FILED DECEMBER 2, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **CHARLES COLIN COSSIO,** **Member No. 167901,** A Member of the State Bar.	**Case No.: 12-O-18065 - DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent Charles Colin Cossio (Respondent) is charged here with ten counts of misconduct involving a single client matter. The ten counts include allegations of willfully violating (1) Business and Professions Code section 6068, subdivision (a) (failure to comply with law – unauthorized practice of law)[1] [one count] and (2) section 6106 (moral turpitude) [nine counts]. At trial, Respondent stipulated to culpability in six of the nine counts of acts of moral turpitude. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on February 12, 2014.

On April 23, 2014, Respondent filed his response to the NDC.

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

On March 24, 2014, the initial status conference was held in the case. At that time, the case was given a trial date of June 5, 2014, with a two-day trial estimate. The commencement of the trial was continued on June 5 to June 13, 2014, due to the fact that Respondent's counsel was then in trial in superior court.

Trial was commenced on June 13, 2014, and submitted for decision on June 16, 2014. The State Bar was represented at trial by Deputy Trial Counsel Hugh G. Radigan. Respondent was represented at trial by Edward Lear of Century Law Group LLP. On the following day, June 17, 2014, Respondent filed a motion to re-open the evidentiary record to allow submission of supplemental character reference evidence. No opposition being filed by the State Bar to that request, the motion was granted and the submission order vacated. Trial was then resumed and completed on September 4, 2014.

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 California on December 10, 1993, and has been a member of the State Bar at all relevant times.

Case No. 12-O-18065

On February 18, 2010, the Supreme Court of California issued an order in State Bar Court case No. 07-O-10996, imposing on Respondent a three-year suspension, stayed, and a three-year period of probation with conditions that included an actual suspension of a minimum of two years and until Respondent pays restitution to certain specified payees and provides proof

to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. The order and resulting suspension became effective on March 20, 2010. [2]

At the time that Respondent's suspension became effective, he continued to represent Angeline Mazzenga in a personal injury matter. Although an agreement to settle the case had previously been reached by the parties during a mediation conducted on December 22, 2009, that settlement had not yet been completely funded by State Farm, the settling insurance company, at the time that Respondent's suspension began because State Farm was awaiting information as to the final amount of a lien held by Medi-Cal over the settlement proceeds.[3] Medi-Cal had still not provided that information to the parties.

On or about April 14, 2010, Medi-Cal finalized its lien and provided the required information to Respondent. On the same day, April 14, 2010,[4] Respondent, who was then suspended, sent a letter to State Farm, forwarding the "Final Lien Notice" that he had received from Medi-Cal in the amount of $8,517.66 and asking the State Farm claims representative the best method of effectuating distribution of the settlement proceeds. This letter was written on blank paper, rather than on Respondent's law firm's letterhead, and it did not refer to Respondent as an attorney.

After State Farm received the lien information, it immediately disbursed the settlement funds. Respondent deposited into his CTA $35,000 of Mazzenga's settlement proceeds on the

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[2] The State Bar did not place in evidence the pertinent court files reflecting either Respondent's discipline and misconduct in case No. 07-O-10996 or Respondent's misconduct in case No. 11-PM-15234. The court therefore takes judicial notice of the relevant State Bar court records regarding the two prior discipline records, admits them into evidence and directs the clerk to include copies in the record of this case.

[3] On March 15, 2010, Respondent received and deposited his client's settlement draft in the amount of $101,077.45, representing a portion of his client's settlement, and on March 16, 2010, he distributed $21,537.87 to her. These actions took place prior to Respondent's suspension becoming effective.

[4] On this same day, Respondent also had his required meeting with his assigned probation deputy. During this meeting, he discussed the fact that he was awaiting a resolution with Medi-Cal before disbursing settlement funds he was holding. (Ex. 2001.)

following day, April 15, 2010, and the liens on the settlement funds were subsequently satisfied on April 30, 2010, in the amount of $8,905, and on May 21, 2010, in the amount of $24,475.

Count 1 – Business and Professions Code Sections 6068, subd. (a), 6125, and 6126 [Failure to Support Laws/Unauthorized Practice of Law]
Count 2 - Section 6106 [Moral Turpitude]

In these counts, the State Bar alleges that Respondent held himself out as entitled to practice law and actually practiced law when he was not an active member of the State Bar by negotiating a personal injury lien with Medi-Cal on behalf of his client, Angela Mazzenga, and conveying that final lien amount to State Farm Insurance to effectuate finalization of settlement. In Count 1, the State Bar alleges that this alleged conduct represents a failure by Respondent to comply with the law, in willful violation of section 6068, subdivision (a). In Count 2, the State Bar alleges that Respondent's alleged conduct represents an act of moral turpitude, in willful violation of the prohibition of section 6106.

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125, provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail." Where it is contended that a member has violated sections 6125, the appropriate method of charging those violations is by charging a violation of section 6068, subd. (a). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

Turning to Count 2, section 6106 provides: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "[a]ny crime or misconduct reflecting dishonesty, particularly when committed in the course of practice . . . ." (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.)

The State Bar failed to present clear and convincing evidence that Respondent either held himself out as entitled to practice law in the *Mazzenga* matter after March 20, 2010, or performed acts constituting the practice of law. The actions taken by Respondent, in receiving and distributing the proceeds of the settlement that had been agreed to prior to his suspension, were consistent with and justified by the lien that he held on his own behalf over those funds, the Medi-Cal lien to which he and his client were legally subject, and his obligation not to terminate his employment without taking reasonable steps to avoid foreseeable harm to his client. There is no evidence that Respondent sought to negotiate after his suspension the terms of the Medi-Cal lien or to modify in any way the terms of the existing settlement agreement. He was only waiting to receive information from Medi-Cal as to the amount of that lien so that he could communicate the information to State Farm. In doing so, there is not clear and convincing evidence that Respondent affirmatively held himself out as eligible to practice during this time. Finally, State Bar records (Ex. 1002) show that Respondent discussed with his assigned probation deputy the fact that he was holding the settlement funds and would be disbursing them after the Medi-Cal lien was determined on the same day that Respondent wrote his letter of April 14, 2010. The deputy's notes indicate that Respondent was then reminded of his duty to place and maintain the funds in his client trust account (Rules of Prof. Conduct, rule 4-100), and he was encouraged to contact the State Bar's Ethics Hotline. Respondent both complied with rule 4-100 and contacted the Ethics Hotline. In doing so, he was advised that his handling of the

distribution of the settlement funds while suspended would not constitute the unauthorized practice of law.

Counts 1 and 2 are therefore dismissed with prejudice. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 620 [suspended counsel who went to court to inform court of his suspension and who discussed possible settlement with client at court's instruction held not culpable of unauthorized practice of law].)

Count 3 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by the following conduct: "On or about April 8, 2010, Respondent stated in writing under oath to the Probation Department of the State Bar that he had no clients, papers or property to which a client was entitled and did not represent any clients in pending matters as of February 28, 2010, when Respondent knew or was grossly negligent in not knowing that the statements were false[.]"

The State Bar failed to provide clear and convincing evidence that Respondent made any statement to the Office of Probation on April 8, 2010, that he did not have any clients as of February 28, 2010.[5] Accordingly, this count is dismissed with prejudice.

[5] In the stipulation of facts filed with the court, the parties stipulated, "Within Respondent's 9.20 compliance declaration, filed April 28, 2010, Respondent stated under penalty of perjury that he had no clients and no papers or property to which a client was entitled and that he did not represent any clients in pending matters as of the filing date of the underlying discipline order, February 18, 2010." These stipulated facts, however, do not substantiate the allegations of the NDC, since none of the stated dates, underlined above, correspond with the conduct alleged in the NDC and the rule 9.20 compliance declaration was filed with the State Bar Court, not the Office of Probation. Further, no motion to amend the NDC was made by the State Bar to have the NDC conform with the proof offered at trial. Accordingly, the parties' stipulation regarding the rule 9.20 compliance declaration may only be treated as evidence of a possible aggravating circumstance. See discussion below.

Count 4 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath in a quarterly report he submitted to the Office of Probation on or about July 9, 2010, that he had not practiced law within the preceding quarter (April 1-June 30, 2010) and that he was in compliance with all of the provisions of the Rules of Professional Conduct, when Respondent knew or was grossly negligent in not knowing that the statements were false.

The State Bar failed to state in this count the factual basis for its contention that Respondent's statements in his quarterly report were false, in violation of its obligation to provide such information and notice in its charging allegations. (See *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 185-186.) However, Respondent did not object to the deficiency of the NDC, and that deficiency was corrected by the State Bar's pretrial conference statement, as set forth below, in which the State Bar stated that the factual basis for this count was Respondent's handling of the *Mazzenga* settlement:

> A review of Respondent's CTA records indicates that on April 15, 2010, Respondent deposited into his CTA, $35,000 of Mazzenga's settlement proceeds which appear to have been used primarily to address outstanding liens which were satisfied on April 30, 2010 in the amount of $8,905 and on [sic] May 2010 in the amount of $24,475. By virtue of the same above-referred conduct, Respondent rendered the competency of the Quarterly Report filed July 9, 2010, equally suspect. Within that report under oath, Respondent averred that during the preceding quarter (April 1-June 30), he had complied with all provisions of the Rules of Professional Conduct and that he did not practice law while suspended. Neither representation was true.

(State Bar Pretrial Statement, p. 3; see also *In the Matter of Varakin, supra,* 3 Cal. State Bar Ct. Rptr. at pp. 185-186.)

Respondent prepared and submitted a Quarterly Report that was filed July 9, 2010. Within that report, Respondent averred under oath that during the preceding quarter he had complied with all provisions of the Rules of Professional Conduct and that he had not practiced

law while suspended. While the State Bar contends that Respondent's actions in the *Mazzenga* settlement constituted the unauthorized practice of law by Respondent, the court finds, for the reasons discussed above, that this contention is not supported by clear and convincing evidence.

This count is dismissed with prejudice.

Count 5 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath within a job application to Wells Fargo, submitted on or about April 6, 2010, that he had never been disciplined or the subject of an administrative order related to any licensed industry or profession when Respondent knew or was grossly negligent in not knowing that such statements were false.

At trial, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 9, p. 6.)[6]

Count 6 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating on or about September 13, 2010, in writing under oath within an application for a salesperson exam/license to the Department of Real Estate that he had never had a professional license denied, suspended or revoked when Respondent knew or was grossly negligent in not knowing that the statement was false.

During the trial of the instant proceeding, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 7, p. 2.)

[6] Whatever else may be encompassed by the term "moral turpitude," it most assuredly includes the use of deception to attempt to gain employment. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341 [deliberate misrepresentation on resume to gain employment by law firm constitutes moral turpitude].)

Count 7 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath within a mortgage loan originator license application submitted to the Department of Corporations on or about October 27, 2010, that he had not had any state agency find him unethical, revoke his license, suspend his license, discipline him, nor had he ever had an authorization to act as an attorney revoked, when Respondent knew or was grossly negligent in not knowing that such statements were false.

At trial, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 10, p. 7.)

Count 8 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath within a mortgage loan originator license application submitted to the Department of Corporations on or about December 17, 2010, that he had not had any state agency find him unethical, revoke his license, suspend his license, discipline him, nor had he ever had an authorization to act as an attorney revoked, when Respondent knew or was grossly negligent in not knowing that such statements were false.

At trial, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 10, p. 16.)

Count 9 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath within a mortgage loan originator license application submitted to the Department of Corporations on or about December 22, 2010, that he had not had any state agency find him unethical, revoke his license, suspend his license, discipline him, nor

had he ever had an authorization to act as an attorney revoked, when Respondent knew or was grossly negligent in not knowing that such statements were false.

At trial, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 10, p. 24.)

Count 10 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges that Respondent violated the prohibition of section 6106 by stating in writing under oath within a mortgage loan originator license application submitted to the Department of Corporations on or about July 30, 2012, that he had not had any state agency find him unethical, revoke his license, suspend his license, discipline him, nor had he ever had an authorization to act as an attorney revoked, when Respondent knew or was grossly negligent in not knowing that such statements were false.

At trial, Respondent stipulated to culpability pursuant to this count, and the court so finds. (See Ex. 10, p. 32.)

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, [7] std. 1.5.)[8] The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent has been disciplined on two prior occasions.

As previously noted, in State Bar case No. 07-O-10996, effective March 20, 2010, the Supreme Court issued an order imposing on Respondent a three-year suspension, stayed, and a three-year period of probation with conditions that included an actual suspension of a minimum of two years and until Respondent pays restitution to a former client and provides proof to the

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

State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. Other conditions of probation included the requirements that Respondent, within one year of the effective date of discipline, provide to the Office of Probation satisfactory proof of his attendance at and passage of the State Bar's Ethics School and his completion of no less than 4 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. The order and resulting suspension became effective on March 20, 2010. Respondent's misconduct included violations of Rules of Professional Conduct,[9] rules 3-110(A) and 4-100(A) and section 6106 (two counts) and arose from his gross negligence in delegating to his wife and failing to supervise the handling of his client trust account. This gross negligence by Respondent resulted in the mishandling of client funds subject to several medical liens and the making of a mistaken accounting to a client.

On October 28, 2011, the Supreme Court issued an order revoking Respondent's probation and again imposing on Respondent a three-year suspension, stayed, and a three-year period of probation with conditions that included an actual suspension of a minimum of 60 days and until Respondent pays restitution to his former client and provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent's misconduct leading to the revocation of his probation included his failures to timely take the Ethics School and to timely complete six units of approved MCLE courses.

Respondent's history of two prior disciplines is a significant aggravating factor, although the court notes that much of the misconduct involved in the instant proceeding occurred prior to the second discipline. (Std. 1.8(b); *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

[9] Except for references to rule 9.20 of the California Rules of Court, all future references to rule(s) are to this source.

Multiple Acts of Misconduct

Respondent is culpable of six counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.5(b).)

Harm

Respondent's misrepresentation in his application for a real estate license caused harm, although there is not clear and convincing evidence that this harm was to Respondent's clients, members of the public, or the administration of justice. As a result of his application, Respondent was issued a real estate salesperson license by the Department of Real Estate. On September 19, 2012, the Department sent a letter to Respondent, indicating that it had received information that he had "suffered license disciplinary action which may have a material effect upon [his] real estate licensing rights." (Ex. 1015.) The letter asked that Respondent respond to the inquiry and provide details regarding any prior discipline.

On September 26, 2012, Respondent responded with a letter in which he acknowledged having been suspended by the State Bar:

> However, it is true that I stipulated to being negligent in the handling of my State Bar client trust account, in that I failed to properly supervise my wife. I did not catch a significant accounting mistake that occurred with one client's funds. While unintentional, it involved a significant amount of money that should have been maintained in my trust account. My license was suspended as a result of this error.

(Ex. 1014.)

The Department of Real Estate was then required to take additional administrative steps to address and rectify its prior issuance of a license based on inaccurate information. These steps resulted on May 9, 2013, in a formal Accusation being filed against Respondent by the Department of Real Estate. Respondent subsequently agreed to surrender his real estate salesperson license on October 17, 2013. (Ex. 1013.)

The fact that Respondent's misconduct resulted in a license being improvidently issued by the Department of Real Estate, which was subsequently required to investigate and take administrative action to rectify the situation for the protection of the public is an aggravating factor.

In contrast, the evidence is not clear and convincing that Respondent's misrepresentations to the Department of Corporations, in conjunction with his applications for a mortgage loan originator license, caused harm. After the State Bar had raised issues with Respondent about his applications, Respondent sent a letter on January 30, 2014, to the Department of Business Oversight [the successor agency to the former Department of Corporations] to "self-report" his State Bar discipline in 2010. (Ex. 1012.) In this letter, Respondent stated, "I have previously believed in the accuracy of my prior attestations. For the most part, I still do. However, when read more closely, I have come to realize that my attestations could be interpreted as not being 100% accurate."

Thereafter, on or about February 10, 2014, Respondent then submitted an MU4 document to the state, in which he sought to correct and explain his prior answers as follows:

> Prior to obtaining my MLO license, I practiced law in California for a period of 17 years. In 2009, I stipulated with the State Bar of California that I was negligent in the handling of my client trust account on one (1) client matter. As a result, by way of an order filed on February 18, 2010, my license to practice law was suspended for a period of two years of actual suspension. Having served my suspension, I am eligible at the present time to petition the State Bar for reinstatement of my license and intend to have this completed by June 2014. I do believe that my previous disclosures are both truthful and accurate. Over the course of the last several months, I have been working on my State Bar petition for reinstatement. During this process, however, I have had the opportunity to review some areas of concern raised by the State Bar on how my previous responses could be interpreted as not being completely accurate. I have unilaterally decided to take steps to rectify any questions concerning my honesty in making the disclosures by self-reporting the issue regarding my State Bar license to the Department of Business Oversight. I would like to address those possible areas of concern and hereby amend my responses. With regard to Question (K)(6), I previously interpreted the question as

> dealing with a "financial services-related business" and determined that this did not fit my circumstances. Reading the question in a different light and removing from consideration the "financial services-related business" language, it is clear to me now that the State Bar of California is a "State regulatory agency" that "disciplined" me and "suspended" my "license" to practice law. Although the question is compound, I can now see how my previous response might be considered inaccurate if the question is interpreted in a different manner. I regret any previous misinterpretation on my part and amend my response accordingly. Much the same with Question (K)(6), I interpreted Question (K)(9) as dealing with a financial entity. Again, looking at the question in hindsight and under a different viewpoint, it is a true statement that an "order" was entered concerning my State Bar "license." I am attaching hereto a true and correct copy of the Order entered in State Bar Court No 07-O-10996. I regret any previous misinterpretation on my part and amend my response accordingly. I still find Question (L) to be somewhat vague and ambiguous. When I previously answered this disclosure question, I interpreted the phrase "authorization to act as an attorney" in the context of a power of attorney. I cannot recollect that I have ever had a client, who had provided me with a power of attorney, revoke his or her power of attorney. So I believe my previous answer is accurate. But, if you interpret "authorization" as a noun to mean "license," then it is true that my license to act as an attorney was suspended. I regret any previous misinterpretation on my part and amend my response accordingly. It is my hope and desire that these amended responses clarify any issues there may be regarding the honesty and accuracy of my previous responses. Thank you.

(Ex. 1011, p. 9.)

While, as noted, Respondent did obtain a mortgage loan originator license as a result of his applications, there is no clear and convincing evidence that this license would not have been issued in any event; nor is there any evidence of any subsequent effort by the state to revoke the license after Respondent's "self-reporting."

Uncharged Violation

Evidence of uncharged misconduct may be considered in aggravation where it is elicited for a relevant purpose and is based on the attorney's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

In the stipulation of facts, signed by both parties and filed with the court, the parties stipulated, "Within Respondent's 9.20 compliance declaration, filed April 28, 2010, Respondent

stated under penalty of perjury that he had no clients and no papers or property to which a client was entitled and that he did not represent any clients in pending matters as of the filing date of the underlying discipline order, February 18, 2010." (See also Ex. 14.) This compliance declaration included an untrue statement under penalty of perjury because Respondent had continued to represent Angelina Mazzenga on and after that date. This misrepresentation constitutes an act of moral turpitude in violation of Business and Professions Code section 6106; reflects a failure by Respondent to comply with his obligations under California Rules of Court, rule 9.20, as ordered by the Supreme Court; and is a significant aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[10] The court finds the following with regard to mitigating factors.

Cooperation

Respondent cooperated with the State Bar by entering into a stipulation related to various charges. Although the stipulated facts were not difficult to prove and Respondent did not admit culpability until the trial was underway, the stipulation was relevant and assisted the State Bar's prosecution of the case. The court therefore assigns mitigation credit for cooperation. (Std. 1.6(e).)

Character Evidence/Community Service

Respondent presented good character declarations from eight individuals, representing a wide range of references in the legal and general communities. The individuals included two attorneys, a former client (Mazzenga), several family members, and members of the business community. All opined about Respondent's honesty and integrity; however, only six witnesses

[10] Previously standard 1.2(e).

were aware of the full extent of Respondent's misconduct, as required by the standard. (Std. 1.6(f).

In addition, Respondent and one of the declarants discussed Respondent's community involvement, including being active in his church and coaching youth athletics. (Ex. 1021.)

For this evidence, Respondent is entitled to mitigation credit.

Emotional Difficulties

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct and there is clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) The evidence presented at trial by Respondent satisfies these requirements.

At trial, Respondent placed in evidence a report, dated December 5, 2013, from his former treating psychologist. This report was prepared by the therapist in conjunction with a prior effort by Respondent (withdrawn by Respondent before resolution) to be reinstated to active status. In this report, the psychologist reported that Respondent had been treated from October 2012 until November 2013 for Depressive Disorder, with symptoms including serious deficits in focus, distorted thinking, and disregard for others. These problems were also corroborated by at least one of the character declarants. While the therapist did not specifically discuss the misconduct involved in this proceeding, his description of the problems caused by Respondent's depressed emotional state, which started after Respondent was suspended in 2010 and continued to and including October 2012, would encompass those acts and omissions. At the completion of the report, the therapist reported that Respondent had responded positively to

treatment, and he opined that Respondent's former problems with depression had been resolved and that Respondent is able to resume practicing law without posing a risk of harm to the public.

This is a mitigating factor.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(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 sanctions for Respondent's misconduct is found in standard 1.8(b) [formerly standard 1.7]. Standard 1.8(b) provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.[11]

Also applicable are standards 1.8(a) and 2.7. Standard 1.8(a) provides that, where a member has a prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Standard 2.7 provides: "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The 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."

Respondent's culpability results from his repeated misrepresentations to two state agencies for the purpose of securing other professional licenses. Those misrepresentations took place after he had been disciplined for other acts of moral turpitude and while he remained on actual suspension and probation. Aggravating the situation is Respondent's acknowledged false rule 9.20 compliance declaration, representing an additional act of moral turpitude and a failure by him to comply with his obligations under California Rules of Court, rule 9.20, as ordered by the Supreme Court.

[11] Notwithstanding its unequivocal language to the contrary, the California Supreme Court has held that disbarment is not always mandated under the language of standard 1.8(b). (See, e.g., *Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781; see also *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125.) Rather, we are to "examine the nature and chronology of respondent's record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

Respondent was ordered by the California Supreme Court in March 2010 to remain actually suspended for a minimum of two years and until he demonstrates his rehabilitation, fitness to practice, and learning and ability in the general law to the satisfaction of this court. Although it is approaching five years since that order was issued and the two-year minimum suspension has long since elapsed, Respondent still remains suspended. During that time he had failed to comply with the terms of his probation, violated the Supreme Court's order regarding compliance with rule 9.20, and committed numerous other acts of moral turpitude for the purpose of and with the effect of securing from various governmental agencies other professional licenses to deal with the public. His misrepresentations resulted in at least one of those agencies being misled and harmed.

Under the circumstances, this court concludes that the sanction of disbarment is both appropriate and necessary to protect the public.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Charles Colin Cossio,** Member No. 167901, 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.

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 **Charles Colin Cossio,** Member No. 167901, 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).)[12]

Dated: January _____, 2015.

DONALD F. MILES
Judge of the State Bar Court

[12] 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.)