FILED APRIL 21, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of		**Case No.: 12-O-15664-DFM**
REZA BAVAR,	)	**DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**
Member No. 218811,	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent **Reza Bavar** (Respondent) is charged here with willfully violating: (1) section 6106 of the Business and Professions Code[1] (moral turpitude - forging client's endorsement on settlement check); (2) rule 4-100(B)(1) of the Rules of Professional Conduct[2] (failure to notify of receipt of client funds); (3) rule 4-100(A) (failure to maintain client funds in trust account); (4) section 6106 (moral turpitude – misappropriation); (5) section 6106 (moral turpitude – altering copy of settlement document); and (6) section 6106 (moral turpitude – misrepresentations). In view of Respondent's misconduct, the court recommends, inter alia, that Respondent be disbarred from the practice of law.

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[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 May 24, 2013.

On July 3, 2013, Respondent filed his response to the NDC, titled "Reza Bavar's First Amended Answer to Notice of Disciplinary Charges." In this response, Respondent admitted culpability for all six counts of misconduct alleged in the NDC.

On June 24, 2013, the initial status conference was held in the case. At that time the case was scheduled to commence trial on September 24, 2013. That trial date was then postponed until January 28, 2014, due to a lengthy ongoing trial in another matter.

Trial was commenced and completed on January 28, 2014. The State Bar was represented at trial by Deputy Trial Counsel Meredith McKittrick. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in the State of California on February 19, 2002, and since that time has been a member of the State Bar of California.

Case No. 12-O-15664 (Mavany Matter)

On April 29, 2009, Shellina Mavany (Mrs. Mavany) employed Respondent to represent her in motor vehicle warranty and lemon law claim involving a defective Aston Martin automobile she had recently purchased. Respondent had previously successfully represented her

husband (Mr. Mavany) in a similar dispute arising from a different automobile, and Respondent and Mr. Mavany had become good friends.

Respondent's fee agreement with Mrs. Mavany stated: "[T]he Firm's legal fees will be paid for in whole by the manufacturer. No portion of the Firm's legal fees will be charged to the Client at any time, even if the Firm is unsuccessful in the Client's matter."

On October 7, 2009, Respondent filed a lawsuit on behalf of Mrs. Mavany in the Los Angeles County Superior Court against the manufacturer of the Aston Martin and the dealership that sold her the car.

In early September 2010, the defendants communicated to Respondent an offer to settle the *Mavany* lawsuit for $15,000. The defendants' settlement offer was merely to pay $15,000 to Mrs. Mavany in exchange for a complete release and contained no provision with regard to the amount of Respondent's fees.

At the time of this proposed settlement, Respondent had encountered financial difficulties and was anxious to get a fee out of the proposed settlement. Respondent did not want to get into a separate dispute with his clients regarding the amount of his fees and was concerned that his clients would want him to take only a small portion of the settlement proceeds, comparable to a contingency fee in a personal injury action. In an effort to avoid that potential problem, on September 15, 2010, Respondent conveyed to Mr. Mavany that the defendants had offered to pay a total of $15,000 to settle the case, with the proviso that $6,500 was to be paid to Mavany and $8,500 was to be paid to Respondent for attorney's fees. Respondent recommended that this purported settlement offer be accepted. Having no reason to believe that Respondent would deceive him, Mr. Mavany then accepted the offer on behalf of his wife.

On September 20, 2010, Respondent notified defendants' counsel that Mrs. Mavany would accept the settlement offer. The defendants then sent Respondent a confidential release

and settlement agreement for Mrs. Mavany to sign. This settlement agreement stated, in pertinent part:

> In consideration of the Release and Discharge as set forth above, [defendants] agree to pay $15,000.00 by check made payable to "Shellina Mavany and her attorneys of record Bavar Law Group, PC." Both parties agree to bear their own attorney's fees and costs. The Defendant [sic] agrees to deliver the aforementioned check to Plaintiffs [sic] counsel by October 20, 2010.

Because the original settlement agreement forwarded by the defendants did not provide for Respondent to receive $8,500 of the $15,000 settlement and because Respondent also wanted to be able to use all of the $15,000 for a period of time before providing any of the funds to his client, he altered the settlement document before forwarding it to Mrs. Mavany to indicate that the defendants had agreed that he was to receive $8,500 of the settlement as fees and that the settlement would not be funded until late-December 2010. The modified document, provided to Mrs. Mavany for execution, now stated in pertinent part:

> In Consideration of the Release and Discharge as set forth above, [defendants] agree to pay $15,000.00 **($6,500 to Shellina Mavany and $8,500 to Bavar Law Group)** by check made payable to "Shellina Mavany and her attorneys of record Bavar Law Group, PC." Both parties agree to bear their own attorney's fees and costs. The Defendant agrees to deliver the aforementioned check to Plaintiffs counsel by **December 20, 2010**. [Modifications in bold]

On October 4, 2010, Mrs. Mavany executed the altered settlement agreement and provided it to Respondent. On the same day, Respondent then sent only the signed signature page of the settlement agreement to counsel for the defendants, without disclosing that his client had signed a different document than they had sent.

Approximately two weeks later, on or about October 18, 2010, Respondent received the $15,000 settlement check, which was made payable to "Shellina Mavany and Her Attorney of Record Bavar Law Group, PC." Because Respondent wanted to have the use of the entire

$15,000 for his own purposes for as long as possible, he did not notify the Mavanys that the settlement funds had been received. Instead, without the knowledge, authorization, or consent of Mrs. Mavany, Respondent simulated her signature on the back of the settlement check and deposited it into his client trust account (CTA) on October 18, 2010. Thereafter, Respondent disbursed all of the settlement funds from the CTA for his own use.

As noted above, the settlement document signed by Mrs. Mavany provided that the settlement agreement was to be funded by the defendants by December 20, 2010. When that date arrived, Respondent was financially unable to pay to Mrs. Mavany the portion of the settlement that she was expecting to receive. As a result, he continued to conceal from her the fact that the settlement funds had already been received. This continued until April 2012, nearly 18 months after the money had been received.

Mr. Mavany sent multiple requests to Respondent for a status update between January 2011 and April 2012, more than a year. In response to these inquiries, Respondent made false excuses as to why Mrs. Mavany had not received her settlement funds, indicating that there was “an issue” with the settlement. Respondent knew these statements were false when he made them.

On or around April 9, 2012, Respondent told Mr. Mavany that he had received the settlement funds and a dinner was arranged, at which Respondent was going to bring the settlement funds. At the dinner, Respondent did not present the settlement funds; instead, he asked if he could be allowed to use the funds for a period of time. On April 11, 2012, Mr. Mavany sent an email to Respondent, requesting to be provided with a copy of the settlement agreement. In response to this request, Respondent sent Mr. Mavany a copy of the altered agreement later that same day.

On April 12, 2012, Mr. Mavany sent Respondent an email (1) inquiring if Respondent had received a settlement check with Shellina's name on it; (2) requesting to be provided with the entire file for his wife's case; and (3) asking to be provided with the name of the defendants' attorney.

In response to those requests, Respondent sent a lengthy email to Mr. Mavany on April 12, 2012, admitting Respondent's many acts of misconduct:

> Hi Salim,
>
> Im writing you to confess everything. To say its been a huge burden on me to keep lying is an understatement. I hope you will read this all completely and with compassion. I hope you will also understand that it was never my goal to hurt anyone. I take full responsibility for my own actions and will deal with the consequences, whatever they are.
>
> We settled your case for $15,000 in the end of September or beginning of October, I don't actually remember the exact date.
>
> During the time we settled, I was going through severe financial difficulties and having a hard time making payments on my debts and my rent. I thought that things would turn around quickly and so I altered the date on the Settlement agreement to say that the payment was due by December 20, 2010. I also changed the agreement to separate out my attorneys fees. I did this because your settlement with Aston Martin was "all inclusive" meaning that attorney's fees were part of the $15,000 and I didn't want to have to go through the process of negotiating with you what a fair amount would be on a case that I had worked over a year on would be.
>
> When I received the check it had my firms name and Shellina's name on it; I signed Shellina's name on the back and deposited into my firm client trust account. I then took the money out to pay bills.
>
> When December 20, 2010 came and I still did not have the money to pay you, I made up the excuse that the check had not arrived, which ultimately changed to an issue with the Settlement. I made up these lies in order to buy time so I could make the money to pay you back and avoid telling you the truth so we could retain our friendship. Meanwhile, 2011 was the most financially difficult year of my life. I barely made my rent and would often go without money for food or gas. I kept this from many people and borrowed money from friends to pay off other debts, but there was a limit as to the total amount I could borrow from friends and family.

> As of today, I have lost all my credit cards and my personal bank account and I have judgments and debtors all around me.
>
> My intention was never to hurt anyone. I will pay you back as soon as I can and if you decide you want to take this matter to the authorities, I will cooperate with them. I know that I will lose my law license and possibly go to jail, but this is the price of what I have done.
>
> For my part, I hope you will forgive me and allow me to pay you back without having to lose my license and freedom.
>
> I've made a lot of mistakes in trying to start my company Salim. I hope you will forgive my lies and continue to be my friend.
>
> In any case, the opposing counsel's name on your case is Brian Takahashi. Brian works for a firm called Bowman and Brooke. His information is below: *[details in original omitted]*
>
> I do not have the case file. When I gave up my office space in my building and moved everything into my apartment I had to make room and so I discarded files that were closed. If you need the file we can most likely pull it from the court.
>
> Please let me know if you have any other questions.
>
> Reza

(Ex. 7, pp. 1-2 [typographical errors in original].)

After Mr. Mavany had obtained some of the background information regarding the settlement, he emailed Respondent on April 16, 2012, to contest Respondent's receipt of more than 50 percent of the settlement proceeds. He then indicated a willingness to allow Respondent to retain $5,000 of the settlement funds as legal fees but demanded that Respondent pay Mrs. Mavany the remaining $10,000 within the next 30 days. "If we do not receive the full amount, I will have no choice but to turn it over to my attorney. [¶] I hope you can redeem yourself by satisfying this request." When Respondent then asked that he be given 60 days to pay the money, Mr. Mavany agreed that the deadline would be June 16, 2012.

At the beginning of June, Respondent emailed Mr. Mavany to ask for more time, indicating that he did not have the money to make any payments at that time. He asked that the

deadline be extended to August. This request was rejected by Mr. Mavany, who instead indicated a willingness to accept weekly payments of $2,500, beginning July 1, 2012. In response, Respondent indicated that he would pay $5,000 in July and would attempt to pay the balance in August. At some point during these exchanges, Mr. Mavany turned the matter over to his attorney, who then had his clients file a complaint with the State Bar.

On July 18, 2012[3] and September 23, 2012, Respondent sent $5,000 checks to Mr. Mavany. At trial, Mr. and Mrs. Mavany indicated that no more money is owed by Respondent to them and that no economic harm has come to them as a result of Respondent's prolonged use of their money. They both also asked that Respondent not be disbarred as a result of his misconduct.

Count 1 - Section 6106 [Moral Turpitude – Unauthorized Endorsement]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

Unless expressly granted, an attorney does not have the authority to endorse a client's signature on negotiable instruments payable to the client. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 794-795.) The State Bar alleges that Respondent committed an act of moral turpitude, in willful violation of section 6106, by endorsing the signature of Shellina Mavany on the check made payable to her without her authorization, consent, or knowledge. This court agrees.

Count 2 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

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." Here, Respondent received client funds on behalf of Mrs. Mavany in October 2010 and did not notify her of that fact until April 2012, more than a year later. His conduct constituted a willful violation of his duties under rule 4-100(B)(1).

[3] This first payment was made on the day before the Mavany complaint was sent to the State Bar on July 19, 2012.

Count 3 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

Rule 4-100(A) requires that funds received or held for the benefit of clients shall be deposited and maintained in a client trust account (CTA). 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. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411.) Under this non-delegable duty, an attorney must maintain client funds in the CTA until outstanding balances are settled. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123.)

Respondent did not maintain in his CTA the settlement funds owed to his client. Instead, he misappropriated those funds for his own use. This conduct was a willful violation by him of rule 4-100(A).[4]

Count 4 – Section 6106 [Moral Turpitude – 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 wilfulness, 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*, *supra,* 4 Cal. State Bar Ct. Rptr. at p. 410.)

In the absence of client consent, an attorney may not unilaterally withhold or use entrusted funds for personal purposes even though the attorney may be entitled to reimbursement. (*Most v. State Bar* (1967) 67 Cal.2d 589, 597; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358.) Withholding and appropriating client funds without client consent clearly

[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.)

supports a finding that an attorney misappropriated funds in violation of section 6106. (*Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [depriving client of rightful and timely access to funds by withholding them without authority represents clear and convincing proof of violation of § 6106].)

By withholding the proceeds of the Aston Martin settlement funds from his client for more than a year and using those funds for his own personal purposes, Respondent misappropriated them in willful violation of section 6106. (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829-830 [attorney's willful misappropriation of trust funds usually compels conclusion of moral turpitude].)

Count 5 – Section 6106 [Moral Turpitude – Altering Copy of Settlement Document]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice . . . ." (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.) "In broad terms, any act contrary to honesty and good morals involves moral turpitude. [Citations.] Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or at least gross negligence is required. [Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.) "To hold that an act of a practitioner constitutes moral turpitude is to characterize him as unsuitable to practice law." (*In re Higbie* (1972) 6 Cal.3d 562, 570.)

Respondent's actions, of making modifications to the settlement document that he had received from the Aston Martin defendants, providing that modified document to his client for execution without disclosure of the changes, and submission of the executed signature page to the defendants without disclosure, constituted acts of intentional dishonesty and moral turpitude, in willful violation of section 6106.

Count 6 - Section 6106 [Moral Turpitude –Misrepresentation]

Acts of moral turpitude under section 6106 include omissions, concealment, and affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) "No distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.) If this statute means anything, it means that an attorney may not intentionally lie to a client about the status of that client's matter.

Respondent willfully violated section 6106 by responding to the status inquiries of his client from 2011 until April 2012 by knowingly providing false information and intentionally concealing the true facts. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 103 [fraudulent invoices and memoranda created after the fact to justify respondent's fees constitutes moral turpitude]; (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes creating false impression by concealment as well as by affirmative misrepresentations].)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, [5] std. 1.5.) [6] The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent is culpable of six acts of misconduct. This is an aggravating factor. (Std. 1.5(b).[7]

[5] All further references to standard(s) or std. are to this source.
[6] Previously standard 1.2(b).
[7] Previously standard 1.2(b)(ii).

Misconduct Surrounded by Bad Faith/Concealment/Dishonesty/Overreaching

Standard 1.5(d)[8] provides as an aggravating circumstance that the member's misconduct included intentional misconduct, bad faith, dishonesty, concealment, overreaching, or other uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

While Respondent's misconduct included intentional misconduct, dishonesty, and concealment, such circumstances were the basis for the findings above that his actions violated section 6106. As a result, it would be duplicative to also treat such factors as an aggravating circumstance. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 89; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[9] The court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent had practiced law in California for slightly more than eight years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. That period of discipline-free practice is entitled to some, but not significant, weight in mitigation. (Std. 1.6(a);[10] *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295; *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 752.) Furthermore, Respondent is entitled to some mitigating credit even though his conduct was serious. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13

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[8] Previously standard 1.2(b)(iii).
[9] Previously standard 1.2(e).
[10] Previously standard 1.2(e)(i).

[noting that the Supreme Court has repeatedly applied former standard 12(e)(1) in cases involving serious misconduct and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Cooperation

Respondent entered into an extensive stipulation of facts and freely admitted the violations in this case, for which conduct Respondent is entitled to mitigation credit. (Std. 1.6(e);[11] 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].)

Candor/Remorse

Respondent demonstrated candor and remorse to his client, the State Bar, and this court regarding the circumstances surrounding his misconduct. Such is a mitigating factor. (Std. 1.6(g).) [12]

Restitution

Although Respondent misappropriated the funds of his client for his own use, he also accounted for such sums and repaid half of the funds owed to his clients prior to any complaint to the State Bar or the initiation of disciplinary proceedings. Such conduct is a mitigating factor. (*In the Matter of Mapps*, supra, 1 Cal. State Bar Ct. Rptr. 1, 13, citing *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310; *Weller v. State Bar* (1989) 49 Cal.3d 670, 676; *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1366-1367; *Waysman v. State Bar* (1986) 41 Cal.3d 452.)

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[11] Previously standard 1.2(e)(v).
[12] Previously standard 1.2(e)(vii).

Character Evidence

Respondent presented good character evidence from numerous individuals, including several attorneys. Respondent is entitled to mitigation for this good character evidence. (Std. 1.6(f);[13] *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"].)

Community Service

Respondent and his character witnesses presented significant evidence of community service and pro bono work by Respondent, which 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. (*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 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

[13] Previously standard 1.2(e)(vi).

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.)

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 1.7(a) [previously designated 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.

In addition standard 2.7[14] provides: "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The

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[14] Previously standard 2.3.

degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

Misappropriation of client funds has long been viewed as a particularly serious ethical violation. It 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*, *supra*, 53 Cal.3d at p. 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.)

Turning to the case law, 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*, *supra*, 41 Cal.3d at p. 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court and this court have imposed disbarment on attorneys with no prior record of discipline in cases involving a single intentional misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [taking of $29,500, showing of substantial mitigation]; *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]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm, and was disbarred]; *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]; *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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 511 [misappropriation of nearly $40,000, misled client for a year, no prior discipline]; and *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].)

The amount of money misappropriated by Respondent was not insignificantly small. Nor is there compelling mitigation in the current situation. Respondent's misappropriation of Lee's funds did not result from gross negligence on his part or from his failure to supervise the conduct of others. Instead, his misuse of his client's money was intentional; it was effected by Respondent's calculated preparation and use of fabricated documents; and it was concealed from his client for more than a year by additional acts of moral turpitude. "An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

It is especially concerning to this court that Respondent's misconduct was directed at people he regarded as friends and who, he knew, viewed him as a trusted friend. In addition, Respondent was admittedly aware at the time that his misconduct would cause him to "lose [his] law license and possibly go to jail." Despite those facts, he was not dissuaded from directing at his friends a series of calculated acts of moral turpitude lasting for more than a year. Under such circumstances, it is this court's conclusion that a disbarment recommendation is both appropriate and necessary to protect the profession and the public.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Reza Bavar,** Member No. 218811, 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.

California Rules of Court, 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 **Reza Bavar,** Member No. 218811, 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).)[15]

Dated: April _____, 2014.

DONALD F. MILES
Judge of the State Bar Court

[15] 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 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. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)