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JAN 27 2016

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-17015-DFM
)	
STEVEN MARK KLUGMAN,)	
Member No. 53902,)	DECISION
)	
A Member of the State Bar.)	
_____)	

INTRODUCTION

Respondent **Steven Mark Klugman** (Respondent) is charged here with three counts of misconduct involving a single client matter. The counts include allegations that Respondent willfully violated (1) rule 4-100(A) of the Rules of Professional Conduct¹ (failure to maintain client funds in trust account) (2) Business and Professions Code² section 6103 (failure to obey court order); and (3) section 6068, subdivision (a) (failure to comply with laws – breach of fiduciary duties). 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 August 27, 2014. On October 3, 2014, Respondent filed his response to the NDC.

¹ Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

² 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 October 7, 2014. At that time the case was given a trial date of December 3, 2014, with a two-day trial estimate.

On November 7, 2014, a motion for continuance of the trial date was filed by Respondent, based on the need to obtain the transcripts of the hearings related to the alleged misconduct. No opposition to the motion was filed by the State Bar. A status conference was held in the matter on November 17, 2014, at which a new trial date of February 25, 2015, was scheduled.

On January 6, 2015, a new motion to continue the trial date was filed by Respondent, based on the fact that the court reporter of the superior court proceedings had still not completed the transcripts. On January 27, 2015, that motion was denied, based on the fact that there was no showing that the transcripts would not be completed prior to the scheduled trial. However, on February 17, 2015, the trial date was continued by the court to May 13, 2015, due to the fact that the transcripts had not yet been completed by the court reporter.

On April 27, 2015, a motion to continue the trial was filed by Respondent, based on the fact that Respondent's counsel was suffering from a significant illness and was scheduled to undergo major surgery just prior to the scheduled trial. A status conference was held on May 4, 2015, during which it was decided to vacate the existing trial date and schedule a follow-up conference on August 3, 2015, to determine when and whether Respondent's counsel would be able to participate in a trial of the matter.

At the August 3, 2015 conference, a new trial date of October 29, 2015, was scheduled.

On September 25, 2015, Respondent filed a motion to dismiss the NDC in this matter. That motion was denied on October 19, 2015.

Trial was commenced and completed on October 29, 2015, followed by a period of post-trial briefing. The State Bar was represented at trial by Senior Trial Counsel Lara Bairamian and Deputy Trial Counsel Jamie Kim. Respondent was represented by Theodore Cohen and acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts filed by the parties and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 14, 1972, and has been a member of the State Bar at all relevant times.

Case No. 13-O-17015

On November 24, 2011, the California Child Support Services Department (CSSD) caused a writ of execution to be levied against Carl James Pearson (Carl) in the amount of \$108,377.20 (the November Writ). On December 20, 2011, CSSD filed an amended application for issuance of writ of execution against Carl, reducing the amount of the requested writ to \$95,881.64 (the December Writ), based on its recalculation of the amount of money owed by Carl for past child support. At the time of the issuance of the November and December writs, Adrienne Pearson (Adrienne) and Carl were engaged in legal proceedings involving the collection of arrearage child support in *Adrienne Pearson vs. Carl James Pearson*, Los Angeles Superior Court, case no. SWD025769. Between April 2012 and up to and including August 1, 2013, Respondent was the attorney of record for Carl.

On April 9, 2012, pursuant to the November Writ, CSSD collected \$108,377.20 from Carl, more than what CSSD felt it was entitled to collect.

On April 10, 2012, Respondent, on behalf of Carl, filed an ex parte application for an order staying the distribution of the funds obtained by CSSD pursuant to its writ. The basis for this requested stay was Carl's contention that he had previously satisfied his obligation to pay child support by transferring a parcel of property to Adrienne. Because that issue was contested and would require an evidentiary hearing to resolve, the court ordered that distribution of the funds held by CSSD be stayed. The court further ordered that the funds were to be held either by CSSD or in a client trust account agreed to by the parties. The court then scheduled a hearing on the issue of Carl's claimed defense for July 9, 2012, nearly three months after the stay order was issued.

At the hearing on April 10, 2012, Respondent indicated that he would have no problem having Adrienne's attorney, Robert Nolan Conrad (Conrad), take custody of the disputed funds and placing them in Conrad's client trust account. Before any such arrangement could be perfected, however, Adrienne had Conrad prepare a substitution of attorneys in the case, removing himself as counsel of record and designating Adrienne as an *in propria persona* party.

On April 20, 2012, prior to the substitution of attorneys being filed with the court, Adrienne filed an ex parte application for an order dissolving the April 10, 2012 stay order or, in the alternative, advancing the July 9, 2012 hearing. At the hearing, which was not attended by Conrad, she informed the court that she was no longer represented by her prior counsel.

At the hearing of the ex parte motion on April 20, 2012, Lauren Orr from CSSD notified the court that a final audit had been conducted by it, with the amount owed by Carl to Adrienne calculated to be \$96,504.57, rather than the \$108,377.20 it was holding. She indicated that the "overage" should be released to Carl. Orr also indicated that CSSD no longer wished to be holding the funds it had received as a result of its writ. In response, the court and parties

discussed the fact that Conrad's disappearance as counsel of record in the case rendered him no longer attractive as the person who should be entrusted with the funds collected by CSSD.

Respondent then volunteered to serve in that capacity:

Respondent: We believe the County shouldn't have to expend money in this case. We're all taxpayers. I'm willing to act as a officer of the Court and place the funds in a designated trust account for the benefit of the parties, that will not be disbursed until the Court so orders.

The Court: Okay.

(Ex. 6-6, lines 7-14.)

The court then ordered CSSD to disburse the funds to Respondent as follows:

- (1) A check in the amount of \$96,504.57 to Adrienne, in care of Respondent, to be physically held by Respondent; and
- (2) A second check for \$11,872.63 to Carl, in care of Respondent, to be placed in Respondent's client trust account.

During the hearing, the court's comments make clear that the court contemplated that Respondent would deposit the \$11,872.63 check to Carl into Respondent's client trust account and hold it "pending further order of the court" (Ex. 6-14, lines 21-25) or until "we've had a hearing on disbursement." (Ex. 6-15, lines 4-9.) In making those comments, the court effectively ignored the expressed concerns of Adrienne that the court was unaware of or was violating the family law rule that an ex parte temporary stay order had to be scheduled for a formal hearing within 21 days and otherwise expired. Because the court had set the hearing for July, it was beyond this 21-day limitation.

On May 31, 2012, a second substitution of attorneys was filed in the case, restoring Conrad as Adrienne's counsel.

On June 19, 2012, Conrad, as counsel for Adrienne, filed an ex parte motion seeking to have the court (1) dissolve the previously-issued orders transferring the disputed funds to

Respondent; and (2) transfer all of the funds to Adrienne. In this motion, Conrad argued that the previously-issued orders, staying distribution of the funds and transferring them to Respondent for safekeeping, had "expired as a matter of law." (Ex. 1003, p. 5.)

On June 20, 2012, Respondent, on behalf of Carl, filed a motion to quash the writ filed by CSSD. In this motion to quash, Respondent argued that Carl had transferred an interest in certain real property to Adrienne in 1985 in exchange for a waiver of child support and, thus, Adrienne was not entitled to any of the attached funds.

On August 8, 2012, Conrad, on behalf of Adrienne, filed a responsive declaration to request for order, requesting that the court deny the motion to quash and order the funds being held by Respondent pursuant to the April 20, 2012 order be transferred to Adrienne. In the responsive declaration, Conrad, on behalf of Adrienne, claimed that Carl ultimately owed Adrienne \$139,915.

On November 28, 2012, Respondent issued a check to "Robert Nolan Conrad, A Law Corp. Client Trust Account" in the amount of \$96,504.57. The remaining \$11,872.63 remained in Respondent's client trust account.

On February 6, 2013, Respondent issued a check to Carl in the amount of \$11,872.63. In issuing the check, Respondent sent an accompanying letter, confirming that the funds were being released by Respondent after the court had indicated orally that it had no jurisdiction over the funds and as a result of Carl's demands and threats to report Respondent to the State Bar for withholding money owed to him. The letter further memorialized an agreement by Carl to retain the funds until the dissolution case was completed. (Ex. 12.) The letter was signed by Carl, to confirm his agreement to the letter's terms.

Despite this apparent agreement by Carl to retain the funds until the dissolution action was completed, on the very next day, February 7, 2013, Carl signed the check in the amount of \$11,872.63 over to his dentist.

On March 29, 2013, the motion to quash, filed by Respondent in June 2012, was denied. At the same time, the court further ordered: “The Court’s orders of April 10, 2012 and April 20, 2012, **staying the distribution of funds**, are dissolved, and all such funds shall be distributed, first to satisfy said writ of execution, and the balance to Respondent [Carl].” (Ex. 11, p. 2; emphasis added.)

On May 1, 2013, Respondent appeared in court on behalf of Carl for an ex parte application filed by Conrad on behalf of Adrienne. Conrad orally requested an order from the court, ordering Respondent to turn over the remaining \$11,872.63 to Adrienne. In the alternative, he asked the court to issue an order requiring Respondent to order “that whatever the funds that Mr. Klugman is supposed to hold, that he continue to hold them pending the hearing on that date.” (Ex. 13, p. 13.) For the first time, Respondent notified the court that he had previously disbursed the \$11,872.63 to Carl. The court did not grant the motion made by Conrad. Nor did it indicate any unhappiness with Respondent’s prior distribution to Carl of the \$11,872.63. Instead, the court merely ordered the parties to meet and confer to try to resolve matters without the additional expenditure of attorney’s fees.

The parties have stipulated that after the May 1, 2013 hearing, the court ordered Carl to pay an money to Adrienne.

On August 2, 2013, Respondent substituted out as counsel for Carl.

The parties have stipulated that, although Adrienne has collected some monies from Carl by executing on bank accounts, "the bulk of the money" is still uncollected. The specifics regarding what monies were collected and are still owed have not been provided to this court.

Count 1 – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]
Count 3 – Section 6068, subd. (a) [Failure to Comply with Laws – Breach of Fiduciary Duties]

In these counts the State Bar alleges that, on February 6, 2013, Respondent was acting as a fiduciary with regard to the \$11,872.63 then on deposit in Respondent's client trust account; that his disbursement of those funds to Carl on that date was unauthorized, either by the court and by any agreement of all parties; and that, as a result, this disbursement violated Respondent's fiduciary obligations owed to Adrienne and, in turn, his duty under rule 4-100(A) to maintain the funds in his client trust account. This court agrees.

By virtue of his conduct during the April 20, 2012 hearing, Respondent voluntarily assumed the responsibilities of a fiduciary with regard to the funds being transferred by CSSD to him pursuant the court's order. He was explicit in affirming his obligation to safeguard the \$11,872.63, believed by CSSD to be owed to Carl but now being claimed by Adrienne, by depositing the funds into his firm's client trust account and maintaining the funds in that account until the court otherwise ordered. He expressly assured both the court and Adrienne of his intent to comply with that obligation.

Respondent argues here that the court's order was governed by the time limitation of temporary restraining orders and that the order had expired prior to his disbursement of the funds to Carl in February 2013. He testified that he was unaware of that rule at the time of the hearings in April 2012, and first learned of it after receiving Conrad's June 2012 motion to dissolve the stay orders. He then researched the issue, concluded that the time limitation applied, and

educated his client of the results of this research. Having concluded that the court's order was no longer effective, he then decided that his obligation to safeguard the money for Adrienne had also expired.

Respondent was wrong in that conclusion. The creation of a fiduciary duty on the part of an attorney - to protect properties claimed by competing parties - does not depend on the issuance or existence of a formal court order. It may be created by actual agreement of the attorney. (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 355; see generally *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 221.) That is the case here. Because Respondent agreed to hold the disputed \$11,872.63 in his trust account until authorized by the court to release those funds, he owed a fiduciary duty to both litigants not to violate that obligation. When Respondent acceded to the demand of his client, Carl, to release the funds to Carl, Respondent violated the fiduciary obligation he owed to Adrienne to continue to safeguard the funds until further court order and, in turn, his obligation under rule 4-100(A) to maintain the funds in his client trust account. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979; *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632.)

Count 2 – Section 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part: “A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, ... constitute causes for disbarment or suspension.” In this count, the State Bar alleges that Respondent’s disbursement of the \$11,872.63 constituted a violation of the court’s order of April 20, 2012, in willful violation of section 6103.

In determining whether an attorney's conduct has violated the prohibition of section 6103, the Review Department has made clear that the State Bar must present "clear and convincing evidence in the record that the respondent knew there was a final, binding court order. Such knowledge is an essential element to establishing that an attorney wilfully disobeyed or violated it in violation of section 6103." (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787, citing "*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 666 [review department adopted hearing judge's finding that attorney's failure to obey court order did not violate section 6103 because attorney did not receive notice of the order in time to comply with it]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868 [review department agreed with hearing judge that, because attorney clearly knew of the relevant court order, the only issue regarding the charged violation of section 6103 was whether attorney had a reasonable time to comply with the order]; see also, *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 367 [knowledge of a court order necessary to establish culpability under section 6068, subdivision (b) for failure to obey the order]; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404 [attorney's lack of knowledge defense to charged violations of section 6068, subdivision (b) and section 6103 for failure to obey court orders rejected because attorney was present when the orders were issued and because the opposing party sent attorney written requests for compliance with the orders]" .)

The evidence in this proceeding fails to meet that standard.

Instead, the conduct and actions of the parties reveals that both of the competing litigants and eventually the court believed that the April 20, 2012 order had expired by February 2013. . . . At the April 20, 2012 hearing, Adrienne expressed concern that the court's scheduling of the

hearing in July of Carl's request for a release of the funds that had been secured by CSSD for Adrienne reflected the court's lack of knowledge of the 21-day limitation of any such stay order. Thereafter, Conrad, as re-appointed counsel for Adrienne, argued to the court in June 2012 that the order has "expired as a matter of law." (Ex. 1003, p. 5.) He explained that conclusion as follows:

On April 10, 2012, Carl filed an ex parte application (by which, he, again, did not give notice to Adrienne) (Decl. Adrienne, 7:22-23) to block payment of the money on the newly fabricated claim that in 1984 he entered into a settlement agreement with Adrienne by which she agreed to waive collection of all past due child support. Carl has not produced any such agreement, and his payments of child support for the past five years belie any such agreement. The Hon. Michelle Court, Judge, in Dept. 67 immediately issued a stay order pending a motion which Carl was ordered to file no later than May 1, 2012, and set a hearing date of July 3, 2012. (RJN, Exh. 7)

On April 20, 2012, two ex parte applications were filed in Dept 67 before the Hon. Michelle Court: one by Adrienne, then in pro per, to advance the hearing date on Carl's yet to be filed motion or dissolve the stay because Carl had not filed an OSC with his ex parte application, and one by CSSD authorizing the release to Adrienne's attorney of the funds that CSSD had collected. (RJN, Exh. 8) Adrienne appeared in pro per. The court made no order on Adrienne's ex parte application, but instead authorized the release of funds by the County by check to Carl's attorney, Steven Klugman ("Klugman"). (RJN, Exh. 9)

...

Any ex parte relief authorized by the Family Code must be obtained in accordance with the uniform procedures described by Family Code § 240, which, in turn, refers to Family Code §§ 2045, 4620, 6320 and 7710. Thus, in order for ex parte relief to be granted under the Family Code, it must be pursuant to one of those four code sections.

Although the relief granted by the court does not appear to fall within any of those code sections, it is possible that Carl may argue that it does fall within the general purview of Family Code § 2045. It should be noted that Carl did not provide any legal authority to the Court to issue a stay order with respect to his ex parte application.

In any event, any ex parte temporary restraining order must be accompanied by an order to show cause and petition to be heard within 21

days, or if good cause appears to the court, 25 days from the date that a temporary order is granted.

Family Code § 241 requires that any ex parte application for a restraining order be accompanied by a petition for the order. Carl did not file a petition with his ex parte application and has never filed any Order to Show Cause; instead, on April 30, 2012, Carl filed a motion that was taken off-calendar four days later. There is no matter presently set for hearing. It has now been far in excess of the maximum 25 days allowed under Family Code § 242.

Respondent testified credibly during the trial of this matter that, after receiving Conrad's brief, he researched the issue of whether the order previously issued by the court had expired and concluded that it had. As a result, when his client insisted that Respondent disburse the funds to him, Respondent felt there was no prohibition by the court's order against him doing so. This belief was apparently buttressed by an expression by the newly assigned judge that the court had no jurisdiction of the funds still being held by Respondent. Further, after the *Pearson* matter had been reassigned to this new judge, the Hon. Hollie Fujie, she issued an order formally dissolving the court's orders of April 10, 2012 and April 20, 2012, and characterizing those orders as "staying the distribution of funds"

During the trial of this matter, no expert opinion or legal authorities were provided to this court showing that the conclusions of the two litigating attorneys, that the April 20, 2012 order had expired, were incorrect. Finally, after the superior court was advised by Respondent that the \$11,872.63 had previously been disbursed by Respondent to Carl, there is no evidence that it viewed Respondent's actions to have violated any valid order or that it ever sought to sanction Respondent for his action.

As did the Review Department in the *Maloney and Virsik* matter, this court concludes that the evidence fails to provide clear and convincing evidence that Respondent's actions constituted a willful violation of section 6103. It, therefore, dismisses this count with prejudice.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.5.) The court finds the following with regard to aggravating factors.

Prior Discipline

Respondent has been disciplined on two prior occasions, an aggravating factor. (Std. 1.5(a).)

The first discipline involved misconduct in a dozen different client matters during the period 1999-2003 and included violations of rule 3-110(A) [failure to act with competence], rule 3-700(D)(2) [failure to promptly refund unearned fees], rule 4-100(A) [failure to maintain client funds in client trust account], section 6106 [moral turpitude - misappropriation], rule 1-311(D) and (F) [failures to notify State Bar of employment and termination of person who has resigned with charges pending], and rule 3-500 and section 6068, subdivision (m) [failures to communicate significant developments to client]. As a result of the filing of this disciplinary action, Respondent stipulated to the facts and conclusions of law giving rise to his eventual discipline during the course of his successful effort to be enrolled in the State Bar's Alternative Discipline Program (ADP). While the stipulation regarding Respondent's misconduct was lodged with this court on September 19, 2005, Respondent's participation in the program delayed the finalization of the disciplinary matter until August 25, 2010, when the Supreme Court filed its order suspending Respondent for three years, stayed, and placing him on probation for four years subject to various conditions, including actual suspension for the first four months of probation.

³ All references to standards are to this source.

Respondent's second discipline resulted from Respondent's failure to comply with the conditions of the probation ordered by the Supreme Court on August 25, 2010. On June 12, 2014, the Supreme Court filed an order revoking his original probation and placing him on a new three-year probation, with conditions including 30 days of actual suspension. Respondent's misconduct included numerous failures to file timely quarterly reports, including client fund certificates, and failures to make required restitution payments.

Although Respondent has two prior disciplines, the misconduct here occurred prior to the second discipline and during the same time as the misconduct giving rise to the second discipline. Hence, its aggravating impact must be assessed using the framework set forth in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Significant Harm

Although the State Bar contends that Respondent's conduct caused significant harm to Adrienne, the evidence is not clear and convincing in that regard.

CSSD had concluded that Adrienne was entitled to only \$96,504.57. That amount of money was released by Respondent to her attorney on November 28, 2012. Further, on March 29, 2013, the court further ordered: "The Court's orders of April 10, 2012 and April 20, 2012, staying the distribution of funds, are dissolved, and all such funds shall be distributed, first to satisfy said writ of execution, and the balance to Respondent [Carl]." Since the CSSD had indicated that it was seeking only \$96,504.57 with its writ and that the \$11,872.63 "overage" should be released to Carl, Respondent would apparently have been entitled to release the \$11,872.63 to Carl at that time, had he still retained the funds. It was only later that the court, for reasons not provided to this court, concluded that additional money was still owed by Carl to Adrienne.

Lack of Insight and Remorse

Respondent fails to demonstrate any realistic recognition of or remorse for his wrongdoings and instead continues to assert that his conduct was proper. “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.) His 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.) This is an aggravating factor. (Std. 1.5(k); *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *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, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *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.)

The State Bar argues that Respondent should be disbarred because of his actions here, not because of the nature of his offense but because this will be his third discipline. (Std. 1.8(b).) That argument, however, fails to acknowledge that the misconduct here occurred prior to the second discipline and occurred during the same period of time as that leading to the second discipline. In such situations, the appropriate discipline must be assessed by assessing what discipline would have been appropriate for the combined misconduct prior to the second discipline. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) Here, that assessment fails to suggest that disbarment is appropriate.

Instead, this court concludes that a six-month period of actual suspension will be both appropriate and sufficient to address the misconduct and to protect the public, the profession and the courts. Such a period of actual suspension is consistent with standard 1.8(a), standards 2.1 and 2.12, and with prior cases imposing discipline for comparable cases. (See, e.g. *Guzzetta v. State Bar*, *supra*, 43 Cal.3d 962 [six months actual suspension]; *Johnstone v. State Bar*, *supra*,

64 Cal.2d 153 [three months actual suspension]; *Clark v. State Bar* (1952) 39 Cal.2d 161 [six months actual suspension]; and *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91 [90 days actual suspension]; cf. *Crooks v. State Bar* (1970) 3 Cal.3d 346 [public reproof].)

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Steven Mark Klugman**, State Bar No. 53902, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first six (6) months of probation.
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to

Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

5. He must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and the State Bar's Client Accounting School and passage of the test given at the end

of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20

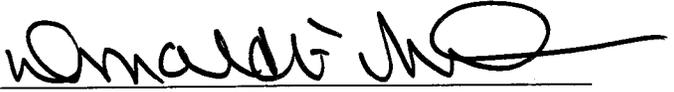
The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁴

⁴ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: January 27, 2016



DONALD F. MILES
Judge of the State Bar Court

disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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 Los Angeles, on January 27, 2016, I deposited a true copy of the following document(s):

DECISION

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 Los Angeles, California, addressed as follows:

**THEODORE A COHEN
LAW OFFICES OF THEODORE A COHEN
3550 WILSHIRE BLVD STE 1280
LOS ANGELES, CA 90010**

**STEVEN MARK KLUGMAN
3424 CARSON ST STE 500
TORRANCE, CA 90503**

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

LARA BAIRAMIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 27, 2016.



Tammy Cleaver
Case Administrator
State Bar Court