

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ) Case No.: 12-O-15500-PEM  
)  
RAYMOND ROY MILLER, )  
) DECISION  
)  
Member No. 144398, )  
)  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

In this disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent Raymond Roy Miller with multiple acts misconduct involving his client trust account (CTA). Specifically, the State Bar charges respondent with (1) violating section 6106’s proscription of acts of moral turpitude by repeatedly issuing insufficiently funded checks (NSF checks)<sup>2</sup> drawn on his CTA and (2) violating rule 4-100(A) by commingling his personal funds in his CTA and using his CTA as his personal checking account.

For the reasons set forth *post*, the court does not find respondent culpable on any of the charged acts of moral turpitude (§ 6106). The court does, however, find respondent culpable on some, but not all of the charged commingling and personal use of his CTA. After carefully considering all the appropriate factors, the court concludes that the appropriate level of discipline

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

<sup>2</sup> A non-sufficient funds check (or NSF check) is a banking term that refers to a check presented for payment that a bank is not required to pay because there are not sufficient funds in the account on which the check is drawn to pay the check.

for the found misconduct is two years' stayed suspension and two years' probation on conditions, which do not include a period of actual suspension, but do include requiring that respondent successfully complete the State Bar's trust accounting school and that respondent's handling of client and other trust funds and other property be monitored by a certified public accountant.

### **Significant Procedural History**

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on March 7, 2013. On April 5, 2013, respondent filed a response to the NDC. On August 20, 2013, the parties filed a partial stipulation as to facts. A one-day trial was held on August 22, 2013. Following closing arguments, the court took this proceeding under submission on August 22, 2013.

The State Bar was represented in this proceeding by Attorney Steven F. Egler, a contract attorney for the State Bar. Respondent represented himself.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 12, 1989, and has been a member of the State Bar of California since that time.

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Respondent maintains a trust account at Bank of the West labeled "Raymond R. Miller, California State Bar." All references to "respondent's CTA" or "his CTA" are to this account.

On May 4, 2012, respondent deposited \$700 of his own money into his CTA for the purpose of paying client costs in a matter in which respondent had agreed to advance the costs for his client. Not long thereafter, respondent actually paid, from his CTA, costs totaling almost \$700 for the client. Respondent employed this convoluted and inappropriate method of

advancing costs for a client because he mistakenly believed that he was required to pay all client costs from his CTA.<sup>3</sup>

In May 2012, Bank of the West classified and paid the following three checks drawn on respondent's CTA as NSF checks:<sup>4</sup>

CHECK NUMBER	CHECK AMOUNT	DATE PRESENTED	BANK ACTION	BALANCE WHEN PRESENTED
1033	\$ 2,000.00	May 15, 2012	Paid NSF	\$910.44
1034	37.50	May 18, 2012	Paid NSF	884.44
1035	75.00	May 18, 2012	Paid NSF	884.44

Respondent credibly testified that, in early May 2012, his partner in a business unrelated to respondent's law practice asked him to finalize a lease the partner had entered into with the owner of a building by issuing a \$2,000 check made payable to the building owner drawn on respondent's CTA and postdated to June 1, 2012. Respondent's partner assured respondent that he would give respondent the \$2,000 to cover the postdated check before June 1, 2012.

Respondent's partner also assured respondent that the building owner agreed to accept the \$2,000 lease payment through a check postdated until June 1, 2012, and that the building owner

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<sup>3</sup> Of course, an attorney is required to pay client costs out of a trust account only when a client gives the attorney an advance for costs or expenses, which the attorney is required to deposit into and maintain in a trust account under rule 4-100(A).

<sup>4</sup> According to the parties' partial stipulation as to facts, when check number 1034 in the amount of \$37.50 was presented for payment on May 18, 2012, Bank of the West returned the check unpaid because respondent's CTA was overdrawn by \$1,115.59. Further, according to the parties' stipulation, when check number 1035 in the amount of \$75 was presented for payment on May 18, 2012, Bank of the West returned the check unpaid because respondent's CTA was overdrawn by \$1,153.09 (- \$1,115.59 less \$37.50). The court rejects these stipulated facts because the State Bar's credible evidence, which was admitted without objection or limitation, establishes that they are not true. (Cf. *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55; see also Rules Prof. Conduct, rule 5-110.) Specifically, the bank records establish that Bank of the West paid both check numbers 1034 and 1035 as NSF checks on May 18, 2012, and that the actual balance in respondent's CTA on May 18, 2012, was \$884.44. Neither justice nor the goals of attorney discipline are advanced by the court relying on stipulated facts that are contradicted by credible evidence admitted without objection or limitation.

agreed not present the \$2,000 postdated check until June 1, 2012. At the hearing in this State Bar Court proceeding, respondent credibly testified that he trusted his business partner was dealing with a third party who could be trusted to keep his word and would not cash the postdated check.

Thereafter, respondent issued and gave to his partner check number 1033 drawn on respondent's CTA in the amount of \$2,000 and made payable to the building owner and postdated to June 1, 2012. At the time respondent issued check number 1033, respondent, respondent's partner, and the building owner knew (and had to have known by the fact that the check was postdated) that the \$2,000 needed to pay the check would not be in respondent's CTA until June 1, 2012. And respondent reasonably believed that check number 1033 would be cashed or deposited on (and not before) June 1, 2012, and that there would be sufficient funds on deposit in his client trust account when check number 1033 was presented to Bank of the West for payment on that date.

On May 10, 2012, respondent issued check numbers 1034 and 1035 drawn on respondent's CTA in the amounts of \$37.50 and \$75, respectively. Both of those checks were made payable to a service of process company which had served various parties with the summons and complaint in one of respondent's client matters. At the time respondent issued check numbers 1034 and 1035, there was \$910.44 on deposit in respondent's CTA. Of that amount, \$700 were respondent's personal funds that he deposited into his CTA on May 4, 2012, for the purpose of paying the costs in this client matter. Moreover, because the building owner agreed to accept and hold check number 1033 until its June 1, 2012 postdate, respondent reasonably believed that there would be sufficient funds on deposit in his CTA when check numbers 1034 and 1035 were presented to Bank of the West for payment.

On May 15, 2012, unbeknownst to respondent, the building owner prematurely presented postdated check number 1033 to Bank of the West for payment. Even though there was only \$910.44 on deposit in respondent's CTA on May 15, 2012, Bank of the West did not return check number 1033 unpaid, but instead elected to pay check number 1033 and to charge respondent's CTA \$26 in NSF-check fees. After Bank of the West paid check number 1033, respondent's CTA was overdrawn by \$1,115.56 (\$910.44 minus \$2,000 minus \$26).

On May 18, 2012, which was a day or two after respondent learned that the building owner broke his promise and prematurely presented postdated check number 1033 for payment on May 15, 2012, respondent deposited \$2,000 in cash into his CTA. Respondent's business partner gave respondent the \$2,000 to cover check number 1033 once respondent told him that check number 1033 had been prematurely presented for payment. After that \$2,000 cash deposit, the actual balance in respondent's CTA on May 18, 2012, was \$884.44 (-\$1,115.56 plus \$2,000).

Also, on May 18, 2012, CTA check numbers 1034 and 1035 in the amounts of \$37.50 and \$75, respectively, were presented to Bank of the West for payment. Even though there was \$884.44 on deposit in respondent's CTA on May 18, 2012, Bank of the West was not required to use and, in fact, did not use any of portion of that \$884.44 to pay check numbers 1034 and 1035 on May 18, 2012.<sup>5</sup> Instead, on May 18, 2012, Bank of the West, classified and paid both checks as NSF checks and then charged and collected \$70 in NSF-check fees from respondent's CTA. Presumably, Bank of the West recognized the unfairness in its not using the \$884.44 on deposit in respondent's CTA to pay check numbers 1034 and 1035 because on May 31, 2012, Bank of

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<sup>5</sup> Under federal banking regulations, Bank of the West was not required to make any portion of the \$2,000 that respondent deposited into his CTA on May 18, 2012, available for use (e.g., to pay checks) or for withdrawal until Monday, May 21, 2012, which was the next business day following the banking day of deposit of the \$2,000. (See Regulation CC: Availability of Funds and Collection of Checks, 12 C.F.R. § 229.10.)

the West refunded the \$70 in NSF-check fees that it charged and collected from respondent's CTA on May 18, 2012.

During the nine-day period from May 29, 2012, to June 6, 2012, respondent issued the following three checks drawn on respondent's CTA and used them to pay his personal or business expenses:

CHECK NUMBER	CHECK AMOUNT	DATE PRESENTED	PAYEE
1040	\$ 430.12	May 29, 2012	Honda
1041	50.00	May 29, 2012	AUM Utilities
1042	50.00	June 6, 2012	H&M Investments

Respondent credibly testified that, when he wrote these three checks, he believed that he was writing them on his business-checking account. As respondent credibly explained, he mistakenly confused his CTA checkbook with his business-account checkbook. Both of the checkbooks look alike and both accounts are at Bank of the West. Respondent also credibly testified that he made these mistakes during a short period of time in which he was under an unusually large amount of stress. In short, respondent mistakenly wrote and used these CTA checks to pay personal or and business expenses. At worst, respondent was negligent.

In the NDC, the State Bar alleges that, on June 7, 2012, respondent made a \$20,000 cash deposit into his CTA using his own funds and that, thereafter, respondent repeatedly issued checks drawn on his CTA and authorized electronic debts from his CTA to pay his office and personal expenses. The record, however, fails to establish any of these facts by clear and convincing evidence. Instead, the record clearly establishes that, on June 7, 2012, respondent's brother Michael Miller, who lives in Michigan, wire transferred \$20,000 into respondent's CTA. by a wire transfer. Moreover, respondent credibly testified that Michael deposited the \$20,000 into respondent's CTA so that respondent could pay various expenses Michael was going to incur

soon on a business opportunity Michael was then pursuing in California and that respondent thereafter used all but a very small portion of the \$20,000 to pay those expenses as Michael directed.

***Count One -- (§ 6106 [Moral Turpitude])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In count one, the State Bar charges that respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106 “[b]y repeatedly issuing checks drawn upon Respondent’s CTA when he knew or was grossly negligent in not knowing that there were insufficient funds in the account to pay them.” The record, however, fails to establish the charged violation by clear and convincing evidence.

When one issues a check and tenders it to the payee without qualification, the drawer (i.e., the maker) implicitly represents to the payee that there are sufficient funds to cover the check (and all the other outstanding checks then unpaid) on deposit with the drawee bank such that the drawee bank will instantly pay the check upon it being presented for payment. (*Wilson v. Lewis* (1980) 106 Cal.App.3d 802, 807-808, and cases there cited.) When one issues a check knowing that it will not be paid when it is presented for payment and then tenders the check to the payee without qualification, the check drawer’s representations that sufficient funds are on deposit to cover the check (and all other outstanding checks) such that the drawee bank will instantly pay the check when it is presented for payment are deliberately fraudulent. This is the reason why the Supreme Court and the review department have repeatedly held that an attorney who continuously issues checks knowing that they will not be honored when presented for payment acts dishonestly and with moral turpitude in willful violation of section 6106 (e.g., *Alkow v. State Bar* (1971) 3 Cal.3d 924, 264; *In the Matter of McKiernan* (Review Dept. 1995)

3 Cal. State Bar Ct. Rptr. 420, 426, and cases there cited). This is also why the Supreme Court held, in *Read v. State Bar* (1991) 53 Cal.3d 394, 409, that “[k]nowledge that a check was issued without sufficient funds is an integral element of a charge of moral turpitude premised on writing a bad check.” If the attorney does not know that the check was issued without sufficient funds, the attorney’s representation to the contrary by tendering the check to the payee, even if untrue or false, is not deliberately fraudulent.

When respondent issued postdated check number 1033 and it was tendered to the building owner, respondent did not make the standard drawer representations to the building owner payee that there were sufficient funds to cover the check (and all the other outstanding CTA checks) on deposit in respondent’s CTA such that Bank of the West would instantly pay check number 1033 upon its presentment for payment because a postdated check is not a true “check” under the California Uniform Commercial Code. (*Wilson v. Lewis, supra*, 106 Cal.App.3d at p. 808.)

A postdated check “is no more than ‘a mere promise to discharge a present obligation at a future date.’ ” Thus, when a payee accepts a postdated check, the payee “ ‘is looking to the promise of payment in the future.’ [Citations.]” Accordingly, the issuance and tender of “a postdated check is not subject to the civil or penal sanctions normally attending the knowing tender of a check without sufficient funds .... [Citations.]” (*Id.* at p. 808.) At best, the tender of a postdated check is a promise to cover the check when it is presented for payment on or after the postdate.

In short, the court concludes that an attorney’s issuance and tender of a postdated check does not inherently involve moral turpitude, dishonesty, or corruption. Moreover, this court does not believe that relying on a third party to cash a postdated check on or after the postdate constitutes moral turpitude. Further, the court concludes that the record fails to otherwise



establish, by clear and convincing evidence, that the facts and circumstances surrounding respondent's issuance of postdated check number 1033 involved moral turpitude, dishonesty, or corruption. Moreover, the State Bar has failed to establish, by clear and convincing evidence, that respondent knew when he issued check numbers 1033, 1034, and 1035 that they would not be honored when they were presented to Bank of the West for payment. Accordingly, a charge of moral turpitude premised on writing bad checks has not been established. (*Read v. State Bar*, *supra*, 53 Cal.3d at p. 409.)

The court orders that count one is DISMISSED with prejudice for want of proof.

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

Rule 4-100(A) provides that all funds received or held for the benefit of clients, including advances for costs and expenses, must be deposited into and held by an attorney in a trust account and that, except for limited exceptions, no funds belonging to the attorney or law firm are to be deposited into the trust account or otherwise commingled with the account. "An attorney violates [rule 4-100(A)] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]" (*Murray v. State Bar* (1985) 40 Cal.3d 575, 584.)

In count two, the State Bar first charges that respondent commingled his personal funds in his CTA in violation of rule 4-100(A) "[b]y leaving his fees in [his] CTA for withdrawal as needed to pay business and/or personal expenses." In count two, the State Bar also charges that respondent both improperly used his CTA as a personal account and improperly deposited or commingled his personal funds in his CTA in violation of rule 4-100(A) "[b]y depositing non-client funds into [his] CTA for withdrawal as needed to pay office and/or personal expenses, and by issuing checks and authorizing electronic fund withdrawals as needed for office and/or personal expenses."

With respect to the first charge in count two, there is no evidence suggesting, much less establishing by clear and convincing evidence, that respondent improperly left his fees in his CTA. Accordingly, the court orders that the first charge in count two is DISMISSED with prejudice for want of proof.

With respect to the second charge in count two, the court finds that, as charged, respondent willfully violated rule 4-100(A) by commingled his personal funds with his CTA on May 4, 2012, when he deposited \$700 of his own funds into his CTA. Respondent's mistaken belief that he was required to pay advanced client costs from his CTA is not a defense a to this commingling violation. (*Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1099 ["honest belief is simply not a defense for purposes of (rule 4-100)"].) The court further finds that respondent willfully violated rule 4-100(A) as charged when he used his CTA as a personal checking account by paying three personal/business expenses totaling \$530.12 from his CTA with checks numbers 1040, 1041, and 1042. The fact that respondent mistakenly and unknowingly paid those three expenses from his CTA is not a defense to the rule 4-100(A) violation. Because respondent commingled \$700 of his own funds in his CTA on May 7, 2012, it is clear that respondent did not misappropriate any client funds when he mistakenly paid the three personal/business expenses from his CTA.

Finally, the court does not find that respondent culpable of willfully violating rule 4-100(A) with respect to his handling of the \$20,000 that his brother Michael wire transferred into his CTA on June 7, 2012. When an attorney agrees to hold funds for a third-party who is not a client, the attorney owes the third party the duties of a "client" under rule 4-100. (*Guzzetta v. State Bar* (1987) 43 C3d 962, 979 ["Having assumed the responsibility to hold and disburse the funds as directed by the court or stipulated by both parties, petitioner owed an obligation to [the third party] as a 'client' to maintain complete records, 'render appropriate accounts' [rule

4-100(B)(3)], and ‘[p]romptly pay or deliver to the client’ on request the funds he held in trust [rule 4-100(B)(4)].”]; accord *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 27, 28.) Also in accord is Cal. State Bar Formal Opn. No. 1995-141, which provides:

The [State Bar Rules of Professional Conduct] do not specifically regulate the conduct of lawyers who engage in business activities that do not involve the fiduciary relationship between lawyer and client, such as a dry cleaning business or a restaurant. However, “[a]n attorney’s violation of the duty arising in a fiduciary or confidential relationship warrants discipline even in the absence of an attorney-client relationship.” (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [“An attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal profession whether or not he acts in his capacity as an attorney.”].) (See also *Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 429; Cal. State Bar Formal Opn. No. 1982-69.) Thus, when rendering professional services that involve a fiduciary relationship, a member of the State Bar must conform to the professional standards of a lawyer even if the services performed could also be rendered by [a layperson or] one licensed in a different profession. (*Sodikoff v. State Bar, supra*, 14 Cal.3d at p. 429; *Libarian v. State Bar* (1945) 21 Cal.2d 862; 865; *Jacobs v. State Bar* (1933) 219 Cal. 59; see Cal. State Bar Formal Opn. Nos. 1991-123 and 1982-69.)

In short, respondent owed an obligation to Michael as a “client” to handle the \$20,000 in accordance with rule 4-100.

### **Aggravation<sup>6</sup>**

#### **Prior Record of Discipline (Std. 1.2(b)(i).)**

Respondent has one prior record of discipline. In an order filed on July 10, 2013, in *In re Raymond Roy Miller on Discipline*, case number S210427 (State Bar Court case number 11-O-16029) (*Miller I*), the Supreme Court placed respondent on two years’ stayed suspension and two years’ probation on conditions, including a thirty-day actual suspension. That discipline was imposed on respondent because he (1) failed to counsel or maintain such proceedings only as appear to him legal or just by filing, for an improper purpose, an involuntary bankruptcy

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<sup>6</sup> All references to standards or stds. are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

petition against a company on behalf of four clients, each of whom was a creditor of the company, and by failing to have three of his clients dismissed from the bankruptcy proceeding after they notified respondent that they no longer wanted to force the company into bankruptcy involuntarily (§ 6068, subd. (c)); (2) committed acts involving moral turpitude, dishonesty and corruption in the bankruptcy proceeding by making multiple affirmative misrepresentations to and by concealing facts from the bankruptcy court, the bankruptcy trustee, and three of his clients (§ 6106); and (3) violated a bankruptcy court sanctions order by failing to pay the sanctions without first seeking relief from the order based on his alleged inability to pay (§ 6103).

The sole aggravating circumstance in *Miller I* was the significant harm that respondent's misconduct caused the public, the administration of justice, and some of the creditors of the company that was the subject the involuntary bankruptcy petition that respondent filed (std. 1.2(b)(iv)). There were three mitigating circumstances in *Miller I*: (1) respondent's then lack of a prior record of discipline in 17 ½ years of practice (std. 1.2(e)(i)); (2) remorse (std. 1.2(e)(vii)); and (3) good faith (std. 1.2(e)(ii)).

The aggravating force of respondent's prior record of discipline is reduced because respondent committed all of the misconduct found in the present proceeding before the State Bar filed and served the NDC in *Miller I* on June 12, 2012. While *Miller I* is indeed a prior record of discipline, *Miller I* does not carry with it the same need for severity as if respondent had committed the misconduct found in the present proceeding after respondent had been disciplined and then still failed to conform his conduct to the strictures of the profession. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

### **Uncharged, But Found Misconduct**

At trial, while respondent was explaining how he managed his CTA , respondent admitted that he maintained personal funds in his CTA as a hedge against mathematical errors and to cover costs that he anticipated advancing for clients. Without question, maintaining personal funds in trust account for such purposes violates rule 4-100(A). However, no such violation of rule 4-100(A) was charged or tried. Nonetheless, the court concludes that it is appropriate to find and considered the violation as uncharged-but-found-misconduct aggravation. (Std. 1.2(b)(iii) [charged misconduct was surrounded by other violations of the State Bar Rules of Professional Conduct]; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].)

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)**

The State Bar's contends that respondent displayed a lack of candor to it with respect to respondent's involvement in the lease transaction that respondent's partner entered into using respondent's CTA check number 1033. The record, however, fails to establish the alleged lack of candor by clear and convincing evidence.

**Mitigation**

**Lack of Harm (Std. 1.2(e)(iii).)**

Respondent's present misconduct did not cause any client or other harm.

**Discussion**

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

*Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*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.)

The applicable sanction in the present proceeding is found in standard 2.2(b), which provides:

Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Notwithstanding standard 2.2(b)'s seemingly mandatory three-month minimum suspension, standard 2.2(b) is a guideline and is not strictly applied. (*Dudugjian v. State Bar, supra*, 52 Cal.3d at p. 1100; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [noting that former rule 8-101 (now rule 4-100) violations have not always resulted in actual or even stayed suspensions].) Nonetheless, standard 2.2(b) reflects rule 4-100's important purpose, which is " " "to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that ... commingling will result in the loss of client's money." " " [Citations.]" (*Hamilton v. State Bar* (1979) 23 Cal.3d 868, 876.)

The court concludes that the appropriate level of discipline for the found misconduct in the present proceedings lies between the public reproof imposed in *Dudugjian v. State Bar, supra*, 52 Cal.3d 1092 and the 30 days' actual suspension imposed in *Sternlieb v. State Bar* (1990) 52 Cal.3d 317.

In *Dudugjian*, the Supreme Court did not impose standard 2.2(b)'s minimum three-month suspension on two attorneys who violated former rule 8-101--rule 4-100's virtually identical predecessor--by depositing a client settlement check into their general office account instead of trust account and by refusing to pay settlement funds to the client as the client requested.

Instead, the Supreme Court imposed a public reproof with an attached restitution condition on each of the attorneys. In *Dudugjian*, there was significant mitigation not present here, including no prior records of discipline and clear and convincing evidence that the misconduct was completely out of character and not likely to recur. Furthermore, there was no aggravating circumstance in *Dudugjian*.

In *Sternlieb*, the Supreme Court placed the attorney on one year's probation and thirty days' actual suspension. In *Sternlieb*, the attorney willfully violated former rule 8-101 by misappropriating trust funds, failing to maintain proper records of the trust funds, and failing to account for the trust funds. There the attorney's misappropriation of trust funds did not involve moral turpitude or otherwise violate section 6106 because the attorney honestly, but unreasonably believed that her client had authorized her to use the trust funds for payment of her attorney's fees. The misconduct in *Sternlieb* was significantly more egregious than that in the present proceeding.

On balance, the court concludes that the appropriate level of discipline in the present proceeding is two years' stayed suspension and two years' probation on conditions, but no actual suspension. The court does not recommend that respondent be ordered to take and pass a professional responsibility examination because he was recently ordered to take and pass the Multistate Professional Responsibility Examination in the Supreme Court's July 10, 2013 order in *Miller I*.

### **Recommendations**

#### **Discipline**

The court recommends that respondent **RAYMOND ROY MILLER**, State Bar number 144398, be suspended from the practice of law in the State of California for two years, that

execution of the two-year suspension be stayed, and that he be placed on probation for two years subject to the following conditions:

1. Miller is to comply with the provisions of the State Bar Act, the State Bar Rules of Professional Conduct, and all of the conditions of this probation.
2. Within 30 days after the effective date of the Supreme Court order in this proceeding, Miller is to contact the State Bar's Office of Probation in Los Angeles and to schedule a meeting with Miller's assigned probation deputy to discuss the terms and conditions of his probation. Upon the direction of the Office of Probation, Miller is to meet with the probation deputy either in-person or by telephone. Thereafter, Miller is to promptly meet with the probation deputy as directed and upon request of the Office of Probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Miller must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Miller is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles. The reports must be received by the Office of Probation or postmarked no later than each January 10, April 10, July 10, and October 10. In each report, Miller is to state, under penalty of perjury under the laws of the State of California, whether he has complied with the State Bar Act, the State Bar Rules of Professional Conduct, and all the conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to the quarterly reports, Miller is to submit a final report containing the same information. The final report must be received by the Office of Probation or postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of any applicable privilege, Miller is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.
6. Within the first year of his probation, Miller is to attend and satisfactorily complete the State Bar's Ethics School -- Client Trust Accounting School and to provide satisfactory proof of his completion of that program to the State Bar's Office of Probation in Los Angeles. The program is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the school must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Miller's Minimum Continuing Legal Education ("MCLE") requirements;



accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)

7. During each calendar quarter in which Miller receives, possesses, or otherwise handles funds or property of a client (as used in this probation condition, the term “client” includes all persons and entities to which Miller owes a fiduciary or trust duty) in any manner, Miller must submit, to the State Bar’s Office of Probation with his probation report for that quarter, a certificate from a California certified public accountant certifying:
  - (a) whether Miller has maintained a bank account that is designated as a “Trust Account,” “Clients’ Funds Account,” or words of similar import in a bank in the State of California (or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client’s business and the other jurisdiction);
  - (b) whether Miller has, from the date of receipt of the client funds through the period ending five years from the date of appropriate disbursement of the funds, maintained:
    - (1) a written ledger for each client on whose behalf funds are held that sets forth:
      - (a) the name and address of the client,
      - (b) the date, amount, and source of all funds received on behalf of the client,
      - (c) the date, amount, payee, and purpose of each disbursement made on behalf of the client, and
      - (d) the current balance for the client;
    - (2) a written journal for each bank account that sets forth:
      - (a) the name of the account,
      - (b) the name and address of the bank where the account is maintained,
      - (c) the date, amount, and client or beneficiary affected by each debit and credit, and
      - (d) the current balance in the account;
    - (3) all bank statements and cancelled checks for each bank account; and
    - (4) each monthly reconciliation (balancing) of (1), (2), and (3) and, if there are any differences, an explanation of each difference; and
  - (c) whether Miller has, from the date of receipt of all securities and other properties held for the benefit of a client through the period ending five years from the date of appropriate disbursement of the securities and other properties, maintained a written journal that specifies:
    - (1) each item of security and property held,
    - (2) the person on whose behalf the security or property is held,
    - (3) the date of receipt of the security or property,
    - (4) the date of distribution of the security or property, and
    - (5) the person to whom the security or property was distributed.

If Miller does not receive, possess, or otherwise handle client funds or property in any manner during an entire calendar quarter and if Miller includes, in his probation report

for that quarter, a statement to that effect under penalty of perjury under the laws of the State of California, Miller is not required to submit a certificate from a certified public accountant for that quarter.

8. This probation will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Miller has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for two years will be satisfied and that suspension will be terminated.

### **Costs**

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

Dated: November \_\_\_\_, 2013.

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**PAT E. McELROY**  
Judge of the State Bar Court