

PUBLIC MATTER

FILED

JUL 07 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 14-O-00170, 14-O-00862,
)	14-O-01035, 14-O-03539-DFM
ROBERT ARTHUR BRADY,)	
Member No. 141223,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER

INTRODUCTION

Respondent **Robert Arthur Brady** (Respondent) is charged here with 12 counts of misconduct, involving four different client matters. The counts include allegations that Respondent willfully violated (1) Business and Professions Code¹ section 6106 (moral turpitude - misappropriation) [two counts]; (2) rule 4-100(A) of the Rules of Professional Conduct² (failure to maintain client funds in trust account) [two counts]; (3) rule 4-100(A) [commingling]; (4) section 6068, subdivision (m) (failure to respond to client inquiries) [two counts]; (5) rule 4-100(B)(4) [failure to pay client funds promptly]; (6) rule 3-110(A) [failure to perform with competence]; (7) section 6068, subdivision (m) (failure to inform client of significant development); (8) section 6103 (failure to obey court order); and (9) rule 3-700(D)(2) [failure to

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

² Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

refund unearned fees]. 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 November 26, 2014. The matter was originally assigned to Judge Patrice McElroy of this court. On December 18, 2014, Respondent filed his response to the NDC, admitting jurisdiction in the matter but otherwise denying all allegations in the NDC.

An initial status conference was held in the matter on December 15, 2014. At that time the case was given a trial date of March 24, 2015, with a four-day trial estimate.

On March 2, 2015, a status conference was held in the case, during which the trial date was continued to June 2, 2015.

On May 18, 2015, a pretrial conference was held in the matter. On May 20, 2015, the case was transferred to the undersigned judge for future handling.

Trial was commenced on June 2, 2015, as scheduled, and completed on June 3, 2015. The State Bar was represented at trial by Deputy Trial Counsel Ross Viselman and Shane Morrison. Respondent was represented by Kevin Gerry.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the stipulation of undisputed facts previously filed by the parties, Respondent's stipulation at trial of culpability to certain counts of the NDC, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 19, 1989, and has been a member of the State Bar at all relevant times.

Case No. 14-O-00170 (McKeen Matter)

On May 17, 2012, Russell McKeen (McKeen) hired Respondent to represent McKeen regarding McKeen's receipt of various monies through inheritance from his father's estate. McKeen paid Respondent \$500 in advance for these services. As part of the retention, McKeen hired Respondent to process two life insurance checks from McKeen's father's estate.

Respondent subsequently deposited two checks, totaling \$35,661.53, into his client trust account (CTA) at Bank of America on behalf of McKeen. The first check, in the amount of \$12,329.83 from Genworth Life Insurance Company, was deposited on June 20, 2012. The second check, in the amount of \$23,331.70 from Aviva Life and Annuity Company, was deposited on October 31, 2012.

Pursuant to McKeen's request, Respondent agreed to issue checks periodically in the amount of \$2,000 to McKeen. Respondent eventually issued the following checks to McKeen from funds in his CTA:

- \$2,000 on June 21, 2012;
- \$2,000 on August 10, 2012;
- \$2,000 on October 26, 2012;
- \$2,000 on November 27, 2012; and
- \$2,000 on March 1, 2013.

At various times after the March disbursement, McKeen sought to contact Respondent to have him disburse additional funds from the account. Respondent neither responded to those

inquiries nor disbursed funds to McKeen, who was disabled and needed the funds to pay for food and other life essentials.

During virtually the entire time that Respondent was entrusted with the McKeen funds, the balance of his client trust account was less than the amount required to be there. By September 30, 2012, prior to the deposit of \$23,331.70 in October 2012, and despite the deposit of \$3,880 of additional funds owned by client Tamara Moller (discussed below), the balance of the account was down to \$59.40. Then, after the deposit in October 2012 of \$23,331.70 belonging McKeen, the balance of the CTA was quickly reduced by Respondent down to \$823 by the end of 2012, and it continued to be reduced until it was only \$1.22 at the end of May 2013.

Not able to have access to his funds being held by Respondent, McKeen retained a new attorney, who was eventually successful in early March 2014, after numerous letters and phone calls, in obtaining a return from Respondent of \$21,650.00 of the McKeen funds, with an accounting purporting to show that the balance of the funds were earned fees that Respondent was entitled to keep.

Count 1 – Section 6106 [Moral Turpitude - Misappropriation]

Count 2 – Rule 4-100(A) [Failure to Deposit 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. It is well-established that “an attorney has a ‘personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds.’ [Citation.] These duties are non-delegable. [Citation.]” (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411.) Under this non-delegable duty, an attorney must maintain client funds in a CTA until outstanding balances are settled. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123.)

In Count 2 of the NDC, the State Bar alleges that McKeen was entitled to at least \$21,648.78 of the funds deposited in the CTA; that Respondent failed to maintain a balance of \$21,648.78 in the CTA on behalf of McKeen; and that this failure represented a willful violation by Respondent of rule 4-100(A) of the Rules of Professional Conduct.

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 2, namely that he failed to maintain at least \$21,648.78 of funds belonging to McKeen in his CTA and that this failure represented a willful violation by him of rule 4-100(A) of the Rules of Professional Conduct.³

Section 6106 of the Business and Professions Code prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. 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, supra*, 4 Cal. State Bar Ct. Rptr. at p. 410.)

In Count 1, the State Bar alleges that, between about November 2012 and June 2013, Respondent dishonestly or grossly negligently misappropriated for his own purposes at least \$21,648.78 that McKeen was entitled to receive and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

While Respondent stipulated to having failed to maintain funds in his client trust account, at trial he disputed the allegations of Count 1, that his failure to maintain the funds in the account

³ However, the conduct underlying this violation is essentially the same as that underlying the finding, below, that Respondent is culpable of the more serious misconduct of committing acts 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.)

represented an act of moral turpitude. Instead, he contends that his mishandling of funds in the account resulted merely from negligence on his part, not conduct amounting to gross negligence or actual dishonesty.

This court does not agree with the argument advanced by Respondent and finds instead that Respondent's admitted mishandling of the funds in his CTA represented both gross negligence and intentional and dishonest acts of moral turpitude by him, in willful violation of the prohibition of section 6106.

In the absence of client consent, an attorney may not unilaterally withhold entrusted funds even though he may be entitled to reimbursement. (*Most v. State Bar* (1967) 67 Cal.2d 589, 597; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358.) Withholding and/or 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 violation of section 6106].) Further, carelessness leading to trust account violations may involve moral turpitude. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475 ["Gross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship owed to clients."].)

The court finds both gross negligence by Respondent in his handling of his client trust account and intentional misappropriation and dishonesty by him in his unauthorized use of the funds belonging to his clients.

The evidence is clear and convincing that Respondent's handling of his client trust account reflected gross negligence on his part, at a minimum. He did not regularly reconcile his accounts. He did not maintain the records regarding the client funds deposited into his client trust account that are required by rule 4-100(B)(3) and the standards adopted pursuant to that rule. Finally, the balance of the CTA frequently and routinely dipped well below the amount that was required to be maintained in it. These facts show gross negligence on Respondent's part, at a minimum, and represent acts of moral turpitude in willful violation of section 6106. (See, e.g., *Palomo v. State Bar* (1984) 36 Cal.1.3d 785, 795-796 [trust account violation may be willful for disciplinary purposes when caused by "serious and inexcusable lapses in office procedure"]; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 712 ["[T]he repeated dipping of respondent's trust account below the required balance constitute[s] a basis for a finding of moral turpitude under section 6106"]; "Even when such neglect [of clients] is grossly negligent or careless, rather than willful and dishonest, it is an act of moral turpitude and professional misconduct, justifying disbarment" (*Simmons v. State Bar* (1970) 2 Cal.3d 719, 729, quoting *Grove v. State Bar* (1967) 66 Cal.2d 680, 683-684; see also *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 385; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416; *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].)

While a finding of gross negligence alone will support a finding of a willful violation of section 6106, a careful review of the bank records for Respondent's client trust account reveals that Respondent's misappropriation of his clients' funds did not result from mere gross

negligence on his part, but instead resulted from his repeated, knowing, and intentional use of his clients' funds for his own purposes.

As previously noted, the deposit of \$12,329.83 on behalf of client McKeen was posted in the CTA on June 20, 2012. (Ex. 3, p. 5.) At the beginning of the month of June 2012 and immediately before the deposit on June 20, 2012, the balance of funds then existing in the account was \$1,174.57. (*ibid.*) On the day after the deposit of McKeen's money, Respondent withdrew \$9,100 in cash from the account, in the form of a check which he endorsed himself, leaving a balance in the account of only \$4,404.40. (See Ex. 3, pp. 5, 79.)⁴ This was a knowing, immediate, and dishonest misappropriation by Respondent of \$7,925.43 of McKeen's money.

In August 2012, Respondent made a second disbursement to McKeen of \$2,000. Then, on September 4, 2012, he deposited into the CTA \$3,880 of "med pay" funds that he had received on behalf of his client Tamara Moller (discussed below in case No. 14-O-00862). Subtracting the \$4,000 that Respondent had now disbursed to McKeen from the original \$12,329.83 deposit but adding to the required balance the \$3,880 Respondent had just received for client Moller, the amount required to be in Respondent's CTA on September 30, 2012, was \$12,209.83. It was not. Instead, on September 30, 2012, the actual balance of Respondent's CTA had been reduced by Respondent to \$59.40, representing a misappropriation by him of more than \$12,000 of the McKeen/Moller funds.

On October 31, 2012, Respondent deposited into his CTA the additional \$23,331.70 of funds belonging to client McKeen. Because Respondent made additional \$2,000 disbursements

⁴ The balance of McKeen's funds in the CTA on June 21, 2012, should have been the original deposit of \$12,329.83 because, although Respondent wrote a check to McKeen for \$2,000 on June 21, 2012, that check was not withdrawn from the account until June 25, 2012. (Ex. 3, p. 5.) Hence, Respondent misappropriated \$7,925.43 of McKeen's funds on the day after he deposited the funds into his CTA.

to McKeen in October and November 2012, the balance of the CTA on December 31, 2012, should have been at least \$31,541.53. The actual balance of the account on that date was \$823.23. (Ex. 3, p. 24.) By the end of January 2013, the CTA balance had been further reduced by Respondent to \$13.23. (Ex. 3, p. 26.) In February 2013, after Respondent wrote a check for \$10.00 cash on February 26, 2013, which he endorsed himself (Ex. 3, p. 111), the balance of the CTA dropped to just \$3.23, representing an overall \$31,538.30 misappropriation of McKeen and Moller funds.

The nature and amount of the \$10.00 check for cash in February 2013, reducing the account balance to \$3.23, makes clear that Respondent was personally well aware of the depleted status of his CTA and was nonetheless using the funds of others for his own purposes. This conclusion is further buttressed by other withdrawals by Respondent, including Respondent's subsequent withdrawals of \$18.00 on April 30, 2013, to reduce the account balance to \$1.72 (Ex. 3, p. 35); his transfer of \$17.00 on May 20, 2013, to reduce the CTA balance to \$1.22 (Ex. 3, p. 37); and his writing of a check for \$22.63 in November 2013, to reduce the account balance to \$1.79 (Ex. 3, pp. 54, 118.). It is clear that Respondent was carefully managing the balance of his account in such a way that he could use as much of the McKeen and Moller money as possible, without causing an overdraft, which would result in an automatic report by the bank to the State Bar of the trust account overdraft.⁵

For all of the above reasons, this court concludes that Respondent's misappropriation of more than \$31,500 of the combined McKeen and Moller funds represented multiple knowing and

⁵ The bank records show that Respondent had previously experienced overdrafts on his CTA in 2012 (Ex. 3, p. 2.) Respondent acknowledged during trial being aware that such overdrafts could generate an inquiry by the State Bar regarding the reason for the overdraft.

intentional acts of moral turpitude and dishonesty on his part, and willful violations by him of the prohibition of section 6106.

Count 3 – Rule 4-100(A) [Commingling]

On November 14, 2013, Respondent issued a check from his CTA, payable to Ralph's grocery store in the amount of \$22.63. On February 12, 2014, Respondent issued a check from his CTA, payable to Princessa Plaza in the amount of \$7,500. Each of these checks was issued by Respondent for personal purposes.

Rule 4-100(A) prohibits attorneys from depositing personal funds into a client trust account. Further, “[t]he rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [“Trust accounts, open or closed, are never to be used for personal purposes”].)

At trial Respondent stipulated, and this court finds, that Respondent's issuance of the above two checks for personal purposes constituted willful violations by him of the prohibition of rule 4-100(A) against commingling. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426.)

Count 4 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to “respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.”

In this count, the State Bar alleges that Respondent failed to respond promptly to numerous and reasonable status inquiries, via telephone and in writing, made by McKeen between about May 2013 and March 2014, in willful violation of section 6068, subdivision (m).

At trial Respondent stipulated, and this court finds, that Respondent failed to respond to reasonable status inquiries of McKeen, as alleged in count 4, and that this failure by him constituted a willful violation by him of section 6068, subdivision (m). (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855 [respondent violated § 6068, subd. (m), by failing to respond to letters from clients about respondent's intentions regarding pursuit of appeals].)

Case No. 14-O-00862 (Moller Matter)

On March 9, 2012, Tamara Moller (Moller) hired Respondent to represent her in a personal injury matter. As previously noted above, on or about May 17, 2012, Respondent received on behalf of Moller "med pay" benefits from State Farm Insurance Company in the sum of \$3,880. On or about September 4, 2012, Respondent deposited the settlement funds into his CTA on behalf of Moller. Respondent was not entitled to any portion of this sum.

On or before September 11, 2012, within a week after Respondent had deposited Moller's med pay benefits into his CTA, he had withdrawn \$3,820.60 of those funds for his own purposes.

Count 5 – Section 6106 [Moral Turpitude - Misappropriation]

Count 6 – Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

In Count 5, the State Bar alleges that Respondent dishonestly or grossly negligently misappropriated for Respondent's own purposes \$3,820.60 of the \$3,880 of "med pay" benefits belonging to Moller and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

In Count 6, the State Bar alleges that Respondent's failure to maintain a balance of \$3,880 in the CTA on behalf of Moller represented a willful violation by Respondent of rule 4-100(A) of the Rules of Professional Conduct.

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 6, namely that he failed to maintain in his CTA all of the "med pay" funds belonging to Moller and that this failure represented a willful violation by him of rule 4-100(A) of the Rules of Professional Conduct.⁶

Respondent, however, at trial disputed the allegations of Count 5, that his failure to maintain the \$3,820.60 of Moller's funds in the CTA represented an act of moral turpitude on his part. Instead, he contended that his mishandling of funds resulted merely from negligence on his part, not conduct amounting to gross negligence or actual dishonesty.

As discussed above, which discussion and findings are incorporated herein by reference, this court does not agree with the argument advanced by Respondent but instead finds that his misappropriation of the Moller funds from his CTA represented and resulted from multiple acts of moral turpitude and dishonesty on his part, in willful violation of section 6106.

Count 7 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Rule 4-100(B)(4) of the Rules of Professional Conduct requires attorneys to "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."

⁶ However, the conduct underlying this violation is essentially the same as that underlying the finding, below, that Respondent is culpable of the more serious misconduct of committing acts 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.)

In this count, the State Bar alleges that between about September 4, 2012 and October 1, 2013, Moller requested that Respondent pay the “med pay” funds that he had received on her behalf but that Respondent failed to pay those funds promptly, in willful violation of rule 4-100(B)(4).

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 7, namely that he failed to transfer promptly to Moller’s new attorney, as he was requested to do by his client, the “med pay” funds belonging to Moller. The evidence is clear and convincing that Respondent received numerous requests by his client and her new attorney to transfer her funds to the new attorney; that there was extensive delay before Respondent transferred any of the funds to the new attorney; and that, at the time of the trial of this matter, Respondent still had not transferred to Moller or her new attorney \$380 of the funds he had previously received on her behalf.⁷ Such a delay of payment by Respondent clearly violated rule 4-100(B)(4). (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 170 [two-month delay violated rule].)

Count 8 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count, the State Bar alleges that Respondent failed to respond promptly to numerous but reasonable status inquiries, via telephone and in writing, by Moller between September 4, 2012 and October 1, 2013, in willful violation of section 6068, subdivision (m).

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 8, namely that he failed to respond to numerous and reasonable inquiries by Moller regarding the status of her matter, causing her stress and eventually resulting in her hiring

⁷ At the conclusion of the trial, Respondent asked that the evidentiary record be held open for approximately one week so that he could pay to Moller the funds that he owed to her. On June 12, 2015, he submitted proof to this court of his payment of \$380 to her via a cashier’s check in that amount.

a new attorney. This failure by Respondent constituted a willful violation by him of his obligations under section 6068, subdivision (m).

Case No. 14-O-01035 (Dietzel Matter)

On April 7, 2011, James Dietzel hired Respondent to represent his minor daughter, Michaela Dietzel, in a personal injury matter involving injuries she suffered at her school. On September 4, 2012, Respondent filed a complaint on behalf of Michaela Dietzel in an action captioned *Michaela Dietzel v. The County of Kern and Kernville Union School*, case no. S-1500-CV-277555, in Kern County Superior Court (the *Dietzel* action). On September 5, 2012, James Dietzel was appointed guardian ad litem for Michaela Dietzel in the *Dietzel* action.

On May 10, 2013, a Notice of Mandatory Settlement Conference/Final Case Management Conference/Trial was served on Respondent in the *Dietzel* action. Respondent received the notice. As set forth in the notice, a Mandatory Settlement Conference in the action was set for February 7, 2014, and trial was set for March 10, 2014. The order specifically required Respondent, as counsel for plaintiff, to attend the settlement conference. (Ex. 23.)

During the course of the *Dietzel* action, defendant Kernville Union School District (Kernville) served on Respondent document requests, special interrogatories, and form interrogatories in April 2013. Despite receiving those discovery requests, Respondent failed to respond on behalf of his client, despite numerous efforts by defendant's counsel to obtain such responses. Although Respondent had promised opposing counsel that he would provide verified responses to the discovery requests, he never did so.

Further, defendant Kernville also properly noticed the deposition of Michaela Dietzel for June 27, 2013. Despite receiving notice of the deposition, Respondent failed both to attend the deposition and to arrange for Michaela to attend it.

As a result, on July 25, 2013, defendant Kernville filed separate motions to compel the requested deposition and discovery. In its motions, it also requested awards of monetary sanctions against both Respondent and his client. Despite these motions, Respondent continued to fail to provide responses to the discovery, failed to file any opposition or other response to the motions, and then failed to attend the hearing of the motions. (Ex. 26, p. 1.) Defendant's motions were granted on October 10, 2013, with separate sanction awards totaling \$1,015 being ordered against Respondent and his minor client, jointly and severally. (Ex. 27.) The order also required that verified answers to the discovery requests be provided and that the sanction amounts be paid within ten (10) days after notice of the ruling was given. Although Respondent received notice of this order, no verified discovery responses were ever provided and the sanctions awards were never paid until after the action was dismissed.⁸

As a result of Respondent's failure to comply with the court's order requiring discovery responses to be provided, defendant Kernville filed on October 30, 2013, a motion seeking either the dismissal of the *Dietzel* action as a terminating sanction or, in the alternative, evidentiary and issue sanctions (motion to dismiss).

Subsequent to the filing of defendant Kernville's motion to dismiss, plaintiff's deposition was taken on November 26, 2013. Respondent was present during this deposition. At some point after the deposition, Respondent indicated to James Dietzel that Dietzel should consider hiring another attorney to handle the case, preferably one located in Kern County.

On the day after the deposition, defendant Kernville's motion to dismiss was heard on November 27, 2013. Respondent did not appear for the hearing. The court declined to dismiss the case at that time but instead signed an order on January 6, 2014, ordering issue and

⁸ In April 2014, after the *Dietzel* action had been dismissed, Respondent paid the sanction orders that had been issued in October 2013. (Ex. C.)

evidentiary sanctions precluding Respondent's minor client from "offering any evidence, calling any witnesses, or introducing any documents at trial" regarding a list of topics and issues that effectively included all issues of liability and damages. The formal notice of this order was served on Respondent on January 17, 2014. (Ex. 29, p. 9.)

James Dietzel, on the advice of Respondent, contacted several attorneys in December 2013, but none were interested in taking over the case.

On February 7, 2014, the court-ordered Mandatory Settlement Conference in the *Dietzel* action was scheduled to be held. Plaintiff Michaele Dietzel and her father/guardian James Dietzel appeared; counsel for defendant appeared; but Respondent did not. The attending judge, Judge Thomas Clark, after reviewing the court's file in the matter and concluding that Respondent had effectively abandoned his minor client in the case, filed a complaint against Respondent with the State Bar.

On March 10, 2014, Respondent failed to appear at trial, despite knowing that trial in the *Dietzel* action was set to commence that day. Once again, plaintiff Michaele Dietzel and her father/guardian James Dietzel appeared; counsel for defendant appeared; but Respondent did not. Instead, Respondent called the court that morning to state that he would not be appearing for the trial and instead intended to dismiss the lawsuit without prejudice. At no time did Respondent inform Michaele or James Dietzel of either his intent to dismiss the *Dietzel* action or his intent not to appear for trial. When Respondent then failed to appear at the scheduled trial, the court dismissed the *Dietzel* action with prejudice.

Count 9 – 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 rule 3-110(A), by failing to prosecute the *Dietzel* action, by failing to respond to discovery and the subsequent motion to compel discovery, and by failing to appear for trial, thereby resulting in the eventual dismissal of the *Dietzel* action with prejudice. This court agrees.

Respondent had a duty to represent his minor client in the lawsuit that he had filed on her behalf. This included an obligation to respond appropriately and timely to discovery requests from the opposing party. Rather than do so, when Respondent was served in the *Dietzel* action with discovery requests requiring interrogatory responses and the production of requested documents, Respondent failed to provide any timely responses. Then, when the opposing party filed multiple motions to compel the responses and sought sanctions against the client, Respondent continued to fail to provide any discovery responses, failed to file any response to the motions, and failed to appear at the hearing of the motions. Although Respondent's client was then ordered by the court to respond to the outstanding discovery requests and sanctions were awarded against both Respondent's client and himself, Respondent then failed to take any steps to see that verified discovery responses were provided or that the sanctions awards were paid by the court-ordered deadline. When this disregard of the court's order led to the filing of the motion to dismiss, Respondent neither provided appropriate discovery responses (accompanied by an executed verification) nor filed any opposition to the motion. As a result of that conduct, his client was eventually deprived of the ability to present any evidence supporting her claims of liability and damages.

Respondent's essential abandonment of his client continued when he failed to appear for either the Mandatory Settlement Conference or the scheduled trial. Respondent's misconduct ultimately resulted in the client's case being dismissed by the court with prejudice.

This repeated and reckless disregard by Respondent of his obligations to his client and to the court represents a willful violation by him of rule 3-110(A). (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522-523; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 278-279 [unjustified failure to attend scheduled court conference is reckless]; and *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 877.)

Respondent's seeks to justify his conduct by claiming that he believed that his client had retained another counsel after the deposition at the end of November 2013. That explanation is neither persuasive nor credible. His disregard for the interests of his client in the *Dietzel* action began months prior to November 2013. At the time of his conversation with Jim Dietzel, his client's father and legal guardian, about the possibility of the client hiring another attorney, a motion to dismiss the client's case, based on Respondent's prior misconduct, had already been filed – and possibly even heard. Moreover, Respondent had no reasonable basis for believing that he had been replaced in the case. No such substitution was ever filed in the action; he had received no request by any attorney for a transfer of the *Dietzel* file; he continued to receive documents being served in the case; and the court's website continued to show him as counsel of record. Even when he acknowledges being aware that he continued to be counsel of record in the *Dietzel* action prior to the scheduled trial, he did not appear for it. Instead, he called the court, to inform it that he intended to file a dismissal of the case – something that he had not even consulted the client about doing.

The Review Department in *In the Matter of Doran, supra*, dealt with a similar situation. There, the attorney had returned the file to the client and, on learning months later that he still remained counsel of record in the case, advised the client that he wanted to dismiss the action. When the client would not consent to either the dismissal of the action or the attorney's withdrawal from it, the attorney failed to take steps sufficiently quickly in the case to prevent the court from dismissing the matter for want of prosecution. On appeal, the Review Department concluded that the attorney's conduct constituted a violation of rule 3-110(A):

On the other hand, respondent remained the attorney of record for approximately one year after determining that he no longer wished to represent Dierking. His failure to either progress the action to trial or take affirmative steps to be relieved as attorney of record was at least reckless and a violation of rule 3-110. (See *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1084; *In the Matter of Koehler, supra*, 1 Cal. State Bar Ct. Rptr. at p. 626.) Dierking's failure to cooperate in permitting respondent's withdrawal in no way excused respondent from making the necessary motion to be relieved as counsel of record.

(3 Cal. State Bar Ct. Rptr. at p. 877.)

As did the Review Department in the *Dierking* matter, this court concludes that Respondent's conduct here violated rule 3-110(A).

Count 10 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count, the State Bar alleges that Respondent violated his duty to keep his clients in the *Dietzel* action advised of significant developments by failing to inform them that he would not appear for trial and intended to request a dismissal of the action.

This court agrees, based on the clear and convincing evidence received at trial. On the morning that the *Dietzel* action was scheduled to commence trial, Respondent notified the court that he would be filing a dismissal of the pending *Dietzel* action that same afternoon, without ever discussing that possibility with his clients. That representation to the court was a significant

development and one which should not be made without disclosure to the client. Moreover, Respondent also made the decision not to appear at the trial but did not disclose that fact to his clients prior the case actually be called for trial. As a result, both James and Michaela Dietzel appeared for the trial, only to watch the daughter's action be dismissed with prejudice.

As previously noted, section 6068, subdivision (m), obligates an attorney to advise his clients of significant development in the client's matters. Respondent's actions here constituted a willful violation by him of that duty.

Count 11 – Section 6103 [Failure to Comply with Court Order]

Section 6103 provides, in pertinent part: "A willful disobedience or violation of an order of the court requiring [a member] 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 disobeyed or violated the order contained in the Notice of Mandatory Settlement Conference/ Final Case Management Conference/Trial issued by the court in the *Dietzel* action, requiring Respondent to appear for the mandatory settlement conference and trial, in willful violation of section 6103.

At trial, Respondent stipulated, and this court finds, that Respondent is culpable as alleged in Count 11, namely that he was ordered to appear for both the Mandatory Settlement Conference and the trial in the *Dietzel* action and failed to do so, and that his failures to appear at those court sessions constituted willful violations by him of section 6103. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 72-73 [failure to attend court-ordered hearings is violation of section 6103].)

Case No. 14-O-03539 (Ronholt Matter)

Count 12 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this matter, the State Bar alleges: “On or about June 4, 2013, respondent received advanced fees of \$3,000 from a client, Aage Ronholt, for purposes of preparing and filing a bankruptcy petition on behalf of Aage Ronholt. Respondent failed to file the petition for bankruptcy, or perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon Respondent's termination of employment on or about July 4, 2013 any part of the \$3,000 fee to the client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).”⁹

While the parties stipulated that Respondent received a \$3,000 advanced fee from Aage Ronholt (Ronholdt), who was seeking to avoid a scheduled foreclosure sale of his home, the evidence is neither clear nor convincing that Respondent was hired to file a bankruptcy petition on Respondent's behalf or that any portion of the fee received by Respondent was unearned. Ronholt died prior to the filing of the NDC in this matter and so his testimony was not available at trial. However, in a letter written by him to Respondent on July 4, 2013, shortly after Respondent had been retained, Ronholdt stated that he had retained Respondent “to take on my litigation against Wells Fargo Bank [the lender on the foreclosed loan].” (Ex. 11.) The letter also makes clear that Ronholt wanted Respondent to take steps to avoid the loss of Ronholt's home, then scheduled to be sold on July 8, 2013. Other documents suggest that Respondent had telephone communications with representatives of the bank, as well as significant discussions with Respondent, and that the sale was postponed as a result of his efforts.

⁹ Rule 3-700(D)(2) provides: “A member whose employment has terminated shall: ... (2) Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.”

In support of the allegations of the NDC, the State Bar sought to rely on the testimony of Ronholt's daughter. Her testimony, however, was neither persuasive nor credible. She had little or no actual knowledge of the dealings between her father and Respondent, although she pretended to have knowledge when such was not the case. The most obvious example of that was her aggressive testimony that Respondent's phone records showed multiple voicemail messages being left by her father with Respondent, when any inspection of those records makes clear that the entries referred to by the daughter reflected calls made by Respondent to the father, rather than the opposite.

The daughter acknowledged that the scheduled sale identified by her father in his letter of July 4, 2013, had been postponed. While she declined to provide Respondent with any credit for that postponement, she had no personal knowledge as to how that postponement had been secured; and she has either destroyed or, at a minimum, not produced for the State Bar the correspondence from the bank reflecting why that postponement had been granted. Significantly, the State Bar did not seek to call Respondent as a witness during its case-in-chief to testify as to what services he had provided or to provide any information as to whether any or all of his fees had been earned.

At the time that the State Bar rested on the culpability portion of its case on this issue, Respondent made a motion to dismiss this count pursuant to rule 5.110(A) [failure to meet burden of proof]. Because this court had received no clear and convincing evidence supporting the allegations of the NDC, that motion was granted. Reaffirming this court's oral order at that time, this count is dismissed with prejudice.

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,¹⁰ std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).)

Significant Harm

Respondent's misconduct significantly harmed his client. (Std. 1.5(f).) He allowed the *Dietzel* action to be dismissed with prejudice without a trial and he deprived his client McKeen of access to his money for an extensive period of time at a time when McKeen needed the funds for important reasons.

Lack of Candor

Respondent displayed a lack of candor with this court during his testimony in this matter. His testimony that the mishandling of funds resulted from the loss of his office administrator and a lack of oversight over the account lacked candor, as did his suggestion that his inattention to the *Dietzel* action resulted from some belief that the matter had been taken over by another attorney. 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, 791-2; *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 282-3.)

¹⁰ All further references to standard(s) or std. are to this source. While the State Bar has adopted new standards effective July 1, 2015, the court applies to this decision the standards in effect from the filing of the NDC through the submission of this matter for decision.

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. Even at trial, Respondent failed to understand the lack of competence he had displayed in his handling of the *Dietzel* action. Such a lack of insight into his misconduct raises this court's concern that the misconduct will recur. (Std. 1.5(g).)

Mitigating Circumstances

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

No Prior Discipline

Respondent had practiced law in California for 24 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is normally entitled to significant weight in mitigation, but that weight is diminished significantly by the serious and ongoing nature of his misconduct. (Std. 1.6(a); *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [limited weight for 12 years of discipline-free practice where member had misappropriated significant funds over a lengthy period of time].)

Cooperation

Respondent entered into an extensive stipulation of facts and freely admitted certain, but not all, of the violations in this case, for which conduct Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Gadda, supra*, 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Restitution

Although Respondent misappropriated the funds of his clients, he eventually repaid all of such sums to those clients. The court, however, declines to give Respondent any mitigation credit for that action. The authorities are clear and consistent that restitution made only after the initiation of disciplinary proceedings is not a proper source of mitigation credit. (See, e.g., *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 249, citing *Warner v. State Bar* (1983) 34 Cal.3d 36, 47; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 490; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619; *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 496; *In the Matter of Robins, supra*, 1 Cal. State Bar Ct. Rptr. at p. 714 [delay in making restitution is aggravating, not mitigating, factor]; and *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 663, citing *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 663.)

Character Evidence

Respondent presented good character testimony from seven witnesses, including three attorneys. While Respondent is entitled to some mitigation credit for this character evidence, the weight of that evidence is reduced by the fact that the witnesses do not represent a wide range of references who are aware of the full extent of Respondent's misconduct, as required by the standard. (Std. 1.6(f); *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305; *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477; *In re Matter of Johnson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct]; *In the Matter of*

Myrdall, supra, 3 Cal. State Bar Ct. Rptr. at p. 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references].)

Community Service

Respondent presented significant evidence of community service, which is a mitigating factor. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126.)

Emotional Difficulties Disability/Alcohol Addiction

Extreme emotional difficulties and/or alcoholism and marital problems may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

The evidence offered by Respondent regarding the emotional difficulties and subsequent problems with alcohol abuse he had in the past do not provide clear and convincing evidence that those problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's claimed problems and his misconduct. By way of example, Respondent's misappropriation of his clients' funds began prior to his problems with alcohol, commenced prior to the decision by his former office administrator to leave her employment with Respondent, and resulted from his intentional use of his clients' funds for his own purposes, rather than poor handling of the client trust account. Nor was there sufficient evidence for this court to conclude that emotional problems and/or substance abuse problems, if they caused Respondent to fail to comply with his professional obligations in the past, have now been satisfactorily resolved, witness the fact that Respondent continued to

hold money owed to former client McKeen all through the trial of this matter, despite his awareness that he still owed the money to her. (Std. 1.6(d).)

Further, Respondent offered no expert testimony to establish that his emotional and alcohol abuse problems were directly responsible for his misconduct or that those problems have now been resolved. (Std. 1.6(d).) While Respondent submitted some documentation of his participation in alcohol recovery sessions and treatment, none of those records provided an evaluation of the extent of Respondent's alcohol addiction or gave any indication as to the degree of his recovery. Also missing from these records is evidence establishing the relationship between his alcohol problems and his misconduct.

As the Review Department observed in *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560, "our Supreme Court does require lawyers' claims in mitigation based on substance abuse to show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period [citations]"

Respondent failed to do that here.

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 1095, 1090.) The court then looks to the decisional law. (*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 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 Silvertan* (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; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that disbarment of Respondent is called for by both the case law and the standards and that such is necessary to protect both the public and the profession. This court agrees.

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.

The most severe sanction is found in standard 2.1(a) which recommends disbarment for intentional or dishonest misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is a one-year actual suspension.

Respondent's misconduct consisted of a series of individual misappropriations of funds belonging to his clients, perpetrated over a period of many months. The amount of money misappropriated by Respondent (\$31,538.30) cannot be concluded to be "insignificantly small." Nor is there any compelling mitigation in this situation. Respondent's misappropriation of his clients' funds did not result solely from gross negligence on his part or from any failure by him to

supervise the conduct of others. Instead, his misuse of his clients' money was intentional and repeated and it continued despite repeated requests by the clients to have access to their funds.

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 and Review Department of this court have consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (See, e.g., *Kelly v. State Bar, supra*, 45 Cal.3d 649, 656; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961; *In the Matter of Song, supra*, 5 Cal. State Bar Ct. Rptr. 273) The courts have 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, 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]; *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]; and *In the Matter of Song, supra* [attorney appropriated \$112,000 over three years from single client].)

Here, Respondent was culpable of numerous acts of misappropriation, ultimately totaling more than \$31,500. He continues to dispute his culpability for his conduct and instead seeks unsuccessfully to find justifications for it. 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 **Robert Arthur Brady**, Member No. 141223, 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.

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 **Robert Arthur Brady**, Member No. 141223, 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).)¹¹

Dated: July 7, 2015


DONALD F. MILES
Judge of the State Bar Court

¹¹ 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.)

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 July 7, 2015, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT

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

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

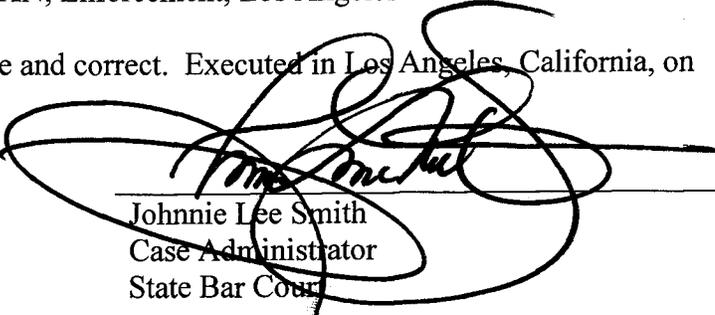
**KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103**

**ROBERT A. BRADY
ROBERT A. BRADY
16936 SHINEDALE DR
SANTA CLARITA, CA 91387**

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

ROSS VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 7, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court