

FILED

JUL 10 2014

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: 13-O-11446-PEM; 13-O-14149;
	)	14-O-00534 (Cons.)
<b>GEORGE BERNARD ALTENBERG, JR.,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 117984,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<b>A Member of the State Bar.</b>	)	
	)	

Introduction<sup>1</sup>

This contested disciplinary proceeding involves three consolidated matters. Respondent George Bernard Altenberg, Jr., is charged with: (1) failing to maintain entrusted funds in a trust account; (2) failing to notify client of receipt of funds, (3) failing to pay client funds promptly; (4) committing acts of moral turpitude by misappropriation (\$54,815) in two client matters; (5) failing to comply with California Rules of Court, rule 9.20; and (6) filing a false rule 9.20 declaration.

For the reasons stated below, this court finds by clear and convincing evidence that respondent is culpable of the alleged misconduct. Based on the nature and extent of culpability, as well as his mitigating and aggravating factors, this court recommends that respondent be disbarred from the practice of law and make restitution.

<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.



### **Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on November 12, 2013, and on December 9, 2013, respondent filed his response (case No. 13-O-11446).

A second NDC was filed on March 5, 2014, and on April 1, 2014, respondent filed his response (case No. 13-O-14149). On March 25, 2014, the two matters were consolidated for trial.

A third NDC was filed on April 11, 2014, and on April 22, 2014, respondent filed his response (case No. 14-O-00534). On April 21, 2014, case No. 14-O-00534 was consolidated with case Nos. 13-O-11446 and 13-O-14149.

A stipulation as to facts was filed on April 22, 2014. A two-day trial was held on April 22 and 23, 2014. The State Bar was represented by Senior Trial Counsel Erica L. M. Dennings. And respondent represented himself. On April 23, 2014, following closing arguments, the court took this matter under submission.

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

Respondent was admitted to the practice of law in California on June 13, 1985, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 13-O-11446 – The Brians Matter**

##### **Facts**

On November 7, 2007, Catherine Brians (Brians) hired respondent to represent her in a personal injury matter. Respondent and Brians signed a fee agreement in which respondent would receive a fee of 33-1/3% or 40% of any settlement proceeds, depending upon when the matter settled.

On January 8, 2008, respondent filed a lawsuit on Brians' behalf, *Catherine Brians v. Natosha Swartz*, Mendocino County Superior Court, case number SCUK-CVPM 08-50719. On August 29, 2008, respondent settled the *Brians* matter before going to trial.

On September 4 and September 22, 2008, respondent deposited two settlement checks, totaling \$30,000, from GEICO Insurance Company made payable to respondent and Brians in the amount of \$27,719.68 and \$2,280.32, respectively, into his Wells Fargo Bank attorney client trust account, number 054-703XXXX<sup>2</sup> (CTA).

On November 25, 2008, respondent deposited another settlement check from Farmers Insurance Exchange in the amount of \$45,000 payable to Brians and respondent into his CTA. Of the total settlement sum of \$75,000 (\$45,000 + \$30,000), Brians was entitled to at least \$50,000 (66-2/3% of \$75,000).

Respondent did not inform Brians that he had received these settlement funds on her behalf. Brians did not endorse the settlement checks. Because respondent was entitled to at most \$25,000 for his fees (33-1/3% of \$75,000), he was obligated to maintain \$50,000 of the settlement funds in his CTA on Brians' behalf. But, by December 12, 2008, the balance in respondent's CTA fell to \$309.94.

On February 22, April 13, May 27, and September 7, 2010, respondent disbursed \$5,000 to Brians for a total of \$20,000. On April 12, 2011, respondent disbursed another \$20,000 to Brians. Brians received a total of \$40,000 in settlement funds from respondent and contended that she was entitled to at least another \$10,000.

In February 2013, Brians and respondent reached an agreement whereby respondent would pay Brians a total of \$7,376. In March 2013, Brians filed a complaint with the State Bar against respondent. Thereafter, respondent made multiple installment payments to Brians. By

---

<sup>2</sup> The complete account number is omitted to prevent against identity theft.

April 2, 2014, respondent had paid her a total amount of \$7,300. And on April 5, 2014, Brians signed a declaration acknowledging the full and complete satisfaction of any funds owed her by respondent.

## **Conclusions**

### ***Count 1 - (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 must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

In September and November 2008, after respondent deposited the three settlement checks totaling \$75,000 in his CTA, he was required to maintain at least \$50,000 in the trust account for the benefit of Brians. But by December 12, 2008, respondent had only \$309.94 in his CTA. Thus, respondent failed to maintain a balance of \$50,000 received for the benefit of a client in his client trust account in willful violation of rule 4-100(A).

### ***Count 2 - (§ 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.

As discussed in count one, respondent was required to hold in trust the amount of \$50,000 for the benefit of his client in his client trust account. But within three weeks after respondent deposited the funds in the CTA, the balance fell to \$309.94.

The mere fact that the balance in respondent's CTA has fallen below the total of amounts deposited in and purportedly held in trust supports a conclusion of misappropriation.

(*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into respondent's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

“[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn.” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) When the balance in the CTA fell below \$50,000 by December 12, 2008, to a balance of \$309.94, respondent misappropriated \$49,690.06 (\$50,000 - \$309.94) of his client funds.

“There is no doubt that the wilful misappropriation of a client’s funds involves moral turpitude.” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) Therefore, respondent committed an act of moral turpitude on December 12, 2008, in willful violation of section 6106 by misappropriating \$49,690.06 that Brians was entitled to receive.

**Case No. 13-O-14149 – The Damian Matter**

**Facts**

On May 21, 2010, Alejandra Damian (Damian) hired respondent to represent her and her daughter for injuries that occurred as a result of a June 8, 2009 automobile accident. Damian and respondent signed a 25% contingency fee agreement for legal services for her daughter and a 33-1/3% contingency fee agreement for legal services for Damian.

On January 18, 2011, respondent received a settlement check for Damian’s daughter in the amount of \$1,400 and deposited it into his CTA. On behalf of her daughter, Damian was entitled to \$1,050 (75% of \$1,400) of the settlement funds. Respondent failed to notify Damian of receipt of funds on her daughter’s behalf.

On June 2, 2011, respondent received on behalf of Damian a settlement check in the amount of \$6,500 and deposited it into his CTA. Again respondent did not notify Damian of the receipt of \$6,500 on her behalf. At the time, Damian was entitled to \$4,334 (66-2/3% of \$6,500) of the settlement funds.

By June 13, 2011, the balance in respondent’s CTA fell to \$98.32.

On November 30, 2011, respondent paid \$160 to a medical provider on Damian's behalf. Thus, including her daughter's settlement, Damian was entitled to about \$5,224, as follows:

*Client's Share of Settlement Funds*

Daughter's share	\$1,050 (75% of \$1,400)
Damian's share	<u>\$4,334 (66-2/3% of \$6,500)</u>
Subtotal	\$5,384
Less medical expense	<u>(160)</u>
<i>Total Amount Owed to Damian</i>	\$5,224

Respondent acknowledges that Damian did not endorse the settlement checks. In 2011, Damian tried to reach respondent on several occasions about the status of her lawsuit. She did not try to contact respondent in 2012 because she thought it was useless. However, as a result of being unable to reach respondent, Damian, on the advice of her chiropractor, called her insurance company. Her insurance company informed her that she should call the State Bar.

In 2013, Damian filed a complaint with the State Bar. On August 27, 2013, respondent met with Damian. In that meeting Damian learned for the first time that respondent had not filed a lawsuit, but instead, had settled the case. Respondent also agreed in the meeting to pay Damian \$20,000 in installments beginning no later than October 27, 2013, with the last payment due no later than November 27, 2014.

Respondent did not make the first installment due in October 2013 because he did not have the money. It was not until April 4, 2014, that respondent was able to come up with any money to pay Damian. On that date, respondent attempted to tender to Damian \$2,500. She refused to accept the \$2,500 because it was not payment in full. At the hearing on this matter, respondent apologized to Damian for taking her money and gave her a cashier's check for \$2,500 which she accepted after prompting by this court.

## **Conclusions**

### ***Count 1 - (Rule 4-100(B)(1) [Notification to Client of Receipt of Client Property])***

Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds, securities, or other properties.

Respondent failed to notify Damian of his receipt of funds on her daughter's behalf in January 2011 and on her behalf in June 2011. She did not learn that her case had settled until August 2013 at the meeting with respondent, more than two years later. Therefore, by failing to promptly inform Damian that respondent received the settlement proceeds, respondent failed to notify a client promptly of the receipt of the client's funds in willful violation of rule 4-100(B)(1).

### ***Count 2 - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])***

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

It was not until April 22, 2014, that respondent paid Damian \$2,500, a portion of the \$5,224 legally owed to Damian. He still owes her at least \$2,724 (\$5,224 - \$2,500). Therefore, respondent failed to promptly pay or deliver, as requested by the client, the settlement funds of \$5,224 in his possession which the client is entitled to receive in willful violation of rule 4-100(B)(4).

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

On January 18 and June 2, 2011, respondent deposited the checks for \$1,400 and \$6,500, respectively, into respondent's CTA on behalf of Damian. Of this sum, the client was entitled to at least \$5,224. By June 13, 2011, the balance in respondent's CTA fell to \$98.32. Thus,

respondent failed to maintain a balance of \$5,224 on behalf of the client in respondent's CTA in willful violation of rule 4-100(A).

**Count 4 - (§ 6106 [Moral Turpitude])**

By misappropriating at least \$5,125.68 (\$5,224 - \$98.32) that Damian was entitled to receive, respondent willfully committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

**Case No. 14-O-00534 – The California Rules of Court, Rule 9.20 Matter**

**Facts**

On November 17, 2011, the California Supreme Court filed a disciplinary order in case number S196276 (State Bar Court case No. 09-O-11169). Among other things, the Supreme Court ordered respondent to comply with California Rules of Court, rule 9.20, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the rule 9.20 Order (Order). The Order became effective December 17, 2011, and was duly served on respondent. Respondent received the Order.

Respondent was to have filed the rule 9.20 affidavit by January 26, 2012. But he did not file a declaration of compliance with the Clerk of the State Bar Court by the due date.

Instead, on January 27, 2012, one day after the due date, respondent filed his rule 9.20 declaration. He stated under penalty of perjury in his declaration the following:

- "As of the date upon which the order to comply with rule 9.20 was filed, I had no clients."
- "As of the date upon which the order to comply with rule 9.20 was filed, I had no papers or other property to which clients were entitled."
- "As of the date upon which the order to comply with rule 9.20 was filed, I had earned all fees paid to me."

On the contrary, as of January 27, 2012, respondent had not disbursed Damian's share of the settlement funds which she was entitled to receive. In fact, respondent waited until April 2014 at this hearing to pay her \$2,500; he still owes her the remaining balance of at least \$2,724.

### **Conclusions**

#### ***Count 1 – (Cal. Rules of Court, Rule 9.20)***

Rule 9.20, subdivision (c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

The State Bar alleged that respondent failed to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20, subdivision (c) with the clerk of the State Bar Court by January 26, 2012, as required by Supreme Court order No. S196276, in willful violation of rule 9.20.

Because respondent filed the rule 9.20 declaration on January 27 and not January 26, the due date, he filed the affidavit one day late and technically violated rule 9.20, subdivision (c), albeit a minor violation. Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in the Order.<sup>3</sup>

---

<sup>3</sup> Specifically, rule 9.20, subsection (d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

***Count 2 – (§ 6106 [Moral Turpitude])***

The State Bar also alleged that on January 27, 2012, respondent stated, under penalty of perjury, in his declaration filed pursuant to rule 9.20 that "As of the date upon which the order to comply with rule 9.20 was filed, I had no clients," when respondent knew or was grossly negligent in not knowing the statement was false and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

At trial, respondent offered that he did not know that Damian was still his client until March 2013 when for the first time he realized he had not paid her monies due her. He also offered that he confused Damian's case with another case that had settled. He testified that when he paid the chiropractor in November 2011, he did not review her file and determine whether there was a close letter in the file. He contended that when he signed the rule 9.20 compliance declaration under penalty of perjury, he truly thought that he no longer represented Damian as the Damian matter had been closed when he paid the chiropractor in November 2011.

Respondent's carelessness and confusion concerning the requirements of rule 9.20 did not obviate his culpability of willful failure to file an accurate rule 9.20 affidavit. (See *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.) This court cannot excuse respondent's non-compliance with the rule 9.20 Order.

Unbeknownst to Damian that her and her daughter's matters had settled by June 2011, she reasonably believed that she was still respondent's client until August 2013. Because respondent had not disbursed the portion of the settlement funds which Damian was entitled to receive, respondent still possessed client property and had not earned the full amount of settlement funds as his fees, as two-thirds of the funds belonged to Damian.

Thus, respondent's declaration that he had no clients, that he had returned all properties to which the client was entitled, or that he did not possess any client funds was false. Therefore, by

filing a false rule 9.20 declaration, respondent committed an act involving dishonesty in willful violation of section 6106.

**Aggravation<sup>4</sup>**

**Prior Record of Discipline (Std. 1.5(a).)**

Respondent has two prior records of discipline. In the first disciplinary matter, by order filed November 17, 2011, respondent was suspended for two years, execution stayed, placed on probation for three years, and actually suspended for one year for client trust account violations in five client matters that occurred in 2008 and 2009. Respondent failed to maintain client funds in his trust account, failed to promptly pay client funds, failed to promptly notify clients of receipt of funds, misappropriated settlement funds, and committed acts of moral turpitude. There, he made full restitution to the clients. (Supreme Court case No. S196276; State Bar Court case No. 09-O-11169.)

In his second disciplinary matter, currently pending before the Review Department, this court recommended that he be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, that respondent be placed on probation for three years with an actual suspension of two years. There, he was found culpable of (1) failing to maintain entrusted funds in a trust account and committing an act of moral turpitude by misappropriation (\$10,850.33) in a single client matter; and (2) failing to comply with conditions attached to his disciplinary probation imposed by the California Supreme Court. Because of his compelling mitigating factors (emotional difficulties, rehabilitation, remorse and good character evidence), the court concluded that respondent should be given another chance to prove to this court that he was willing and capable of discharging his duties as an attorney in a professional

---

<sup>4</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

manner and thus did not recommend disbarment. The misconduct occurred in 2011 and 2012. (State Bar Court case Nos. 12-O-13719; 13-O-10245 (Cons.))

Because his misconduct in the prior cases occurred contemporaneously with the current misconduct during the years of 2008 through 2012, it is appropriate to consider what the discipline would have been if all the charged misconduct during the time period had been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) Nevertheless, prior discipline is a proper factor in aggravation "[w]henver discipline is imposed." (*Id.* at p. 618.)

**Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)**

Respondent's multiple acts of misconduct are an aggravating factor. He failed to maintain client funds in the CTA, misappropriated client funds, failed to notify client of receipt of funds, failed to pay client funds promptly, committed acts of moral turpitude, and failed to comply with rule 9.20.

**Harm to Client/Public/Administration of Justice (Std. 1.5(f).)**

Respondent's failure to fully pay Damian her portion of the settlement funds and failure to promptly pay Brians her share of the settlement funds until some six years later caused significant harm to the clients.

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h).)**

In both instances, respondent did not promptly tell clients that he had received settlement funds on their behalf. In the Brians matter, he did not pay her the remaining balance of \$7,300 in settlement funds until after he was contacted by the State Bar. Similarly, in the Damian matter, he waited more than two years before informing the client that he did not file a lawsuit, had settled her case instead, and had received settlement funds on her and her daughter's behalf.

**Failure to Make Restitution (Std. 1.5(i).)**

Respondent still owes Damian money from a settlement that occurred three years ago.

**Mitigation**

**Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)**

Extreme emotional difficulties are a mitigating factor where expert testimony establishes that the emotional difficulties were directly responsible for the attorney's misconduct, and the attorney has demonstrated through clear and convincing evidence that he no longer suffers from such difficulties and the recurrence of further misconduct is unlikely. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 700-702.)

In the second disciplinary matter, Dr. Barry G. Pierce, respondent's psychiatrist, testified as his expert witness regarding his emotional problems. In this matter, respondent again presented Dr. Pierce to testify on his behalf. However, because Dr. Pierce's testimony was previously considered in his prior discipline and because the magnitude of the misappropriations and misconduct in this disciplinary matter are so severe, the mitigating weight accorded to his testimony is diminished.

Furthermore, there is no clear and convincing evidence that his emotional difficulties have ceased to be a problem or that they no longer pose a risk that he will commit misconduct. Therefore, his emotional and personal difficulties are given minimal weight in mitigation.

**Good Character (Std. 1.6(f).)**

Respondent presented two character witnesses. Their testimony is not entitled to significant weight in mitigation since it is not an extraordinary demonstration of good character attested to by a wide range of references. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.)

**Remorse/Recognition of Wrongdoing (Std. 1.6(g).)**

Respondent's remorse and recognition of wrongdoing are accorded some weight.

**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, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record

demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, the standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.1(a), 2.2(a), 2.2(b), 2.7, and 2.8(a) apply in this matter.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Standard 2.2(a) provides that actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.

Standard 2.2(b) provides that suspension or reproof is appropriate for other violation of rule 4-100.

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending 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.

Finally, standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) – (h).

The State Bar argues that respondent be disbarred from the practice of law for misappropriation under standard 2.1(a) and various cases, including *In the Matter of Conner*

(Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93; *Grim v. State Bar* (1991) 53 Cal.3d 21; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067; and *Chang v. State Bar* (1989) 49 Cal.3d 1140.

Respondent urges no additional discipline given that the instant misconduct involved was contemporaneous with the misconduct in the prior cases. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

As the court noted in its decision in his second prior disciplinary matter, *Porter v. State Bar* (1990) 52 Cal.3d 518 was found to be instructive. There, the Supreme Court imposed a two-year actual suspension for an attorney who committed serious misconduct in nine client matters, including misappropriation of over \$14,500 in trust funds, writing a bad check, forgery, lying to clients, and unlawfully practice law while suspended. In one matter, he settled the case for \$5,000 without the client's consent or knowledge, forged the client's name to a release and her endorsement on the check, and kept the money. He had strong mitigating factors, such as extreme emotional difficulties and rehabilitation evidenced by community and professional activities. He sought psychological treatment for his emotional difficulties and his psychoanalyst concluded that he was fully recovered.

Here, the origin of respondent's misconduct lies with dishonesty and intent. The psychological reasons that gave rise to his taking risks and misappropriating client funds may have been compelling mitigating factors in the previous disciplinary matters. But now, with the additional culpability findings of misappropriations of \$54,815 (\$49,690 + \$5,125) and filing a false rule 9.20 declaration, the court must consider "the totality of the findings in the [three] cases to determine what the disciplinary would have been had all the charged misconduct in this period been brought as one case." (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. 602, 619.)

The misconduct found in the two prior cases and the current matter combined involved 17 counts, eight client matters, violations of his probation conditions, and violation of rule 9.20, spanning from 2008 through 2012. Unlike the attorney in *Porter*, whose psychoanalyst concluded that he was fully recovered, respondent is currently still under treatment and there is no clear and convincing evidence that he now no longer suffers from his mental difficulties. To his credit, he is on his way to recovery but has not yet fully recovered.

In *Conway v. State Bar* (1989) 47 Cal.3d 1107, 1126, the Supreme Court rejected evidence that the attorney no longer suffered from the cocaine addiction as "insufficient to overcome the strong showing that [he] posed a substantial threat of harm to his clients and the public" in light of his "past lapses and history of recurring wrongs." Similarly in this case, it has been shown that there was a causal nexus between respondent's mental problems and his misconduct. But it has not been shown that he no longer suffers from the mental problems or that his ongoing recovery overcomes the evidence that he still poses a substantial threat of harm to his clients and the public in view of his recurring misappropriations and dishonesty.

"In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client's money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

In *Chang v. State Bar, supra*, 49 Cal.3d 114, the attorney was disbarred for misappropriating over \$7,000 by secretly opening a trust account in his own name while employed by a law firm, depositing his client's funds in the trust account, later taking the funds,

failing to comply with the client's request for copies of bank records, and refusing to pay the client the funds owed. The attorney was also found to have failed to cooperate in the disciplinary investigation by making misrepresentations to a State Bar investigator. The attorney offered no evidence in mitigation, but it was noted that he had no prior record of discipline. In ordering disbarment, however, the Supreme Court noted that it had several reasons to doubt that the attorney would conform his conduct in the future to the professional standards required of attorneys in California. In particular, the Supreme Court noted that the attorney had never acknowledged the impropriety of his actions; he had made no effort at reimbursing the client and displayed a lack of candor to the State Bar.

In *Grim v. State Bar*, *supra*, 53 Cal.3d 21, the attorney misappropriated over \$5,500 of client funds and did not return the funds to the client until after almost three years later and after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing. The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties which arose out of a business venture were neither unforeseeable nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court therefore did not find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors. He was disbarred.

Here, respondent's misconduct was not a single act of misappropriation. Based on the two prior disciplinary matters and the current disciplinary matter in totality, he had repeatedly taken settlement funds from clients without informing them. While he had paid most of them back, he caused them considerable grief and harm for the delay. Many had to seek the State Bar's assistance before he would respond to their demands.

The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar, supra*, 53 Cal.3d 21.)

Moreover, respondent's willful violation of the 9.20 Order by filing a false declaration is very serious, for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such violation undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Absent strong mitigating circumstances, a rule 9.20 violation warrants disbarment. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

Therefore, a recommendation of disbarment and restitution would have been appropriate had all three disciplinary cases been brought in as one case. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the Supreme Court order, violations of his probation conditions, and his multiple acts of trust account violations and misappropriations from 2008 through 2012. Disbarment is necessary to protect the public. Accordingly, the court so recommends.

### **Recommendations**

It is recommended that respondent George Bernard Altenberg, Jr., State Bar Number 117984, be disbarred from the practice of law in California and his name be stricken from the roll of attorneys.

**Restitution**

It is also recommended that respondent George Bernard Altenberg, Jr., be ordered to make restitution to Alejandra Damian in the amount of \$2,724 plus 10 percent interest per year from June 2, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**Order of Involuntary Inactive Enrollment**

Respondent George Bernard Altenberg, Jr., is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective 30 calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 10, 2014

  
PAT McELROY  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 10, 2014, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GEORGE BERNARD ALTENBERG JR  
2618 GUERNVILLE RD  
SANTA ROSA, CA 95401

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 10, 2014.

  
George Hue  
Case Administrator  
State Bar Court