

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-15871-DFM
)	
KEVIN MICHAEL HARR,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 149572,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
A Member of the State Bar.)	

INTRODUCTION

Respondent **Kevin Michael Harr** (Respondent) is charged here with seven counts of misconduct in a single client matter.¹ The seven counts include allegations of willfully violating (1) rule 3-110(A) of the Rules of Professional Conduct² (failure to perform with competence); (2) Business and Professions Code³ section 6106 (moral turpitude - misappropriation); (3) rule 4-100(A) (failure to maintain client funds in trust account); (4) section 6068, subdivision (d) (employing means inconsistent with truth) [two counts]; (5) section 6068, subdivision (k) (failure to comply with probation conditions); and (6) section 6106 (moral turpitude - misrepresentation). The court finds culpability and recommends discipline as set forth below.

¹ An eighth count, Count 2 in the NDC, was dismissed by the court at the request of the State Bar at the commencement of trial. That dismissal is reaffirmed here.
² Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.
³ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on May 30, 2014.

On July 8, 2014, the State Bar filed a motion for entry of Respondent's default due to his failure to file a response to the NDC.

On July 14, 2014, the initial status conference was held in the case. Respondent and counsel for the State Bar appeared. At that time, the case was given a trial date of September 15, 2014, with a two-day trial estimate. In addition, a pretrial conference was scheduled on September 8, 2014. On the following day, July 15, 2014, this court issued a written trial-setting order, setting forth the above dates and requiring, inter alia, the parties to meet-and-confer on or before September 2, 2014, regarding all issues identified in rules 1221-1225 of the State Bar Court Rules of Practice and to file pretrial conference statements on or before that same date.

On July 18, 2014, Respondent filed his response to the NDC.

On August 25, 2014, the State Bar filed a motion to exclude Respondent's evidence at trial, based on his failure to comply with his discovery obligations.

The pretrial conference was held on September 8, 2014. A timely pretrial conference statement was filed by the State Bar. No pretrial brief was filed by Respondent. At the pretrial conference, it became clear to this court that Respondent had not complied with his discovery obligations in this matter, with this court's trial-setting order, or with the requirements of rules 1220-1225 of the State Bar Court Rules of Practice. His failings included (1) failing to disclose to the State Bar any of the documents or witnesses called for by the State Bar's discovery request and required to be disclosed as part of the pretrial disclosure process; and (2) failing to file a pretrial conference statement. As a result, Respondent was ordered on September 8, 2014, to comply with all of his pretrial disclosure obligations, including but not limited to serving and

filing a pretrial conference statement, on or before noon, September 11, 2014. He was warned that any failure by him to strictly comply with these requirements could result in the exclusion of his evidence at trial. The pretrial conference was then ordered to resume on September 11, 2014, at 4:00 p.m. This oral order on September 8 was subsequently committed to a written order on September 9, 2014.

When the pretrial conference was resumed on September 11, 2014, Respondent had not complied with the above order. His non-compliance included, but was not limited to, continued failure to disclose any documents to the State Bar, continued failure to file a pretrial statement with the court, and continued failure to prepare an exhibit list for the court. Respondent was again orally ordered to comply with all pretrial disclosure obligations including, but not limited to, serving and filing a pretrial conference statement and marking and distributing (properly paginated and hole-punched) copies of likely trial exhibits. Respondent was given a deadline of the close of business, September 19, 2014, to do so. Once again, Respondent was advised at length by this court that he was not in compliance with his obligations as a participant in this disciplinary proceeding, and he was again warned that any non-compliance beyond the September 19, 2014 deadline with the obligations imposed on him by this court's prior orders and/or the State Bar Court Rules of Practice would result in the exclusion of his evidence at trial. The pretrial conference was then recessed and ordered to resume again on September 23, 2014. Trial of the matter, then set to commence on September 15, 2014, was trailed to September 23, 2014. This oral order was subsequently committed to a written order on September 12, 2014.

The third session of the pretrial conference took place on September 23, 2014. Respondent had filed a purported pretrial conference statement on September 19, 2014; however, notwithstanding all of this court's prior orders and warnings, that statement failed to comply either with this court's trial-setting order or with rule 1223 of the State Bar Court Rules of

Practice. In addition, among other things, Respondent had still failed to comply with the requirements of rule 1224 of the State Bar Court Rules of Practice; failed to provide to either the State Bar or this court copies of his likely exhibits, as he had been previously directed to do by this court; and failed to comply with his obligation under the State Bar Court Rules of Practice and this court's prior orders to meet and confer with the State Bar regarding the admissibility of exhibits and the stipulation to undisputed facts. Instead, with regard to his obligation to disclose and discuss trial exhibits, Respondent had merely handed to counsel for the State Bar, on the afternoon shortly before the third session of the pretrial conference began, a computer disk purporting to show several thousand anticipated possible exhibits. The timing and manner of this purported disclosure of likely exhibits precluded any meaningful identification and resolution of issues regarding those exhibits from occurring at or before the pretrial conference.

As a result of Respondent's continuing disregard of his obligations in this proceeding, on September 24, 2014, this court issued an order precluding him from offering any documentary evidence into evidence at trial⁴ and from calling any witnesses, other than himself, to testify at trial. In addition, due to the needs of the State Bar to schedule out-of-state witnesses for trial, Respondent's failure to comply with his pretrial obligations, and this court's existing calendar conflicts, the commencement of the trial in this matter was continued to December 11-12, 2014.

Trial was commenced on December 11, 2014, and completed on December 15, 2014. The State Bar was represented at trial by Senior Trial Counsel Kimberly G. Anderson. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC and the documentary and testimonial evidence admitted at trial.

⁴ Notwithstanding this order, Respondent was allowed at trial to place in evidence rebuttal and impeachment documents.

Jurisdiction

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar at all relevant times.

Case No. 13-O-15871

Rick Marotta (Marotta), Sherri Nader (Nader) and Parastoo “Paris” Farhoodi (Farhoodi) were co-owners, either directly or indirectly, of an office building in which Farhoodi had her dental practice. Farhoodi and Nader are sisters. Marotta had a 50% ownership interest in the building; Nader held 25% interest; and Farhoodi held the remaining 25%. As a result of this division of ownership, none of the three individuals could unilaterally control decisions regarding the building; nor could the sisters make decisions over the objection of Marotta.

A dispute between the three individuals arose in late 2010 or early 2011 when Marotta decided that he wanted to sell the building. Both sisters were concerned that the building was being sold in a “down market.” Farhoodi also did not want to sell the building because her office was located in it, and she did not have a long-term lease for her office. When no agreement could be reached between the three individuals, Marotta brought a lawsuit on April 7, 2011, to dissolve the relationship and have the building sold. This civil action was entitled *Rick Marotta v. Parastoo Farhoodi, et. al.*, and was filed in the Los Angeles County Superior Court. Farhoodi and Nader were named as defendants.

On April 24, 2011, the two sisters employed Respondent to represent them in the action. Respondent had already been retained by the sisters prior to the filing of the lawsuit to assist them in resisting the sale of the building, and he accepted service of the complaint on their behalf. He had agreed with the sisters to represent them at a rate of \$150 per hour for the two of them. Nader was to pay her portion of the fee with money. Farhoodi was to pay her portion of

the fees by providing dental services to Respondent and several other individuals associated with Respondent.

In hiring Respondent to defend the action, the sisters made clear to him that they did not want the building to be sold. In turn, Respondent indicated that he was going to file a cross-complaint against Marotta. Despite Respondent's commitment to file a cross-complaint and his awareness of his clients' desire to stop any sale of the building, Respondent then failed to file any response on their behalf in the proceeding. As a result, his clients' defaults were entered on June 7, 2011.

A case management conference was held in Department 50 of the Los Angeles County Superior Court on August 5, 2011. Judge Wiley was the presiding judge on that date. Respondent was in attendance. Informed that no responsive pleading had been filed on behalf of the defendants and that a default had previously been entered, the court ordered the two opposing attorneys to meet and confer regarding the possible setting aside of the default. In addition, the court set a hearing date of October 27, 2011, for any motion by Respondent on behalf of his clients to vacate and set aside the default. A further case management conference was also scheduled by the court to also take place on October 27, 2011.

Respondent and plaintiff Marotta's counsel subsequently met to discuss setting aside the default. Marotta's counsel demanded that any agreement to set aside the default must include an obligation on the part of the defendants to pay \$500 to compensate his client Marotta for the cost of obtaining the prior default. Eventually no agreement was reached to set aside the default. Notwithstanding the lack of any such agreement, Respondent did not file a motion to set aside the default. He also did not appear at the October 27, 2011 case management conference.

At the October 27, 2011 case management conference in Department 50 (then being handled by Judge Altoon on a temporary basis), the court observed that a motion to set aside the

default was supposed to have been filed by defendants for hearing that date but that no such motion had been filed. The court then stated that it intended to schedule a default prove-up hearing for 30 days thereafter, to be handled by the new judge then being assigned to the department. A minute order was subsequently issued by the court, scheduling that hearing on November 28, 2011. However, the purpose of the hearing was not described as a default prove-up hearing but instead was described as “Order to Show Cause Re Request to Enter Default Judgment/Case Management Conference/Trial Setting Conference.” In addition, the minute order stated, “If defendant/defendant counsel appear on the above date the Court will set aside the Request to Enter Default and the Case Management/Trial Setting Conference will be held.” (Ex. 40.)

Respondent received notice of the November 28, 2011 hearing and appeared for it. He still had not filed a motion to set aside the default judgment. At the hearing, presided over by the new judge now assigned to Department 50, plaintiff’s counsel accurately described the prior two hearings and stated that he had come to the hearing with witnesses to conduct the default prove-up. The court, noting the language in the prior minute order regarding setting aside the default in the event defendants’ counsel merely appeared, allowed Respondent to discuss the status of the default, informed him of the need to file a formal motion to vacate the default, “directed [him] to schedule said motion with Department 50’s calendar clerk,”⁵ and then indicated that Respondent was not entitled to participate further in the proceeding. After then researching and determining that it was appropriate to go forward that same day with the prove-up hearing, the court allowed plaintiff to proceed with the prove-up hearing.⁶ During that hearing, the court received documentary evidence that the grant deed for the building identified plaintiff Marotta and the

⁵ Ex. 7, p. 1.

⁶ The court concluded that a motion to vacate a default judgment could be made just as readily as a motion to set aside the entry of default. (Ex. 38, p. 9:14-20.)

two sisters as the three grantees and heard testimony regarding past and present problems in the management of the building. At the conclusion of the hearing, the court found that a partnership, consisting of the three individuals, owned the building and that it was appropriate to both dissolve that partnership and appoint a receiver to sell the building. The court then scheduled a hearing on December 12, 2011, for the appointment of a receiver.

Despite the instruction of the court at the November 28, 2011 hearing, Respondent did not subsequently file a motion or take any other action to vacate or set aside the existing default. As a result, the scheduled hearing on December 12, 2011, went forward and resulted in the court signing and filing a “Court Judgment After Default,” entering judgment against the two sisters, dissolving the partnership that the court concluded owned the building, and appointing a receiver to sell the building.

Many months later, the receiver subsequently sold the building. After the sale had closed, the receiver sought to obtain an order approving his final accounting and authorizing him to disburse to Marotta and the two sisters the proceeds of the sale. On November 16, 2012, the court approved the receiver’s accounting and authorized \$206,493 of the net proceeds to be disbursed to Marotta; \$103,246.75 to be disbursed to Nader; and \$68,564.64 to be disbursed to Farhoodi.⁷

On November 19, 2012, the receiver sent a \$68,564.64 check to Respondent as the attorney for Farhoodi. (Ex. 13.) On November 28, 2012, Respondent deposited this check into his client trust account (CTA). Prior to the deposit the balance in the account had been approximately \$40,000.⁸ On the same day that Farhoodi’s funds were deposited into the CTA,

⁷ The smaller amount disbursed to Farhoodi resulted from a portion of the sale proceeds being used to satisfy a lien against the building based on Farhoodi’s student loans.

⁸ The balance in the CTA at the beginning of November 2012 had been \$44,003.70. During the four weeks in November leading up to the deposit of Farhoodi’s funds, there were no deposits of

Respondent issued a check in the amount of \$70,000 to another client. (Ex. 14, p. 15.)⁹ On the same day, he also withdrew \$500 in cash from the account. (Ex. 14, p. 14.) At the end of November 2012, the balance of the CTA was \$38,068.34. (Ex. 14, p. 63.)

In the following months, Respondent continued to withdraw funds from the account for himself even though the only funds in the account were those belonging to Farhoodi. In December 2012, he made a series of cash withdrawals totaling \$9,500. In January 2013, he made cash withdrawals totaling \$6,500. In February 2013, his cash withdrawals again totaled \$6,500. In March 2013, Respondent's cash withdrawals totaled \$9,000. At the beginning of April 2013, the balance of Farhoodi's funds in Respondent's CTA was \$6,508.34. During April 2013, Respondent withdrew in cash an additional \$6,500, leaving a balance in his CTA at the end of April 2013 of \$8.34. On May 3, 2013, Respondent withdrew in cash \$8.00 of that available \$8.34.

Many months before, on December 18, 2012, the receiver had issued a second check to Farhoodi, this one in the amount of \$289.78. That check was also sent to Respondent as Farhoodi's attorney, but Respondent did not immediately deposit it into his CTA. Instead, Respondent only deposited the \$289.78 check into the CTA on behalf of Farhoodi on May 3, 2013, when the account balance would have otherwise been reduced to 34 cents. (Ex. 14, p. 87.) On the following day, May 4, 2013, Respondent then withdrew in cash an additional \$200 of Farhoodi's funds. As a result, of the \$68,854 of Farhoodi's money that Respondent had

any additional funds into the account. However, Respondent made two cash withdrawals of \$2,000 each during those four weeks.

⁹ A declaration from this other client, Julie Pallis (Pallis), was received in evidence at the outset of this trial. In this declaration, Pallis stated that Respondent had received on her behalf \$60,000 "on April 9, 2012" but did not disburse the funds to her, despite numerous requests, until receiving a demand letter from her attorney. (Ex. 35.) The evidence attached to this declaration indicates that Respondent actually received the Pallis funds via wire transfer on February 24, 2012. (See Ex. 35, p. 4.)

deposited into his CTA, only \$90.12 remained in the CTA on May 6, 2013. (Ex. 14, pp. 87-88.)¹⁰

None of the above withdrawals by Respondent of Farhoodi's money from his CTA was made with Farhoodi's knowledge or permission. Instead, throughout this period, Farhoodi assumed that Respondent was continuing to hold her money on deposit in his CTA. Respondent had been telling Farhoodi that the judgment against her was void and that she had a valid cause of action against Marotta and Koloe, LLC, but only if she did not touch the funds deposited into his CTA. It was based on this advice that Farhoodi did not ask that her funds be immediately disbursed to her.

However, on July 13, 2013, Farhoodi, who by then had been locked out of her old dental office by the building's new owner, sent an email to Respondent, indicating that she needed the funds from the sale of the building to pay her bills. In response, rather than disclose to Farhoodi that the funds were no longer in his CTA, Respondent again encouraged her to meet with him regarding the advisability of waiving her claims by asking that Respondent disburse the funds to her. (Ex. 26, p. 17.) Farhoodi replied to this suggestion by sending instructions that she wanted her funds and wanted the check delivered to Nader, Farhoodi's sister.¹¹

In response to this instruction, Respondent acknowledged receiving Farhoodi's message and did not dispute her entitlement to the funds. However, he did not disburse any money. As a result, at the end of July 2013, Farhoodi again sent to Respondent a demand for her funds, threatening to take formal steps to recover her funds if the funds were not disbursed immediately. She again asked that the funds be disbursed via a check delivered to her sister in California. (Ex. 26, p. 14.) In response, Respondent sent an email to Nader on August 3, 2013, asking if she

¹⁰ At the end of June 2013, the balance of funds remaining in Respondent's CTA was twelve cents (\$0.12). (Ex. 14, p. 91.)

¹¹ Farhoodi was then in the process of relocating to Virginia.

was available later that day as “Paris asked me to drop off a check to you.” (Ex. 26, p. 13.) Nader promptly replied via email that she was available to receive the check and forwarded a copy of the correspondence to Farhoodi. Respondent then failed to show up at Nader’s home with a check.

Farhoodi then sent a series of angry emails to Respondent, accusing him of being a thief and threatening to pursue criminal charges. In response, on August 5, 2013, Respondent sent Farhoodi a lengthy email in which he began with the disclaimer “I am not a thief[.]” He then proceeded to explain that he was having a tough time financially due to not getting paid for legal service done for others. At the conclusion of his email, he stated, “I will be in court in the morning, but after I return from court, I will call you (or your nephew, if you prefer) to arrange for the payment of your money. I am sorry for whatever stress I have caused you in the handling of your case. I am not a bad person, and I have never lied to you about my intentions.” (Ex. 26, pp. 6-7.)

On the same day, Respondent met with Farhoodi’s nephew, an attorney admitted to practice in the preceding year. During the meeting, Respondent indicated that Farhoodi’s money remained in his CTA and agreed to return \$50,000 to her within the next two days and to retain the remaining funds in his CTA while he worked on various legal matters for her. Although the nephew confirmed this agreement in an email to Respondent, Respondent never disbursed any of the promised funds. Instead, on August 19, 2013, Respondent sent an email message to the nephew, stating:

I appreciate your patience and have every intention to deliver the money to Paris [Farhoodi]. I have been attempting to recover money from my former partner who stole from me so that I could return all of the money. I will deliver a check to Paris or you tomorrow. If it is not the amount we discussed, Paris and you may decide what to do. Shall the check be payable to Paris?”

(Ex. 26, p. 1.)

Despite all of Respondent's promises, he still has not returned to her any portion of the funds received by him for her.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”

In this count, the State Bar alleges that Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by each of the following:

- A) Failing to file any responsive pleading in the civil lawsuit on behalf of Farhoodi and Nader and permitting their defaults to be entered for failing to file a responsive pleading;
- B) Failing to file a motion or to take any other action to set aside the default judgment against Farhoodi and Nader;
- C) Failing to file a cross-complaint on behalf of Farhoodi and Nader against Marotta and Koloe, LLC, despite his promise to do so; and
- (D) Permitting the court to enter a judgment against Farhoodi and Nader in favor of Marotta for dissolution of the partnership and for an accounting on or about November 28, 2011, and taking no action to set aside that judgment.

The evidence is clear and convincing, and this court finds, that Respondent's (1) failure to file any responsive pleading in the civil lawsuit on behalf of Farhoodi and Nader and permitting their defaults to be entered for failing to file a responsive pleading; (2) failure to file a motion or to take any other action to set aside the default judgment against Farhoodi and Nader; and (3) permitting the court to enter a judgment against Farhoodi and Nader in favor of Marotta on November 28, 2011, and then taking no action to set aside the judgment constituted willful

violations by him of his duties under rule 3-110(A).¹² While Respondent argued during the trial of this matter that the judgment entered by the superior court was void, that contention was of little consolation to his clients and provides no justification for Respondent to have sat back and done nothing to prevent his clients' building from being sold as a consequence of that judgment.

Count 3¹³ – Section 6106 [Moral Turpitude – Misappropriation]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. In this count, the State Bar alleges that Respondent misappropriated \$68,763.33¹⁴ belonging to his client, Farhoodi, an act of moral turpitude in willful violation of section 6106. This court agrees.

“[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.) 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.)

On or about November 19, 2012, Respondent received on behalf of Farhoodi a check in the amount of \$68,564.64. On November 28, 2012, Respondent deposited the \$68,564 check into his client trust account (CTA) on behalf of Farhoodi. By May 1, 2013, the balance in the CTA was \$8.34. On May 3, 2013, Respondent withdrew in cash from the CTA \$8.00 of the available \$8.34, but deposited into it the \$289 check he had previously received on behalf of

¹² The evidence is not clear and convincing that Respondent violated rule 3-110(A) by failing to file a cross-complaint against Marotta and Koloe, LLC. While Respondent gave assurances of his intent to file claims against Marotta and Koloe, LLC, it is unclear whether there was, in fact, any factual or legal basis for any such proceeding, especially in the form of a cross-complaint.

¹³ As previously noted, Count 2 was dismissed at trial.

¹⁴ In actuality, Respondent misappropriated more than \$68,763.33 from his client. However, because the NDC only alleges that Respondent misappropriated \$68,763.33, this court only finds Respondent culpable of willfully misappropriating that alleged amount.

Farhoodi in December 2012. On the following day, May 4, 2013, he then withdrew from the account \$200 of those funds, leaving a balance in the account on May 6, 2013 of \$90.12.¹⁵ None of Respondent's withdrawals were with the knowledge or permission of his client or for her benefit.

By his actions, Respondent dishonestly misappropriated for his own purposes more than \$68,763 of his client's money. Each of his unauthorized withdrawals was an act of moral turpitude in willful violation of section 6106. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278; *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]; *Codiga v. State Bar* (1978) 20 Cal.3d 788, 793 [moral turpitude established without regard to motive or personal gain].) Withholding and appropriating client funds without client consent clearly supports a finding that an attorney misappropriated funds in violation of section 6106. (*Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381; see also *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [depriving client of rightful and timely access to funds by withholding them without authority represents clear and convincing proof of a violation of section 6106].)

At trial, Respondent claimed that Farhoodi had authorized him to withdraw the funds in his CTA as legal fees. That testimony lacked candor, as it was completely belied by Respondent's correspondence in 2013, discussed above, in which he never asserted any such claimed entitlement to the money, but instead always indicated both an obligation and an intent to repay the funds. His testimony is also contrary to his repeated representations to the

¹⁵ At the end of June 2013, the balance of funds remaining in Respondent's CTA was twelve cents (\$0.12). Because the allegations of the NDC do not address this possible additional misappropriation, the court's conclusions are limited to the misconduct alleged in the NDC.

bankruptcy court that he had not received any money in fees from Farhoodi during the preceding year. (See Exs. 42-44.)

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

Rule 4-100(A) requires that "funds received or held for the benefit of clients" shall be deposited in a client trust account (CTA). Under this non-delegable duty, an attorney must maintain these client funds in trust until outstanding balances are settled. (*In the Matter of Song, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 277-278; *In the Matter of Blum, supra*, 4 Cal. State Bar Ct. Rptr. at p. 411; *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 123.) As discussed above, Respondent took the funds belonging to Farhoodi from his CTA without authorization of his client and for his personal use. Such conduct constituted a willful violation by him of rule 4-100(A).

However, this conduct is the same as that underlying the finding, above, that Respondent is culpable of the more serious misconduct of committing an act of moral turpitude (misappropriation) in willful violation of section 6106. Accordingly, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

Count 5 - Section 6068, subd. (d) [Employing Means Inconsistent with Truth]

Section 6068, subdivision (d), makes it a duty of an attorney: "To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

On December 17, 2012, Respondent filed or caused to be filed a Chapter 13 bankruptcy case on behalf of Farhoodi in the case entitled *In Re Parastoo Farhoodi*, United States Bankruptcy Court case number 12-20834, and a Summary of Schedules and Schedule B

indicating that Farhoodi only had \$120 in cash on hand. Nowhere in the Chapter 13 petition or schedules did Respondent disclose that Farhoodi was entitled to receive more than \$68,853.78 from him, when he knew he was required to be holding those funds on her behalf and would be required to return those funds to her on demand.

In this count, the State Bar alleges that Respondent's failure to disclose the above asset of his client in the petition and schedules he caused to be filed in the bankruptcy court constituted a willful violation by Respondent of section 6068, subdivision (d). This court agrees.

Count 6 - Section 6068, subd. (d) [Employing Means Inconsistent with Truth]

On or about September 16, 2013, Respondent filed or caused to be filed a second Chapter 13 bankruptcy case on behalf of Farhoodi in the case entitled *In Re Parastoo Farhoodi*, United States Bankruptcy Court case number 13-16009, and a Summary of Schedules and Schedule B indicating that Farhoodi only had \$150 in cash on hand. Once again, nowhere in the Chapter 13 petition or schedules did Respondent disclose that Farhoodi was entitled to receive more than \$68,853.78 from him, when he knew he was required to be holding those funds on her behalf and would be required to return those funds to her on demand.

In this count the State Bar alleges that Respondent's failure to disclose that asset of his client to the bankruptcy court and the bankruptcy trustee constituted another willful violation by Respondent of section 6068, subdivision (d). This court agrees.

Count 7 -Section 6068, subd. (k) [Failure to Comply with Conditions of Probation]

On February 18, 2011, the California Supreme Court issued an order (S188845) in State Bar case number 08-0-14761, suspending Respondent for one year, stayed, and placing him on probation for two years subject to various conditions of probation. Those conditions included the requirement that "During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct."

Section 6068, subsection (k), provides that it is the duty of every member to “comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” All of Respondent’s violations of the State Bar Act and Rules of Professional Conduct, described herein, took place during the time he remained on probation and was subject to the probation condition quoted above. As a result, Respondent’s acts of misconduct in this matter also represented violations by him of that condition of probation and, in turn, constituted willful violations by him of section 6068, subdivision (k).

Count 8 - Section 6106 [Moral Turpitude – Concealment/Misrepresentation]

Another condition of probation ordered by the California Supreme Court on February 18, 2011, was the requirement that Respondent provide quarterly reports to the State Bar Office of Probation in which reports he “must state whether [he] has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding quarter.”

On October 6, 2011, January 13, 2012, April 10, 2012, September 26, 2012, October 3, 2012, January 9, 2013, and March 18, 2013, as required by the above condition of probation, Respondent submitted written quarterly reports to the Office of Probation in which he stated under penalty of perjury that he had complied with all provisions of the State Bar Act, the Rules of Professional Conduct, and the conditions of his probation during the preceding reporting period. As evidenced by the misconduct discussed herein, those representations were false.

When Respondent made each of the above statements in his quarterly reports, he knew that the statement was false. By making each of those false statements, he committed acts involving moral turpitude in willful violation of section 6106. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [acts of moral turpitude prohibited by section 6106 include misrepresentations, omissions, and affirmative concealment].)

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,¹⁶ std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline

On February 18, 2011, the California Supreme Court issued an order (S188845), suspending Respondent for one year, stayed, and placing him on probation for two years subject to various conditions of probation. Respondent's misconduct in that matter included two counts of mishandling his client trust account in violation of rule 4-100(A) and one count of failing to cooperate in a State Bar disciplinary investigation (Section 6068, subd. (i).)

The conditions of probation included the requirement that during the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct. They also required Respondent to attend and pass the State Bar's Ethics and Client Trust Accounting Schools.

This prior record of discipline is a significant aggravating factor. (Std. 1.5(a).) The weight given this aggravating circumstance is increased by the fact that Respondent's mishandling of client funds in this matter took place shortly after the deadline imposed by the prior discipline for Respondent to have taken and passed both the State Bar's Ethics and Client Trust Accounting Schools. (Std. 1.5(a).)

Multiple Acts of Misconduct

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

¹⁶ All further references to standard(s) or std. are to this source.

Significant Harm

Respondent's misconduct significantly harmed his client Farhoodi. (Std. 1.5(f).) Indeed, he continues to retain the funds he misappropriated from Farhoodi.

Lack of Candor

Respondent displayed a lack of candor with this court during his testimony in this matter. Such a lack of honesty with this court is a substantial aggravating factor. (Std. 1.5(h); *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792); *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-283.)

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.5(g).) He remains defiant and has no insight regarding his unethical behavior. "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.) Respondent's continued insistence that his conduct was justified is "particularly troubling" because it suggests his conduct may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) No mitigating factors were shown by the evidence presented to this court.

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 sanction for Respondent's misconduct is found in standard 2.1(a),¹⁷ 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."

¹⁷ Previously standard 2.2(a).

In considering the application of standard 2.1(a), the amount of the misappropriated funds here certainly cannot be characterized 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*, *supra*, 53 Cal.3d at p. 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, and was disbarred. (See also *In the Matter of Blum*, *supra*, 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, disbarment for 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 misappropriated more than \$68,000 from his client at a time when he was on probation for other misconduct involving funds in his client trust account and after he had been required to take and pass the State Bar Schools on Ethics and Client Trust Accounting. Despite the pendency of this proceeding, he has failed to return any portion of the funds to the victim of his misconduct and he continues to evidence a complete lack of insight into the impropriety of his prior actions. Finally, during the course of reporting his activities to the Office of Probation, he affirmatively misrepresented that he was honoring his professional obligations and concealed his many acts of misconduct, including his misappropriation of significant funds from his client. Under such circumstances, disbarment is both appropriate and necessary to protect the public and the profession.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Kevin Michael Harr**, State Bar number 149572, 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 recommended that Respondent make restitution to Parastoo Farhoodi in the amount of \$68,763.33, plus 10% interest per annum from May 6, 2013 (or to the Client Security Fund to the extent of any payment from the fund to Parastoo Farhoodi, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution 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 **Kevin Michael Harr**, State Bar number 149572, 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).)¹⁸

Dated: April _____, 2015.

DONALD F. MILES
Judge of the State Bar Court

¹⁸ 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.)