FILED AUGUST 22, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **TED SCOTT WARD,** **Member No. 143810,** A Member of the State Bar.	**Case No.: 13-O-11594-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Ted Scott Ward** (Respondent) is charged here with two counts of misconduct, both arising out of his mishandling of the funds of his former legal partnership. The counts include allegations that Respondent willfully violated (1) Business and Professions Code section 6106 (moral turpitude - misappropriation); [1] and (2) section 6106 (moral turpitude - misrepresentation). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 12, 2013. On January 31, 2014, Respondent filed his response to the NDC, denying any culpability in the matter.

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

An initial status conference was held in the matter on January 21, 2014. At that time, the case was given a trial date of April 9, 2014, with a three-day trial estimate.

On March 21, 2014, Respondent filed a motion to continue the trial due to his need to attend to health issues of a family member. On March 25, 2014, the State Bar filed a statement of non-opposition to the motion. On March 25, 2014, a status conference was held in the matter, resulting in the filing of an order on March 27, 2014, continuing the commencement of trial until April 30, 2014, with a two-day trial estimate.

Trial was commenced on April 30, 2014, but was not completed at the end of May 1, 2014. At that time, due to the conflicting schedules of the court and the unavailability of Respondent's counsel, it was not scheduled to reconvene until May 29, 2014. Then, when that date arrived, because Respondent's counsel was still engaged in a trial in superior court, the continuation of the trial was again postponed. Trial was reconvened and completed on June 11, 2014, and the matter submitted for decision on that date.

The State Bar was represented at trial by Supervising Senior Trial Counsel Kristin Ritsema and Deputy Trial Counsel Lara Bairamian. Respondent was represented by Edward Lear of Century Law Group LLP.[2]

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 filed by the parties, and the documentary and testimonial evidence admitted at trial.

[2] On July 17, 2014, Respondent's counsel filed a motion to withdraw as counsel, stating that he had lost contact with Respondent. No opposition to the motion has been filed by Respondent. Accordingly, good cause appearing, the motion is granted.

Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1989, and has been a member of the State Bar at all relevant times.

Case No. 13-O-11594 (Berke Matter)

From 2006 until April 2010, Respondent and Kenneth Berke (Berke) were law partners in the law firm of Berke, Kent & Ward, LLP ("the firm"). In April 2010, Respondent left the partnership.

During their partnership, Respondent and Berke maintained separate offices with separate employees. Berke initially maintained an office in Calabasas, California. Respondent maintained his office in Los Angeles.

During their partnership, Respondent and Berke also maintained separate bank accounts.

During their partnership, Respondent was responsible for paying the firm's federal and state employment taxes for the employees in his office, while Berke was responsible for paying the firm's federal and state employment taxes for the employees in his office.

For tax years 2007 and 2008, Respondent was responsible for filing the firm's quarterly (form 941) and year-end (form 940) federal employment tax returns with the United States Internal Revenue Service (IRS) and for transmitting to the IRS the federal employment taxes owed by the firm. For tax years 2007 and 2008, Respondent also was responsible for transmitting the state employment taxes owed by the firm to the appropriate California state agency.

From March 22, 2007 through January 13, 2009, Berke gave Respondent eleven checks made payable to Respondent and totaling $31,519.82, of which $23,353.82 was provided by Berke to Respondent to pay Berke's share of the federal employment taxes owed by the firm to

the IRS for 2007 and 2008 and to pay Berke's share of the state employment taxes owed by the firm. The sequence and specifics of these payments was as follows:

> On March 22, 2007, Berke issued check number 3252 from his Washington Mutual account ending in 3042 to Respondent in the amount of $2,430.23, of which $1,575.23 was provided by Berke to Respondent to pay Berke's share of payroll taxes for January and February 2007. On March 23, 2007, Respondent deposited check number 3252 into his account at East West Bank ending in 653. On March 26, 2007, check number 3252 posted to Berke's Washington Mutual account.
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> On October 5, 2007, Berke issued check number 3470 from his Washington Mutual account ending in 3042 to Respondent in the amount of $457.08 to pay Berke's share of state payroll taxes for March through August 2007. On October 9, 2007, Respondent deposited check number 3470 into his account at East West Bank ending in 653. On October 11, 2007, check number 3470 posted to Berke's Washington Mutual account.
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> On October 5, 2007, Berke issued check number 3471 from his Washington Mutual account ending in 3042 to Respondent in the amount of $3,435.50 to pay Berke's share of federal payroll taxes for March through August 2007. On October 9, 2007, Respondent deposited check number 3471 into his account at East West Bank ending in 653. On October 11, 2007, check number 3471 posted to Berke's Washington Mutual account.
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> On November 30, 2007, Berke issued check number 3527 from his Washington Mutual account ending in 3042 to Respondent in the amount of $2,958.23, of which $990.23 was provided by Berke to Respondent to pay Berke's share of payroll taxes for September and October 2007. On November 30, 2007, Respondent deposited check number 3527 into his account at East West Bank ending in 653. On December 3, 2007, check number 3527 posted to Berke's Washington Mutual account.
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> On December 31, 2007, Berke issued check number 3590 from his Washington Mutual account ending in 3042 to Respondent in the amount of $1,539.11, of which $555.11 was provided by Berke to Respondent to pay Berke's share of payroll taxes for November 2007. On January 8, 2008, Respondent deposited check number 3590 into his account at East West Bank ending in 653. On January 9, 2008, check number 3590 posted to Berke's Washington Mutual account.

On February 8, 2008, Berke issued check number 3622 from his Washington Mutual account ending in 3042 to Respondent in the amount of $1,270.63, of which $286.63 was provided by Berke to Respondent to pay Berke's share of payroll taxes for December 2007. On February 8, 2008, Respondent cashed check number 3622. On February 8, 2008, check number 3622 posted to Berke's Washington Mutual account.

On February 12, 2008, Berke issued check number 3626 from his Washington Mutual account ending in 3042 to Respondent in the amount of $690.70 to pay Berke's share of payroll taxes for January 2008. On February 23, 2008, Respondent deposited check number 3626 into his account at East West Bank ending in 653. On February 25, 2008, check number 3626 posted to Berke's Washington Mutual account.

On April 2, 2008, Berke issued check number 3678 from his Washington Mutual account ending in 3042 to Respondent in the amount of $3,600.72, of which $1,819.72 was provided by Berke to Respondent to pay Berke's share of payroll taxes for January (again) and February 2008. On April 4, 2008, Respondent deposited check number 3678 into his account at East West Bank ending in 653. On April 7, 2008, check number 3678 posted to Berke's Washington Mutual account.

On April 25, 2008, Berke issued check number 3729 from his Washington Mutual account ending in 3042 to Respondent in the amount of $2,557.77, of which $963.77 was provided by Berke to Respondent to pay Berke's share of payroll taxes for March 2008. On June 2, 2008, Respondent deposited check number 3729 into his account at East West Bank ending in 653. On June 4, 2008, check number 3729 was posted to Berke's Washington Mutual account.

On December 23, 2008, Berke issued check number 3938 from his First Bank of Beverly Hills account ending in 969 to Respondent in the amount of $7,252.30 to pay Berke's share of payroll taxes. On January 2, 2009, Respondent deposited check number 3938 into his account at East West Bank ending in 653. On January 5, 2009, check number 3938 posted to Berke's First Bank of Beverly Hills account.

On January 13, 2009, Berke issued check number 3956 from his First Bank of Beverly Hills account ending in 969 to Respondent in the amount of $5,327.55 to pay Berke's share of payroll taxes for June through December 2008. On January 26, 2009,

> Respondent deposited check number 3956 into his account at East West Bank ending in 653. On January 28, 2009, check number 3956 posted to Berke's First Bank of Beverly Hills account.

The parties have stipulated, and this court finds, that at no time did Respondent pay the federal employment taxes owed by the firm for 2007 and 2008, and at no time did Respondent pay the state employment taxes owed by the firm for 2007 and 2008. Respondent did not use any portion of the $23,353.82 from Berke to pay federal or state employment taxes owed by the firm for 2007 and 2008. Instead, without Berke's knowledge, authorization or consent, Respondent used the $23,353.82 from Berke for Respondent's own purposes. By February 19, 2009, the balance in Respondent's account at East West Bank ending in 653 had dipped to $89.31.

In addition, the court finds that Respondent actively misrepresented and concealed from Berke the fact that Respondent was not using the checks that he had received for the purpose for which those funds had been entrusted to Respondent.

Sometime after Respondent first received money from Berke but did not use it to pay the accrued employee taxes, the IRS began notifying the law firm of its need to file the required reports and pay any accrued taxes. These notices would come to Berke, rather than Respondent. Berke, in turn, would forward the notices to Respondent for handling. When Berke would discuss the matters, Respondent would assure him that the matters were either resolved or being handled.

In September 2009, Berke received a series of overdue tax notifications from the IRS. On September 3, 2009, he sent the following email to Respondent:

> Attached are a stack of letters I received today for unpaid employment taxes dating from March of 2007 to December of 2008. These total almost $60,000. Each time these statements have come in, I've sent them to you and you've indicated that you

> have paid the, or that there was some kind of mistake. This scares the shit out of me. What's going on???

On September 8, 2009, Berke telephoned the IRS to inquire whether the tax returns had been filed. He was informed that the IRS had filed returns for the law firm (just creating an assumed tax deficiency) and that the firm needed to file its actual forms as soon as possible.

On September 22, 2009, Respondent had not responded to Berke's prior email and Berke had received numerous additional notifications from the IRS that interest and additional penalties would be owed on the assumed and assessed overdue taxes for 2007 and 2008 unless the accrued deficiencies were paid by September 28, 2009. (Exhibits 20-26.) Berke then sent a follow-up email to Respondent, complaining of Respondent's inaction and again expressing his concern about any tax delinquency:

> The attached notice arrived Friday from the IRS. Have you filed the 941s and 940s and paid the taxes due? The September 28th deadline is fast approaching.
>
> Ted, you are not returning my phone calls or replying to my emails. I have even called twice to ask about your surgery, but received no reply. What is going on? This is not how partners treat one-another. As you might expect, I am growing increasing concerned and frustrated.

Three days later, on September 24, 2009, when Respondent had still not responded to Berke's various inquiries, Berke sent another complaining email:

> I have still not gotten a phone call from you. Are the 941 tax issues resolved? Have you filed the 941s (and 940s) and paid the actual tax due? You were going to send me copies of cancelled checks showing proof of payment, but I have not received them. I am very concerned that the IRS is going to start levying on our bank accounts. The due date is only two business days away.

Respondent replied to this email several hours later, again reassuring Berke that the matter was being taken care of by him:

> I tried to get a hold of her yesterday. You will not owe a penny (unless its for Sindy since 1/1/09). As soon as I talk to her today I will update you[.]

On the following day, September 25, 2009, Berke again complained to Respondent about the situation:

> As a partners [sic], however**,** we both are personally, jointly and severally liable for payroll taxes. "Put the shoe on the other foot" for a minute. How would you feel if there was a $50K-$60K liability out there that I created, that had been accumulating over a 2-year period and for which you were also responsible for paying if I did not pay it? Now, layer on top of that, the fact that I've been sending you periodic 941 delinquent notices over the past year or so, that you've been repeatedly telling me it was all taken care of, but when I call the IRS, they tell me they have never received even so much as a phone call from you. I hope you can empathize with how upsetting this has been.

In this same email message, Berke then went on to "vent" about other issues the two individuals had in their partnership. Among his final comments, he noted:

> Ted, I am at the end of my rope with our partnership. I'm really not sure what to do at this point. … I am losing sleep thinking about the shape of our partnership, and I can't go on like that.

On October 5, 2009, Respondent responded to the above email with an email apologizing "for how you feel" and for the fact that "this came to a head when I was out with my surgery so I have been unable to get back to your [sic] asap." In this email, Respondent assured Berke that he felt that they were a "good partnership" and added:

> As for the IRS – you will not pay a penny unless you failed to pay for your employees before we started our arrangement which I understand from you is not the case – and I believe you. I will update you after I speak with the IRS today and let you know exactly what I find out and the precise solution I have reached with them.

On October 6, 2009, Respondent sent a follow-up email to Berke regarding the status of the unpaid payroll taxes. In this email, he again reassured Berke that whatever issue there might actually be with the IRS was in the process of being quickly resolved:

> I spoke with Susan at the IRS today and will get her exactly what she needs. She hands [sic] the rports [sic] and is looking for the 940 for 2008 and the 941 for Q4 of 2008. I will fax those to her no later than Thursday, which she said is fine.
>
> I called the other number regarding outstanding amounts due and left a message. Whatever the agreed upon balance due, <u>if any</u>, is, I will cut the IRS a check. I just need them to go through the alleged balance with me.

(Ex. 29, p. 1 [underlining added].)

These above assurances by Respondent to Berke, that Respondent was actively working with the IRS to resolve any possible issues, that payments of accrued payroll taxes had previously been made, and that the deficiency notices merely resulted from communication failures, were all misrepresentations by Respondent of the true situation. No returns had been filed; no prior payments had been made; and Respondent was not talking with the IRS to resolve the deficiency notices. As a result, Berke and the law firm continued to receive demands from the taxing authorities that overdue payroll taxes and accrued penalties be paid. Berke continued to send these notices to Respondent, who continued to do nothing about them while simultaneously reassuring Berke that he was resolving any problems. .

The partnership between Respondent and Berke terminated in April 2010. For the balance of 2010 and all of 2011, Berke, believing that Respondent had previously resolved the tax problem with the taxing authorities, forwarded the notifications to Respondent, so that Respondent could and would remind the government of the prior resolution.

Finally in January 2012, Berke received a notification that the taxes had still not been paid and that the accrued balance, with interest and penalties, now totaled $82,556. Realizing that Respondent had not used the funds that Berke had entrusted to him to pay the accrued payroll taxes, Berke then took steps to handle the problem himself. In addition to hiring outside tax counsel to deal with the problem and submitting a claim to the firm's bonding company (Hartford), Berke made a criminal complaint about Respondent to the Los Angeles County Sheriff's Department.

On January 31, 2012, Deputy Sheriff David Diestel met with Berke, who complained that Respondent, his former law partner, had been entrusted with $23,353.82 to pay the company's taxes to the IRS and had actually not done so, despite assurances to the contrary.

Deputy Diestel then contacted Respondent by phone. When informed by the deputy of Berke complaint, Respondent said the matter was a civil dispute between two former partners and that he "has been in constant contact with the I.R.S. to resolve [the] issue. … 'I am talking to the IRS continuously.'"[3]

In order to determine whether Respondent was actually in contact with the IRS, Deputy Diestel then re-contacted Berke and informed him of what Respondent had stated. The two of them then jointly contacted the IRS and learned that Respondent had not contacted the IRS regarding the law firm's payroll taxes since a single email communication from Respondent in 2009.[4]

[3] Exhibit 51, p. 7.

[4] Although the deputy made adverse conclusions regarding Respondent's conduct, he also concluded that the matter fell outside the jurisdiction of the Los Angeles County Sheriff's Department.

Around this same time, Berke hired an attorney experienced in handling IRS matters, who eventually succeeded in reducing the amount of the taxes, penalties and interest being claimed by the various taxing authorities. Berke then paid the amount of the outstanding indebtedness. In addition, Berke succeeded in having Hartford treat Respondent's misappropriation of the funds entrusted by Berke to him for the taxes as a covered loss. As a result, Hartford reimbursed Berke for the loss.

Count 1 –Section 6106 [Moral Turpitude - Misappropriation]

Under California law, partners in a law firm are trustees (1) for one another (*Leff v. Gunter* (1983) 33 Cal.3d 508, 514) and (2) of the assets of the partnership (*Ragsdale v. Haller* (9th Cir. 1986) 780 F.2d 794, 796). As explained by the Review Department of this court in *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 373:

> Partnership is a fiduciary relationship, and partners are held to the standards and duties of a trustee in their dealings with each other." (*BT-I v. Equitable Life Assurance Society* (1999) 75 Cal.App.4th 1406, 1410.) … "An attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal profession whether or not he acts in his capacity of an attorney. He must maintain proper books of account and records of transactions, and he may not commingle client's funds or use them for personal purposes. [Citations.]" (*Worth v. State Bar* (1976) 17 Cal.3d 337, 341.) Further, "when an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct. [Citations.]" (*Clark v. State Bar* (1952) 39 Cal.2d 161, 166; *Lewis v. State Bar* (1973) 9 Cal.3d 704, 713; *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 307.)

Thus, Respondent, having accepted fiduciary responsibilities, is held to the same fiduciary duties as if there were an attorney-client relationship. (*In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185, 191.)

Section 6106 of the Business and Professions Code prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. A breach of fiduciary duties can constitute an act involving moral turpitude where such breach involves more than simple negligence. (*In the Matter of McCarthy*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 377.) While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) "[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]" (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304; *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].)

Respondent was entrusted by his partner Berke with $23,353.82 for the purpose of paying the payroll taxes owed by the law firm. Rather than use the money for that purpose, Respondent misappropriated the funds for his own purposes.

At trial, Respondent sought to justify his conduct by claiming that Berke owed him money as a result of various matters, including funds received from the Paul Williams bankruptcy. Those contentions lack merit. All of these claimed offsets arose well after Respondent had misappropriated the funds and would not, in any event, justify him in unilaterally and secretly misappropriating for himself money that he had received in a fiduciary capacity.

Respondent's misappropriation of the funds that had been entrusted to him to pay the firm's payroll tax liabilities represented acts of moral turpitude in willful violation of the prohibition of section 6106.

Count 2 – Section 6106 [Moral Turpitude - Misrepresentation]

Acts of moral turpitude 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.)

In this count, the State Bar alleges that Respondent's statements to Deputy Diestel represented acts of moral turpitude. This court agrees. Respondent both misrepresented to the law enforcement officer that he was actively seeking to resolve the payroll tax deficiency with the IRS, and he concealed from the officer the fact that he had not paid the payroll taxes with the funds that had been entrusted to him for that purpose but instead had misappropriated those funds. While Respondent was completely entitled to decline to answer the officer's questions based on his constitutional right not to incriminate himself, he had no right to make representations to the officer that were knowingly untrue. His decision to do so constituted a willful violation by him of section 6106.

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.

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

Prior Discipline

Respondent has been disciplined on one prior occasion. In February 2012, he was privately reproved, with public disclosure, by this court in case No. 11-O-13077. His misconduct in that matter involved Respondent's failure in 2010 to file an appellate brief in violation of rule 3-110(A), despite assurances to his client that the brief was completed and would be filed the next day, and his failure to respond to the State Bar's investigation of the matter, in willful violation of section 6068, subdivision (i).

This prior record of discipline is a significant aggravating factor. (Std. 1.5(a).)[7]

Multiple Acts of Misconduct

Respondent is culpable of multiple acts of misconduct. This is an aggravating factor. (Std. 1.5(b).[8]

Harm

Standard 1.5(f) [9] provides as an aggravating circumstance that the member's misconduct significantly harmed a client, the public or the administration of justice. Respondent's misconduct here caused significant harm to Berke and the law firm's bonding company, Hartford. This is a significant aggravating factor.

Dishonesty and Concealment

Respondent's misappropriation of the funds provided to him by Berke for the payment of payroll taxes was concealed by him from Berke for a number of years, despite numerous

[7] Previously standard 1.2(b)(i).
[8] Previously standard 1.2(b)(ii).
[9] Previously standard 1.2(b)(iv).

inquiries by Berke regarding the status of the inquiries by the taxing authority. Such dishonesty and concealment is an aggravating factor. (Std. 1.5(d).[10])

Lack of Insight and Remorse

Respondent lacks "a full understanding of the seriousness of his misconduct," which is an additional aggravating factor. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68; see also Std. 1.5(g).[11]) "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Mitigating Factors

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[12] The court finds the following with regard to potential mitigating factors.

Cooperation

Respondent did not admit culpability in the matter but entered into an extensive stipulation of facts, thereby assisting the State Bar in the prosecution of the case. For such conduct, Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but "very limited" where culpability is denied].)

[10] Previously standard 1.2(b)(iii).
[11] Previously standard 1.2(b)(v).)
[12] Previously standard 1.2(e).

Alcoholism/Family Problems

Respondent seeks to receive mitigation credit for a claimed problem that he had with alcohol and various family problems during the relevant period. The evidence, however, on that issue was not persuasive that he had any alcohol problem or that any of his claimed personal and substance abuse problems was a cause of his misconduct. No expert appeared to testify regarding this issue. (Cf. Std. 1.6(d).) Instead, Respondent called numerous witnesses to provide character testimony, including his former secretary/paralegal during the critical period. None of these witnesses had any knowledge or observation of any problem of Respondent with alcoholism, and his secretary/paralegal testified that none of Respondent's personal challenges interfered with his daily work.

Financial Problems

Respondent seeks to receive mitigation credit for claimed financial problems that he had during the relevant period. The evidence, however, on that issue was not persuasive. At no time did Respondent indicate to his partner that he was unable to pay the payroll taxes or reimburse the partner because of financial problems. Moreover, when asked about his income at various law firms after leaving his former partnership, he acknowledged receiving significant levels of annual compensation.

Character

Respondent presented good character testimony from numerous individuals representing a wide range of references in the legal and general communities and who are aware, to one degree or another, of the full extent of the member's misconduct. The individuals included attorneys, a former staff member, and members of the business community. For this evidence, Respondent is entitled to receive mitigation credit. (Std. 1.6(f).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *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 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 not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(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 2.1(a),[13] which provides: "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."

In considering the application of standard 2.1(a), the amount of the misappropriated funds certainly cannot be characterized by this court as being "insignificantly small." Nor is there any compelling mitigation.

Turning to the case law, misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation 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* (1991) 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.)

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 at p. 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) The Supreme Court has also imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. (See, e.g., *In re Abbott* (1977) 19 Cal.3d 249 [taking of $29,500, showing of manic-depressive condition, prognosis uncertain].) In *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. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost $7,900 from his law firm, coincident with his termination by that firm,

[13] Previously standard 2.2(a).

and was disbarred. (See also *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]; *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]; *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]; and *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].)

Here, Respondent was culpable of numerous acts of misappropriation, misappropriating more than $23,000 that he received over a two year period. He concealed his misconduct from his partner, despite numerous inquiries, and lied to a law enforcement officer when confronted about the situation. Despite the pendency of this proceeding, he has failed to return any portion of the funds to the victim(s) of his misconduct and he continues to evidence a complete lack of insight into the impropriety of his prior actions. 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 **Ted Scott Ward,** Member No. 143810**,** 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.

Restitution

It is also recommended that Respondent make restitution to the Hartford Insurance Company in the amount of $23,353.82 plus 10 percent interest per year from August 28, 2012. 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

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 **Ted Scott Ward,** Member No. 143810**,** 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).)[14]

Dated: August _____, 2014.

DONALD F. MILES
Judge of the State Bar Court

[14] 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.)