that none of De Duling's actions were known or approved by him, that testimony was not persuasive. He acknowledged being aware on at least one occasion prior to the Rivota/Nixon problem that De Duling was handling and mishandling client funds. Further, although he now claims that she apparently stole the money for her own purposes, he has neither reported her to the police nor filed any civil action against her. Instead, he has allowed her to continue to operate under the auspice of his office, including continuing to send communications using his letterhead, even after the disciplinary charges in this matter were filed.

Under the circumstances present here, the funds entrusted by Rivota and Nixon to Respondent's office are deemed to be within his possession for purposes of the rule 4-100(B)(4) requirement that he promptly refund those funds on request. When that request has been made, as here, and not honored, it constituted a willful violation by Respondent of his obligation under rule 4-100(B)(4). (See, e.g. *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 328-330; *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 479.)[5]

Count 3 - Section 6106 [Moral Turpitude – Misappropriation]

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.) An attorney's non-deliberate breach of a fiduciary duty to a client involves moral turpitude if the breach occurred as a result of

[5] See footnote 4, above.

the attorney's gross negligence. (*Id.*, citing *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020; *In the Matter of Rubens, supra,* 3 Cal. State Bar Ct. Rptr. at p. 478.)

While the evidence does not show that Respondent acted dishonestly in allowing the Rivota/Nixon funds to be misappropriated, the evidence is more than clear and convincing that he was grossly negligent in allowing the misappropriation to occur. The evidence established, and Respondent did not contest in his response to the NDC, that "Respondent knew or should have known that Rivota and Nixon were delivering funds to the Law Office of Rene Sanz and that De Duling was accepting the funds from Rivota and Nixon." (NDC, ¶ 24; Response, ¶ 26.) These payments were being made over a 16 month period. Respondent was aware that Rivota and Nixon had become his clients during that time and yet he made no attempt either to meet with them, supervise the work being done, or to audit the handling of their affairs and funds. The fact that this work on Respondent's behalf was known by Respondent to being performed by a non-attorney makes his lack of attention to the file particularly unjustified. Then, when the clients were seeking to discuss with Respondent their complaints about the handling of the file, he chose not to respond to their inquiries, conduct any independent audit of the situation, or even to return their calls.

It has long been settled that an attorney may not turn his practice over to others, bury his/her head in the sand, and then successfully claim ignorance as an defense to the consequences of the misconduct that was perpetrated by those other individuals in the name of or under the auspices of the attorney. (See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 100; *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 635; *In the Matter of Blum, supra,* 4 Cal. State Bar Ct. Rptr. at pp. 410-411; *In the Matter of Rubens, supra,* 3 Cal. State Bar Ct. Rptr. at p. 478; *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635.) Respondent's indifference to the manner in which

De Duling was conducting a law practice in his name constitutes clear and convincing evidence of at least gross negligence on his part and an act of moral turpitude, in willful violation of section 6106.

Count 4 - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

In this count the State Bar charges that Respondent's failure to supervise De Duling's handling of the funds being entrusted to his office constituted a willful violation by him of rule 3-110(A). This court agrees. (See *In the Matter of Malek-Yonan, supra*, 4 Cal. State Bar Ct. Rptr. at p. 632.)[6]

Case No. 11-O-15070 – Payran/Tenorio

On or about December 21, 2010, Nissan Financial Corporation (Nissan) repossessed a car belonging, in title, to Angel Payran Tenorio (Angel). Angel signed for the car loan, but Hilario Tenorio (Hilario) made the loan payments and drove the car as his own.

On or about December 24, 2010, Hilario hired Respondent through De Duling to help him recover his car. Hilario agreed to pay $500 to Respondent as advance fees for his legal services. Hilario paid Respondent $250 as partial payment of the advance fee.

On or about December 24, 2010, De Duling, as Respondent's agent, told Hilario to deliver $2,000 to Respondent's office. Hilario understood that he was giving Respondent money so that Respondent's office would forward the money to Nissan to pay for Hilario's arrearages and to pay a repossession fee.

On or about December 24, 2010, Hilario delivered $2,000 to Respondent's law office. De Duling accepted the $2,000 from Hilario but it never deposited into Respondent's CTA. Nor

[6] See footnote 4, above.

was any of this money ever delivered to Nissan on Hilario's behalf.

On or about December 29, 2010, De Duling, Respondent's agent, told Hilario to deliver another $1,000 to Respondent's office. Hilario understood that he was giving Respondent money to forward to Nissan to pay for Hilario's arrearages so that he could recover his car.

On or about December 29, 2010, Hilario delivered another $1,000 to Respondent's law office. De Duling accepted the $1,000 from Hilario but it never deposited into Respondent's CTA. Nor was any of this money ever delivered to Nissan on Hilario's behalf.

In or about January 2011, Hilario called Respondent's office to say that Nissan was continuing to make collection calls to him.

In or about February 2011, Hilario spoke to someone at Respondent's office who told him to come to Respondent's office to pick up some papers. Hilario went to Respondent's office and there was given an Application for a Writ of Possession (Application). The Application bore a court stamp indicating that it had been filed on February 10, 2011.

In or about April 2011, Hilario learned that Respondent had not filed a lawsuit against Nissan on his behalf and that the court stamp on his Application had been falsified. He then tried repeatedly, but unsuccessfully, to talk with Respondent about the situation.

On or about June 10, 2011, Hilario sent a letter to Respondent demanding that Respondent refund Hilario's $3,250. Respondent eventually returned the $3,000 to Hilario, but not until on or about January 19, 2012.

Respondent did not perform any work for Hilario that was of any value to Hilario. Therefore, Respondent did not earn any of the advance fees that Hilario had paid him.

In or about April 2011, and through on or about June 10, 2011, Hilario effectively terminated Respondent's employment when he demanded that Respondent return the money that Hilario had delivered to him to settle his repossession matter with Nissan.

Count 5 - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." In this count, the State Bar alleges that Respondent willfully violated rule 3-110(A) by not delivering the $3,000 to Nissan to help Angel recover his car and by not filing a lawsuit against Nissan.

Respondent stipulated at trial, and this court finds based on clear and convincing evidence, that Respondent's actions and inaction, as discussed above, constituted a willful violation by him of his duties under rule 3-110(A).

Count 6 - Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

Respondent stipulated at trial, and this court finds based on clear and convincing evidence, that Respondent's failure to have Hilario's $3,000 deposited into a client trust account constituted a willful violation by him of his duties under rule 4-100(A).[7]

Count 7 - Section 6106 [Moral Turpitude – Misappropriation]

In this count the State Bar alleges, *inter alia*, that Respondent's failure to see that the funds entrusted to his office by Hilario were deposited and maintained in a client trust account constituted an act of moral turpitude.

As discussed fully in the discussion of Count 3 above, this court finds that Respondent was grossly negligent in failing to supervise the handling of client funds entrusted to his office and subsequently mishandled by De Duling. This failure to supervise resulted in De Duling being able to misappropriate the funds entrusted to Respondent's office by Hilario. Respondent's office represented Hilario and held his funds for more than a year before Hilario demanded that they be returned. During that time Respondent had both the opportunity and the duty to oversee his office's handling of Hilario's file and money. As discussed above,

[7] See footnote 4, above.

Respondent's indifference to the manner in which De Duling was treating the funds of his clients, including those of Hilario, constituted an act of moral turpitude, in willful violation of section 6106.

Count 8 - Section 6106 [Moral Turpitude – False Statement]

In this count, the State Bar alleges that "Respondent and/or his employees placed a falsified court stamp on the Application for a Writ of Possession in order to deceive Angel" and falsely represented to the client that a lawsuit had been filed and that a court date was scheduled. It further alleges that Respondent knew, or was grossly negligent in not knowing, that these false statements were being made by his employees, in willful violation of the prohibition of section 6106 against acts of moral turpitude.

There was no evidence that Respondent had any direct involvement in the alleged false statements. Hilario testified that he never met Respondent and that all of the false representations were made instead by De Duling or others in that office. Nor is there any evidence that, at the time of the misrepresentations to Hilario, Respondent was aware of any prior misrepresentations by De Duling or other individuals in his Van Nuys office.

While this court has concluded that Respondent was grossly negligent in failing to supervise and monitor his office's receipt and handling of client funds, it reaches a different conclusion with regard to (1) whether he was grossly negligent in failing to prevent De Duling from lying to the client on the one occasion and (2) whether that failure constituted an act of moral turpitude.

This count is dismissed with prejudice.

Count 9 - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent has stipulated that in or about April 2011, and through on or about June 10, 2011, his employment was effectively terminated. It is also undisputed that Respondent did not perform any work for Hilario or Angel that was of any value and that Respondent did not earn any of the advance fee that had been paid to him.

An attorney may not retain advanced fees if minimal services performed are of no value to client. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424.) Respondent's failure to return to Hilario the advance fee that had previously been paid by Hilario constituted a willful violation by him of his obligation under rule 3-700(D)(2).

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).)[8] The court finds the following with respect to alleged aggravating factors.

Multiple Acts/Pattern of Misconduct

Respondent has been found culpable of eight counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Harm to Client

Respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).)

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

[8] All further references to standard(s) or std. are to this source.

No Prior Record

Respondent had practiced law in California for approximately 15 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is a significant factor in mitigation. (Std. 1.2(e)(i); *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 350; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589; cf. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 520; *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [mitigating weight of such a long period of discipline-free service does not rule out possible disbarment in appropriate case].)

Good Character

Respondent presented good character testimony and declarations from family members, a former client, and several attorneys regarding his good character. The State Bar concedes, and this court finds, that Respondent is entitled to mitigation for this good character evidence. (Std. 1.2(e)(vi).)

Remorse/Recognition of Wrongdoing

The court declines to find remorse as a mitigating factor here. While Respondent did express remorse during his testimony in this matter, he did so months after his misconduct had occurred and only as the case was going to trial. Further, while Respondent acknowledged some culpability for his misconduct during the trial of this matter, that acknowledgement came only at the time of trial, did not encompass all of the allegations of misconduct, and occurred only after Respondent had previously formally denied all culpability in the case. Under such circumstances, remorse is not an appropriate mitigating factor. (Std. 1.2(e)(vii); *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. at p. 519.)

Cooperation

Respondent entered into an extensive stipulation of facts and belatedly admitted culpability to some, but not all, of the counts in this matter. For such conduct Respondent is entitled to some mitigation. (Std. 1.2(e)(v); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable]; cf., *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts "very limited" where culpability is denied].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but 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, this 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.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 20 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) 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.)

The State Bar contends that disbarment of Respondent is called for by both the case law and the standards and that such is necessary to protect both the public and the profession. This court agrees.

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. Here, that would be the sanction set forth in standard 2.2.(a). Standard 2.2(a) 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."

Turning to the case law, misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation 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* (1991) 53 Cal.3d 1025, 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*, 45 Cal.3d 649, 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977)

19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) 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 *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also *In the Matter of Blum, supra,* 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately $55,000 from a single client]; *In the Matter of Spaith, supra,* 3 Cal. State Bar Ct. Rptr 511 [misappropriation of nearly $40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State Bar, supra,* 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

Respondent's conduct, in allowing a non-attorney to operate a law office in his name but without his active supervision, reflected an unacceptable indifference by him to complying with important obligations under the Rules of Professional Conduct which serve to safeguard the public. That indifference was further reflected in his response to his clients beseeching him to become personally involved in protecting them from future harm. Instead of stepping up, he failed to return their calls, respond to their letters, or take steps to investigate and take over the handling of their cases.

Having put De Duling into a position in which she could easily steal from the unwary members of the public who relied on an attorney's obligation to safeguard their clients' money, Respondent continued to defend, rather than investigate, her actions, even both his clients and the State Bar were raising issues about them.

Respondent's claim of ignorance is not "bliss" in this case; it is intolerable. The future protection of the public and the profession require that he be disbarred from the practice of law.

RECOMMENDATION

Disbarment

The court recommends that respondent **RENE WILLIAM SANZ,** Member No. 175351, 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.

Restitution

It is further recommended that Respondent make restitution to the following former 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 5.136): (1) to Hilario Tenorio in the amount of $250.00, plus 10% interest per annum from December 24, 2010 (or to the Client Security Fund to the extent of any payment from the fund to the Staton Trust, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and (2) to Lisa Rivota and Ryan Nixon, jointly, in the amount of $12,000.00, plus 10% interest per annum from May 9, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Elias, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **RENE WILLIAM SANZ,** Member No. 175351, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(d)(1).)[9]

Dated: September _____, 2012

DONALD F. MILES
Judge of the State Bar Court

[9] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also 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. (*Ibid*.) 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.)