FILED JULY 29, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 12-O-11308, 12-O-11434, 12-O-16251-DFM**
EUGENE DUKJOON KIM, Member No. 194100,	)	**DECISION**
A Member of the State Bar.	)	

INTRODUCTION

Respondent **Eugene Dukjoon Kim** (Respondent) is charged here with nine counts of misconduct, involving three related client matters. The counts include allegations that Respondent willfully violated (1) Business and Professions Code section 6106[1] (moral turpitude – unauthorized settlement and misappropriation) [three counts]; (2) rule 4-100(A) of the Rules of Professional Conduct[2] (failure to maintain client funds in trust account) [three counts]; and (3) rule 4-100(B)(1) (failure to notify client of receipt of client funds) [three counts]. The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

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

[2] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 26, 2012. On April 19, 2013, Respondent filed his response to the NDC, which response was subsequently amended to admit many of the factual allegations.

An initial status conference was held in the matter on February 1, 2013. At that time the case was given a trial date of April 24, 2013, with a three-day trial estimate. Trial was commenced on April 30, 2013. At the commencement of trial, the parties presented an extensive stipulation of facts, and Respondent admitted culpability of all nine counts. Trial, focused primarily on issues regarding the appropriate discipline to recommend, was completed on May 1, 2013. The State Bar was represented at trial by Deputy Trial Counsel Ross Eden Viselman. Respondent was represented by Arthur L. Margolis of Margolis & Margolis LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in California on December 7, 1997, and has been a member of the State Bar at all relevant times.

Background Facts Regarding All Three Cases

During his career Respondent has primarily handled immigration and customs law cases. In 2008, he was approached by Jeannie Park (Park) and Richard D'Orange (D'Orange) about the possibility of taking over a personal injury practice then being handled by another attorney who was seriously ill. Park and D'Orange were married and not lawyers. They were actively

involved in the office of this other attorney and proposed continuing to run the office under Respondent's auspices. After briefing investigating the references of Park and D'Orange, Respondent agreed to take over the personal injury practice, resulting in his having two physically distinct offices, one where he conducted his immigration and customs law cases, and the second, where Park and D'Orange oversaw a personal injury practice. The offices were described by Respondent as being about "five minutes" apart.

On May 15, 2009, Rogelio Garcia (Garcia) was involved in a car accident with Jose Torres (Torres). Ofelia Hurtado (Hurtado) and Irma Lemus (Lemus) were passengers in Garcia's car at the time of the accident. Torres was entirely at fault in the accident. Shortly following the accident, Garcia, Hurtado, and Lemus each employed Respondent to represent them in their individual personal injury claims.

Torres' insurance company was American Access Casualty Company (American Access), based in Oakbrook Terrace, Illinois. On May 22, 2009, Respondent sent a letter to American Access, informing it that Respondent represented Garcia, Hurtado and Lemus with respect to their respective personal injury claims arising out of the car accident with Torres on May 15, 2009.

After May 22, 2009, Respondent did not personally communicate again, in writing or verbally, with American Access regarding the personal injury claims. Instead, during his representation of Garcia, Hurtado and Lemus, Respondent authorized his non-lawyer employees, Park and D'Orange to assist him in handling the individual personal injury claims of Garcia, Hurtado and Lemus. Unfortunately, Respondent failed to adequately supervise their work on the three cases.

At some point between May 22, 2009 and September 10, 2009, American Access determined that its insured, Torres, was responsible for the accident and, accordingly, that Garcia, Lemus and Hurtado were entitled to recover from American Access for their personal injury claims.

On September 10, 2009, American Access issued a settlement check payable to Garcia and Respondent in the amount of $5,202 for property damages resulting to Garcia's car in the accident and mailed the property damage check to Respondent. On September 15, 2009, Respondent deposited the property damage check into his client trust account (CTA). On January 29, 2010, Respondent paid the $5,202 to Garcia.

At some point after September 15, 2009 and January 8, 2010, American Access offered to settle the three personal injury claims by paying $3,000 each to Garcia, Lemus and Hurtado. In late 2009, Respondent personally made attempts to contact Garcia, Hurtado and Lemus regarding this proposed settlement of their respective personal injury claims. When his personal efforts were unsuccessful, he then instructed Park and D'Orange to call each of the clients to verify whether each agreed to the proposed settlement. Respondent, however, failed to adequately supervise Park and D'Orange, and none of the three clients was actually contacted about the proposal. Nonetheless, American Access was informed that its settlement proposal had been accepted. As a result, on January 6, 2010, the personal injury claims of Garcia, Hurtado and Lemus were settled for $3,000 each. Thereafter, American Access then forwarded releases to Respondent's office, which were then returned to American Access, purportedly executed by each of the clients. In fact, the clients knew nothing of these documents, and the signatures on the releases were unauthorized and signed by someone other than the clients.

On January 8, 2010, American Access issued three settlement checks in the amount of $3,000: one payable to Garcia and Respondent, one payable to Hurtado and Respondent, and one payable to Lemus and Respondent. On January 15, 2010, Respondent deposited the three $3,000 settlement checks in his CTA. The client's endorsement signature on each of the checks was written by Park, rather than by the client.

After receiving the settlement funds, Respondent personally attempted to reach each of the three clients. When his own efforts were unsuccessful, he then instructed Park and D'Orange to contact Garcia, Hurtado and Lemus to schedule a time for each client to come to the office to obtain his or her disbursement check. Again, Respondent failed to adequately supervise Park and D'Orange, and none of the three clients was notified of Respondent's receipt of the settlement funds.

Garcia, Lemus and Hurtado were all treated at the Chiropractic Medical Center as a result of their personal injuries, and that facility had liens entitling it to receive one-third of any recovery any of those three clients received for their injuries.

Once Respondent deposited the three settlement checks in Respondent's CTA, he was required, after deducting his one-third contingency fee from the settlement proceeds, to maintain a total of $6,000 in his CTA for disbursements on the personal injury claims, i.e. $2,000 for each client.

Respondent signed a check, dated January 14, 2010, to pay $1,421 to Garcia but that check was never sent to Garcia. Instead, it was cashed by someone else. Respondent testified that he generally wrote checks in the personal injury cases pursuant to the instructions he received from Park and D'Orange. When asked during trial why he had not also written checks

to clients Hurtado and Lemus at the same time that he was writing a check to Garcia, he testified that he "totally forgot" about them.

Ultimately, Respondent did not promptly disburse any of the settlement funds to Garcia, Hurtado and Lemus or to any lienholder on behalf of any of the clients. In addition, after receiving the proceeds of the settlements, at no time did Respondent communicate with Chiropractic Medical Center regarding the personal injury claims of Garcia, Lemus and Hurtado or the payment to that facility of funds covered by the existing liens. Nonetheless, on March 31, 2010, the balance in Respondent's CTA had dipped to $820.21. (Exh. 22, p. 5.)

From May 2009 through March 2010, Respondent did not adequately review the bank, statements of Respondent's CTA, did not adequately review the flow of funds into and out of Respondent's CTA, and did not reconcile the account statements.

In early 2010, Respondent decided to close down the personal injury office because it was not making any money for him. In March 2010, Respondent went to the personal injury office and discovered that Park and D'Orange had removed the office computers and all of his clients' files. Respondent then contacted Park by phone and was told by her that D'Orange was in an alcohol clinic, that the files were being stored, and that she would be returning the files in "a couple of weeks." Despite this early assurance, Park never returned either the files or the computers. Eventually, Respondent was unable even to reach her because she had disconnected her phone.

It was not until July 26, 2010, that Respondent first made a report to the police regarding possible criminal activities of Park and D'Orange. This report was made, however, only after Respondent learned that the State Bar was receiving complaints that his clients were not receiving funds to which they were entitled.

On December 20, 2011, Respondent was sued in the Los Angeles County Superior Court small claims court by the Chiropractic Medical Center for the medical liens arising from the medical care provided by it to Garcia, Lemus and Hurtado. Because Respondent had filed for bankruptcy in March 2010, the action was stayed as a result of that bankruptcy filing. The medical liens for Garcia and Hurtado in the small claim action have still not been paid and remain outstanding.[3]

On March 12, 2012, Respondent paid restitution to Lemus in the amount of $1.000. On August 24, 2012, Respondent paid restitution to Hurtado in the amount of $1,000. On April 18, 2013, Respondent made a payment to Garcia in the amount of $1,000.

Case No. 12-O-11308 (Garcia Matter)

Count 1 –Section 6106 [Moral Turpitude – Unauthorized Settlement and Misappropriation]

Section 6106 of the Business and Professions Code 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.)

In this count, the State Bar alleges that Respondent, either dishonestly or as a result of gross negligence, misappropriated a portion of the settlement funds received on behalf of Garcia and settled his personal injury claim without authority to do so, all acts of moral turpitude in willful violation of section 6106. At the beginning of the trial, Respondent acknowledged, and

[3] Respondent paid $1,000 to the medical facility after he paid $1,000 to Lemus in March 2012.

this court finds, that Respondent is culpable of misappropriation, due to gross negligence, of a portion of the Garcia funds, in willful violation of section 6106.

This court further finds that the actions resulting in the unauthorized settlement of Garcia's personal injury claim resulted from Respondent's gross negligence and also constituted an act of moral turpitude, in willful violation of section 6106.

Count 2 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

In this count the State Bar alleges that Respondent failed to maintain in his client trust account all of the funds that he was required to be holding on behalf of his client Garcia, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

Rule 4-100(A) requires that "funds received or held for the benefit of clients" shall be deposited in a client trust account. It is well-established that an attorney has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. Those duties are non-delegable. (*In the Matter of Blum*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 411.) Under this non-delegable duty, an attorney must maintain client funds in the client trust account until outstanding balances are settled. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123.)

The fact that the balance of Respondent's CTA repeatedly fell below the amount required to be held in trust by him for his client supports a finding of willful misappropriation in violation of rule 4-100(A). (*Palomo v. State Bar* (1984) 36 Ca1.3d 785, 795-796 [trust account violation may be willful for disciplinary purposes when caused by "serious and inexcusable lapses in office procedure"].)

At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent failed to maintain all of the required Garcia funds in his client trust account, in willful violation of rule 4-100(A).[4]

Count 3 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

In this count the State Bar alleges that Respondent failed to notify his client Garcia of Respondent's receipt of the settlement funds being paid by American Access to Garcia as a result of the personal injury settlement, in willful violation of rule 4-100(B)(1).

Rule 4-100(B)(1) requires that a member "shall promptly notify a client of the receipt of the client's funds, securities, or other properties." At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent's failure to notify Garcia of Respondent's receipt of the settlement funds from American Access constituted a willful violation of rule 4-100(B)(1).

Case No. 12-O-11308 (Hurtado Matter)

Count 4 –Section 6106 [Moral Turpitude – Unauthorized Settlement and Misappropriation]

In this count the State Bar alleges that Respondent, either dishonestly or as a result of gross negligence, misappropriated a portion of the settlement funds received on behalf of Hurtado and settled her personal injury claim without authority to do so, all acts of moral turpitude in willful violation of section 6106. At the beginning of the trial, Respondent

[4] The conduct underlying this violation is essentially the same as that underlying the finding, above, 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.) This is also true with respect to the Hurtado and Lemus matters, below.

acknowledged, and this court finds, that Respondent is culpable of misappropriation, due to gross negligence, of the Hurtado funds, in willful violation of section 6106.

This court further finds that the actions resulting in the unauthorized settlement of Hurtado's personal injury claim resulted from Respondent's gross negligence and constituted an act of moral turpitude, in willful violation of section 6106.

Count 5 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

In this count the State Bar alleges that Respondent failed to maintain in his CTA the funds that he was required to be holding on behalf of his client Hurtado, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent failed to maintain all of the required Hurtado funds in his CTA, in willful violation of rule 4-100(A).

Count 6 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

In this count the State Bar alleges that Respondent failed to notify his client Hurtado of Respondent's receipt of the settlement funds being paid by American Access to Hurtado as a result of the personal injury settlement, in willful violation of rule 4-100(B)(1).

At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent's failure to notify Hurtado of Respondent's receipt of the settlement funds from American Access constituted a willful violation of rule 4-100(B)(1).

Case No. 12-O-11308 (Lemus Matter)

Count 7 –Section 6106 [Moral Turpitude – Unauthorized Settlement and Misappropriation]

In this count the State Bar alleges that Respondent, either dishonestly or as a result of gross negligence, misappropriated a portion of the settlement funds received on behalf of Lemus

and settled her personal injury claim without authority to do so, all acts of moral turpitude in willful violation of section 6106. At the beginning of the trial, Respondent acknowledged, and this court finds, that he is culpable of misappropriation, due to gross negligence, of the Lemus funds, in willful violation of section 6106.

This court further finds that the actions resulting in the unauthorized settlement of Hurtado's personal injury claim resulted from Respondent's gross negligence and constituted an act of moral turpitude, in willful violation of section 6106.

Count 8 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

In this count the State Bar alleges that Respondent failed to maintain in his client trust account the funds that he was required to be holding on behalf of his client Lemus, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent failed to maintain all of the required Lemus funds in his client trust account, in willful violation of rule 4-100(A).

Count 9 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

In this count the State Bar alleges that Respondent failed to notify his client Lemus of Respondent's receipt of the settlement funds being paid by American Access to Lemus as a result of the personal injury settlement, in willful violation of rule 4-100(B)(1).

At the beginning of the trial, Respondent acknowledged, and this court finds, that Respondent's failure to notify Lemus of Respondent's receipt of the settlement funds from American Access constituted a willful violation of rule 4-100(B)(1).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[5] The court finds the following with regard to aggravating factors.

Multiple Acts of Misconduct

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

Significant Harm

Respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).) He delayed paying money due to them for more than two years. Further, he has subjected the clients to demands by their creditor for payment. Finally, he continues to retain the funds he misappropriated from his client that is owed to that creditor, which was required to file a lawsuit against him to seek reimbursement.

Mitigating Circumstances

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

No Prior Discipline

Respondent had practiced law in California for more than 11 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of

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

discipline. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.2(e)(i).)

Cooperation

Respondent entered into an extensive stipulation of facts and admitted culpability for each of the counts alleged in this case, for which conduct Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Restitution

Respondent has now paid portions, but not all, of the funds that should have previously been distributed to or for the benefit of his clients. However, those payments came only after the State Bar disciplinary process became involved in the situation and most were made on the eve of the trial in this matter. As a result, this court declines to give mitigation credit to such restitution efforts. The authorities are clear and consistent that restitution made only after the initiation of disciplinary proceedings is not a proper source of mitigation credit. (See, e.g., *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 249, citing *Warner v. State Bar* (1983) 34 Cal.3d 36, 47; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 490; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 496; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714 [delay in making restitution is aggravating, not mitigating, factor]; and *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 663, citing *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 663.)

Character Evidence

Respondent presented good character testimony and declarations from individuals reflecting a from a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct. These witnesses included three attorneys and several prominent members of the business community.[6] Respondent is entitled to mitigation for this good character evidence. (Std. 1.2(e)(vi).)

Community Service/Pro Bono Efforts

Respondent testified and presented other evidence that he regularly performs considerable community service and provides legal work on a pro bono basis. This is "a mitigating factor that is entitled to considerable weight." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305 [10-15 hours per month of volunteer community and church work, counseling people in crisis.]; *In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are

[6] We give serious consideration to the testimony of these witnesses because attorneys have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.2(a), which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is a one-year actual suspension.

However, standard 1.6(b) provides:

> The appropriate sanction shall be the sanction imposed unless: … (ii) Mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled

> if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.

The Supreme Court has repeatedly declined to apply in all instances the disbarment sanction spelled out of standard 2.2(a). By way of example, in its decision in *Edwards v. State Bar* (1990) 52 Cal.3d 28, the court stated, "Disbarment would rarely, if ever, be an appropriate discipline for an attorney whose only misconduct was a single act of negligent misappropriation, unaccompanied by acts of deceit or other aggravating factors. Thus we have ordered discipline as light as 30 days of actual suspension when the misappropriation resulted from negligence and other mitigating factors were present." (*Id.* at p. 38, citing *Schultz v. State Bar* (1975) 15 Cal.3d 799, 803-805.)

In addition, the Supreme Court has also rejected the ostensible mandate of standard 2.2(a) that any discipline for misappropriation must include "at least one year" of actual suspension. As explained by the court in the *Edwards* decision:

> Standard 2.2(a) provides that disbarment is the normal discipline for an attorney who has willfully misappropriated entrusted funds, and that a lesser discipline shall be imposed only if the amount of the funds misappropriated is insignificantly small or if the "most compelling mitigating circumstances clearly predominate," in which case the attorney shall be actually suspended for at least one year. This standard correctly recognizes that willful misappropriation is grave misconduct for which disbarment is the usual form of discipline. In requiring that a minimum of one year of actual suspension invariably be imposed, however, the standard is not faithful to the teachings of this court's decisions. (See, e.g., *Howard v. State Bar* [1990] 51 Cal.3d 215 [six months' actual suspension].) The standard's one-year minimum should be regarded as a guideline, not an inflexible mandate. [Emphasis added.]

(*Edwards v. State Bar*, *supra*, 52 Cal.3d at p. 38; see also *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 628 ["A year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation."].)

In addition to the *Edwards* decision, other instances, where the Supreme Court since January 1, 1986, has imposed discipline of less than disbarment for misconduct that included misappropriation, have included *Bates v. State Bar* (1990) 51 Cal.3d 1056 [six months' actual suspension]; *Boehme v. State Bar* (1988) 47 Cal.3d 448 [18 months' actual suspension]; *Brockway v. State Bar* (1991) 53 Cal.3d 51 [three months' actual suspension]; *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 [public reproval, rejecting recommendation of 90 days' actual suspension]; *Edwards v. State* Bar, *supra*, 52 Cal.3d 28 [one year's actual suspension]; *Friedman v. State Bar* (1990) 50 Cal.3d 235 [three years' actual suspension]; *Hipolito v. State Bar, supra,* 48 Cal.3d 621 [one year's actual suspension]; *Howard v. State Bar, supra,* 51 Cal.3d 215 [six months' actual suspension]; *Kelly v. State Bar* (1991) 53 Cal.3d 509 [four months' actual suspension, rejecting recommendation of one year's actual suspension]; *Schultz v. State Bar, supra*, 15 Cal.3d 799 [no actual suspension, rejecting recommendation of 30 days' actual suspension]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [one year's actual suspension, rejecting recommendation of two years' actual suspension]; and *Weller v. State Bar* (1989) 49 Cal.3d 670 [three years' actual suspension].

As evidenced by its decision in *In the Matter of* Bleecker, supra, 1 Cal. State Bar Ct. Rptr. 113, 126-127, the same approach, with comparable results, has been adopted and followed by the Review Department of this court since its earliest days:

> We next turn to the issue of the degree of discipline we are to recommend to the Supreme Court based on our conclusions as to respondent's misconduct in this case. In determining the appropriate degree of discipline to recommend , we start with the standards which serve as our guidelines. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In the present case we have concluded that respondent is culpable of misappropriation and commingling of funds in violation of rule 8-101 [now rule 4-100] and of concealment of his assets in violation of section 6106.

Standard 2.2(a) provides for disbarment for misappropriation of entrusted funds unless the amount of funds misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case a minimum of one year actual suspension should be imposed. Standard 2.2(b) provides for a minimum actual suspension of 90 days for commingling of entrusted funds or any other violation of rule 8-101, not amounting to wilful misappropriation. Standard 2.3 provides for actual suspension or disbarment for offenses involving moral turpitude, depending on the degree to which the victim was harmed, the magnitude of the misconduct, and the degree to which it relates to the practice of law.

Pursuant to standard 1.6(a), if two or more acts of professional misconduct are found in a single disciplinary proceeding and different sanctions are prescribed by the Standards, the sanction imposed should be the most severe of the different applicable sanctions. Thus in the present case, standard 2.2(a) is the most severe applicable sanction. However, our inquiry does not end with standard 2.2(a).

The Standards must be viewed as a whole with the objective of achieving the primary purposes of the disciplinary proceedings as set forth in standard 1.3: namely, the protection of the public, courts and legal profession; the maintenance of high professional standards; and the preservation of public confidence in the legal profession. We are further guided by standard 1.6(b) which provides that the sanction specified by the Standards shall be imposed unless: (1) aggravating circumstances are found to surround the particular act of misconduct and the net effect of the aggravating circumstances, by themselves and in balance with any mitigating circumstances, demonstrates that a greater degree of sanction is required to fulfill the purpose of imposing sanctions as set forth in standard 1.3 or (2) mitigating circumstances are found to surround the particular act of misconduct and the net effect of the mitigating circumstances, by themselves and in balance with any aggravating circumstances, demonstrates that a lesser sanction should be imposed to fulfill the purposes set forth in standard 1.3.

In the present case the nature of respondent's misconduct combined with the mitigating factors indicates that imposing the sanction set forth in standard 2.2 would not further the purposes of standard 1.3. The record before us supports the conclusion that respondent is not a venal person and his misconduct was aberrational. Respondent does not have a prior or subsequent record of discipline. He made a very poor business decision brought on by financial pressures. The misconduct occurred over a relatively short period of time (late 1985 and early 1986), and respondent has taken steps to reform his conduct as evidenced by the business consultant he hired and by the lack of subsequent discipline since the misconduct herein. Respondent's ". . . engagement of a management firm is not only a recognition of the seriousness of the misconduct and an acceptance of responsibility therefor, it is, . . . an objective step taken to avoid misconduct in the future." (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 3.) These factors

> together with the other mitigating circumstances present in this case establish that a lesser sanction than that called for in standard 2.2(a) should be imposed to fulfill the purposes of attorney discipline.

Adopting the same rationale, the Review Department also went on to reject the 90-day actual suspension minimum discipline of standard 2.2(b) for violations of what is now rule 4-100(A), and it recommended an actual suspension of 60 days in the *Bleecker* case.

Other published instances since that decision where the Review Department has declined to recommend the disbarment sanction set forth in standard 2.2(a) have included *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 [six months' actual suspension]; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280 [one year's actual suspension]; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153 [one year's actual suspension]; *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902 [90 days' actual suspension, rejecting the hearing judge's recommendation of six months' actual suspension]; *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 [one year's actual suspension]; and *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [90 days' actual suspension].

Certain of the important factors that the above courts have relied on to impose or recommend discipline below the levels set forth in standard 2.2(a) are present in this case. Respondent had practiced law for more than 11 years with no prior instance of discipline or evidence of misconduct at the time of the misconduct here. The misappropriation of funds resulted from gross negligence, rather than any dishonest intent, and totaled less than $6,000. Respondent voluntarily closed down the personal injury office and practice in which the misconduct occurred and he has returned to practicing immigration and customs law cases, areas in which he has never had a problem.

That said, the court does not conclude that it should ignore the standards or the serious nature of Respondent's misconduct in determining what level of discipline to recommend. There is nothing akin to the "one bite rule" where matters involving the mishandling of client funds are concerned. Similarly, Respondent's good character, pro bono service, community activities and prior record of no discipline are only mitigating factors, not immunizing ones.

Having assessed all of the aggravating and mitigating factors here, and after comparing them to those involved in the cases cited above, this court concludes that the appropriate discipline in this matter should be a two-year suspension, stayed, and a three-year probation, with conditions of probation including, inter alia, one year of actual suspension. (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708; see also *Silva-Vidor v. State Bar*, *supra*, 49 Cal.3d 1071; *Hipolito v. State Bar*, *supra*, 48 Cal.3d at p. 628; *In the Matter of Hagen*, *supra*, 2 Cal. State Bar Ct. Rptr. 153; *In the Matter of Dyson*, *supra*, 1 Cal. State Bar Ct. Rptr. 280; *In the Matter of Trillo*, *supra*, 1 Cal. State Bar Ct. Rptr. 59.)

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Eugene Dukjoon Kim**, State Bar No. 194100, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of probation.
2. Within one year after the effective date of the Supreme Court order in this matter, Respondent must make restitution to the following payees (or reimburse the Client

Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles:

a. Chiropractic Medical Center, on behalf of Rogelio Garcia, in the amount of $1,000 plus 10 percent interest per year from January 15, 2010; and

b. Chiropractic Medical Center, on behalf of Ofelia Hurtado, in the amount of $1,000, plus 10 percent interest per year from January 19, 2010.

3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

4. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

5. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation and must meet with the probation

deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

6. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[7] However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

    (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

    (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

[7] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

5. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and the State Bar's Client Trust Accounting School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

8. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and 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.[8]

Costs

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

Dated: August _____, 2013

DONALD F. MILES
Judge of the State Bar Court

[8] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)