STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **CHARLES GREG LESTER,** **Member No. 160084,** A Member of the State Bar.	Case Nos.: **14-O-00947-LMA; 14-O-03261 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Introduction[1]

In this contested disciplinary proceeding, respondent Charles Greg Lester is charged with six counts of professional misconduct in two client matters. The charged misconduct includes: (1) failing to maintain respect due to the courts of justice; (2) failing to report judicial sanctions to the State Bar of California, Office of the Chief Trial Counsel (State Bar); (3) failing to deposit client funds in a client trust account; (4) failing to maintain client funds in a client trust account; (5) committing acts of moral turpitude by misappropriation; and (6) failing to pay client funds promptly.

This court finds by clear and convincing evidence that respondent is culpable of the alleged misconduct. Based on the nature and extent of culpability, as well as the applicable mitigating and aggravating factors, this court recommends that respondent be disbarred from the practice of law.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on August 21, 2014. Respondent filed a response to the NDC on September 11, 2014. On November 19, 2014, the State Bar filed a second NDC (Second NDC); and, on January 20, 2015, respondent filed a response to the Second NDC. The matters were consolidated for trial at a status conference on December 1, 2014.

A one-day trial in this matter was held on May 11, 2015. The State Bar was represented by Deputy Trial Counsel Charles T. Calix. Respondent represented himself.

The court took the case under submission at the conclusion of trial on May 11, 2015.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 1, 1992, and has been a member of the State Bar of California at all times since that date.

Case No. 14-O-00947 – The Buchwald Matter

Facts

On April 11, 2013, respondent began representing Damien Eugene Buchwald (Buchwald) in a criminal matter. Respondent appeared before the superior court in which Buchwald's criminal proceeding was being heard on February 3, 2014, at which time the court set the matter for a jury trial to commence on February 10, 2014. On Monday, February 10, 2014, respondent again was present when the superior court trailed the trial to February 11, 2014, at 10:30 a.m. Respondent, however, failed to timely appear at 10:30 a.m. on February 11th. Consequently, the court clerk telephoned respondent several times on February 11th, leaving messages on respondent's telephone's voice message system. The messages left by the clerk requested that respondent call the court. At approximately 1:45 p.m., more than three hours after he was to have appeared for trial, respondent telephoned the court. And, it was not until approximately

4:05 p.m. that respondent showed up for trial. Thus, the court continued the matter to February 13, 2014.

When respondent was initially questioned at the trial in the instant proceeding about his failure to timely appear for trial in the superior court on February 11th, he testified that he had telephoned the superior court at 11:30 a.m. But, when questioned by the judge in the *Buchwald* matter at the February 13, 2014 hearing, respondent answered that he had called at 9:30 a.m. or 10:00 a.m. (Exh. 8-009.) The superior court judge informed respondent that in fact he had not telephoned the court on February 11th until about 1:45 p.m.

Respondent also claimed in his testimony before this court that his client's father had threatened respondent's life the night before trial in the criminal matter and consequently respondent had overslept. However, when respondent was explaining to the judge in the *Buchwald* matter why he had been late, respondent stated that respondent's father had threatened to report respondent to the State Bar. Respondent further testified in this matter that he had been unable to dress himself when he awoke on February 11th, because of surgery he had a few months earlier. Respondent then stated that he drove to his parents' house for help to get dressed. When asked why it took so long, respondent testified that he did not remember why. Respondent was also asked in this proceeding if he had inconvenienced the 50 prospective jurors by delaying the trial. Respondent replied that the jurors had not been inconvenienced, because they would have had to sit around anyway.

Respondent appeared in the *Buchwald* matter on February 13, 2014. On that date, the judge allowed respondent to provide an explanation of why he failed to timely appear for trial on February 11th and why he did not contact the court prior to 1:45 p.m. to inform the court that he was delayed and when he would be appearing. The court found respondent did not show good cause for his failure to appear until after 4:00 p.m. for trial. The court then informed respondent

that it was imposing a $1,000 sanction on respondent, which was to be paid by April 30, 2014. When the court imposed sanctions against respondent in the amount of $1,000, respondent replied, "Your honor, that's pretty steep. That's very steep for me right now." Thus, respondent was aware on February 13, 2014, that the court had imposed the $1,000 sanction. (Exh. 8-0011.) Respondent admitted that he did not report the sanctions to the State Bar.

On February 13, 2014, the superior court also issued a written order stating that respondent had failed to provide a credible explanation for his failure to timely arrive for the February 11, 2014 proceeding in the *Buchwald* matter. At no time did respondent report the $1,000 sanctions, which had been imposed against him by the superior court, to the State Bar. On September 3, 2014, the superior court suspended payment of the sanctions.

Conclusions

Count One – (§ 6068, subd. (b) [Failure to Maintain Respect Due to the Courts])

Business and Professions Code section 6068, subdivision (b), provides that it is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers.

"Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system." (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403.)

As set forth, *ante*, respondent was present on February 10, 2014, when the superior court trailed the trial to February 11, 2014, at 10:30 a.m. Thus, respondent was aware that he was required to appear in court by 10:30 a.m. on February 11th. (Exh. 6, p. 0007.) However, not only did respondent fail to timely appear at 10:30 a.m., but he did not telephone the court until three hours after his scheduled appearance. Moreover, he then did not show up for trial until approximately 4:05 p.m. When respondent was asked in this proceeding if, by arriving hours after the trial was scheduled to commence on February 11th, he had inconvenienced the 50

prospective jurors, who had to wait all day for him, respondent replied that the jurors would have had to sit around anyway.

The evidence is clear and convincing that respondent willfully violated section 6068, subdivision (b) by failing to maintain the respect due to the courts of justice, and the judicial officer when on February 11, 2014, he did not appear until after 4:00 p.m. for a trial at which he had been directed to be present by 10:30 a.m. and by then failing to respond with forthrightness and candor to the superior court judge's questions relating to respondent's delay in contacting the court regarding the fact that he would not be timely and to his failure to appear until the end of the day. Additionally, respondent's glib statement, that he was not concerned that he had kept 50 jurors waiting for almost an entire workday because they would have been sitting around anyway, evidences an extraordinary lack of respect for the superior court, the judge, and the judicial system.

Count Two – (§6068(o)(3) [Failure to Report Judicial Sanctions])

Section 6068, subdivision (o)(3), requires an attorney to report to the State Bar the imposition of judicial sanctions, in writing, within 30 days of the time the attorney has knowledge of the imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than $1,000.

As noted, *ante*, respondent was present in court when the $1,000 sanction was imposed against him. Thus, respondent had actual knowledge of the sanction order when it was issued on February 13, 2014. Moreover, respondent has admitted that he has not reported the sanctions to the State Bar. Accordingly, the court finds that the State Bar has shown by clear and convincing evidence that respondent willfully violated section 6068, subdivision (o)(3).

Case No. 14-O-03261 – The Hartshorn Matter

Facts

On August 23, 2012, Brian David Hartshorn (Hartshorn) employed respondent to represent him in a civil dispute . The hybrid fee agreement required Hartshorn to pay a "flat fee" of $5,000 and a contingency fee of 25% to respondent. Hartshorn paid the $5,000 flat fee to respondent.

On February 27, 2013, respondent told Hartshorn that the litigation was more complex than he originally thought and requested an additional flat fee of $2,500, which Hartshorn paid. Thereafter, on August 11, 2013, respondent requested that Hartshorn pay him $1,000 for the cost of two depositions, which respondent planned on conducting. The following day, August 12, 2013, respondent received a check for $1,000 from Hartshorn, which respondent cashed and used for his own purposes. Respondent did not deposit the $1,000 in his client trust account. Respondent never conducted the depositions.

In January 2014, respondent settled Hartshorn's litigation for $15,000. On February 26, 2014, respondent received a check for $15,000, made payable to respondent and Hartshorn, which he deposited into his CTA on that same date. Respondent was required to maintain at least $11,071.60 of that $15,000 in his client trust account for his client.

In a letter to Hartshorn, which was dated February 26, 2014, respondent stated that Hartshorn would receive a disbursement of $12,071.60. The $12,071.60 disbursement included the $1,000 costs for the depositions that were never conducted.

By March 10, 2014, respondent's CTA balance was $23.02. Respondent took the funds belonging to Hartshorn for his own personal use. He never paid Hartshorn any part of the funds.

On or about May 7, 2014, Nicholas Gebelt (Gebelt) called respondent on behalf of Hartshorn.[2] Gebelt asked respondent when he planned on sending Hartshorn's money to Hartshorn. Respondent told Gebelt that he needed additional time because he was expecting an inheritance, which he would use to pay Hartshorn.

To date, respondent has not paid any portion of the $11,071.60 settlement or the $1,000 in costs to Hartshorn.

Conclusions

Count One - (Rule 4-100(A) [Failure to Deposit and/or Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

By cashing the $1,000 check he received from his client on August 12, 2013, which funds were to be used to cover the costs of depositions, and never depositing those funds into his client trust account, but rather using those funds for his own purposes, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

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

On February 26, 2014, after respondent deposited the settlement check for $15,000, which was made payable to himself and to his client, into his client trust account, he was required to maintain at least $11,071.60 for the benefit of his client. But, by March 10, 2014, respondent's client trust account balance was $23.02. By failing to maintain $11,071.60 in his client trust account on Hartshorn's behalf, respondent failed to maintain funds received for the

[2] In this proceeding, attorney Gebelt testified that Hartshorn is his client.

benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Three – § 6106 [Moral Turpitude - Misappropriation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. "'There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]' [Citations omitted.]" (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

The mere fact that the balance in respondent's client trust account has fallen below the total of amounts deposited in and purportedly held in trust supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into respondent's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

"[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) When the balance in respondent's client trust account fell below $11,071.60 by March 10, 2014, to a balance of $23.02, respondent had misappropriated at least $11,048.58 of his client's funds.

Accordingly, by: (1) cashing the $1,000 check he received from Hartshorn on August 12, 2013, which funds were to be used to cover the costs of depositions, and never depositing those funds into his client trust account, but rather using them for his own purposes, and (2) failing to

maintain at least $11,071.60 of the $15,000 in settlement funds he received and deposited into his client trust account on February 26, 2014, on behalf of Hartshorn, respondent misappropriated a total of $12,048.58 of Hartshorn's funds and thus committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Count Four - (Rule 4-100(B)(4) [Failure to Promptly Pay/Deliver Client Funds])

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

By failing to return, as requested by Gebelt on behalf of Hartshorn, the advanced costs of $1,000 which were never used for their intended purpose, i.e., depositions, and by failing to pay any part of the $11,071.60 in settlement funds to which Hartshorn was entitled and which respondent received on Hartshorn's behalf, respondent failed to promptly pay the funds that were in his possession and to which the client was entitled in willful violation of rule 4-100(B)(4).

Aggravation[3]

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

Respondent has two prior records of discipline.

On September 24, 1998, the Supreme Court filed an order suspending respondent from the practice of law for three years and six months and until respondent shows satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to former standard 1.4(c)(ii); the execution of that suspension was stayed; and he was placed on probation for five years on conditions including that he be actually suspended for two years and six months and until he shows satisfactory proof to the State Bar

[3] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to former standard 1.4(c)(ii). Respondent was given credit toward his period of actual suspension for the period of his inactive enrollment which commenced on December 1, 1996.

Respondent stipulated in this first prior disciplinary matter that (1) his criminal conduct in six matters did not involve moral turpitude but did involve other misconduct warranting discipline in violation of section 6068, subdivision (a);[4] (2) he willfully violated rule 3-110(A) [twelve matters]; (3) he willfully violated section 6068, subdivision (m) [eight matters]; (4) he willfully violated rule 3-700(A)(2) [four matters]; (5) he willfully violated rule 3-700(D)(2) [six matters]; (6) he willfully violated rule 4-100(A) [five matters];[5] (7) he willfully violated section 6106 for misappropriation of funds [three matters]; (8) he violated section 6106 for issuing checks when an account contained insufficient funds [one matter]; (9) he willfully violated rule 4-100(B)(3) [one matter]; (10) he willfully violated rule 3-700(D)(1) [one matter]; (11) he willfully violated rule 4-200(A) [one matter]; (12) he willfully violated section 6068, subdivision (b) [one matter]; and (13) he willfully violated section 6103 [one matter].

In aggravation, respondent stipulated that his misconduct (1) involved trust funds or trust property violations; (2) harmed clients and the administration of justice; and (3) involved multiple acts of misconduct. In mitigation, respondent stipulated that (1) he had no prior record of discipline; (2) his misconduct occurred during a time period in which he suffered from substance abuse, and respondent has taken affirmative steps towards rehabilitation for his substance abuse issue; (3) he has suffered emotional difficulties due to contested child custody

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[4] Respondent was convicted on nolo contendere pleas in 1997 of six separate violations of Health and Safety Code section 11550(a) for unlawful and willful use, or being under the influence of, a controlled substance or illegal narcotics.

[5] Although in one matter the rule violation was not expressly characterized as willful, as discipline was imposed for such a violation, the court finds that, in fact, the violation was willful. (See rule 1-100(A).)

issues; (4) at the time of the misconduct, respondent suffered extreme physical disabilities; (5) he fairly and fully cooperated with the State Bar in the matter; (6) he was of good character; and (7) he had paid certain restitution to the Client Security Fund.

On March 14, 2001, the Supreme Court filed an order suspending respondent from the practice of law for four years and until respondent shows satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to former standard 1.4(c)(ii); the execution of that suspension was stayed; and he was placed on probation for five years on conditions including that he be actually suspended for three years and until he shows satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to former standard 1.4(c)(ii). Respondent was given credit toward his period of actual suspension for the period of his inactive enrollment which commenced on June 25, 2000.

Respondent stipulated in his second prior disciplinary matter that his conduct in three criminal matters did not involve moral turpitude but did involve other misconduct warranting discipline in violation of section 6068, subdivision (a).[6]

In aggravation, respondent (1) had a prior record of discipline; (2) his misconduct significantly harmed his battery victim, and the public was endangered as result of his driving under the influence; and (3) his misconduct evidenced multiple acts of wrongdoing or demonstrated a pattern of misconduct. In mitigation, respondent cooperated throughout the proceedings with the State Bar.

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[6] Respondent was convicted on a nolo contendere plea in 2000 of separate misdemeanor violations of Vehicle Code section 23152(a) [driving under the influence of alcohol or drugs]; Penal Code section 242 [battery]; and two counts of Health and Safety Code section 11550(a) [being under the influence of a controlled substance].

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing.

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

Respondent's misappropriation of Hartshorn's funds, and his failure to promptly pay Hartshorn his funds, resulted in significant harm to Hartshorn.

Mitigation

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

Respondent had back surgery in December 2013 which made it difficult for him to get to court on time in February 2014. However, the court gives very minimal mitigating weight to respondent's surgery and back issue, as expert testimony did not establish that the surgery or back issue was directly responsible for his misconduct, and there is no clear and convincing evidence that his surgery or back issue no longer poses a risk that respondent will commit misconduct.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the standards are not mandatory, they may be deviated

from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

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

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

Standard 1.7(c) provides, in pertinent part, if mitigating circumstances are found, they should be considered alone and in balance with any aggravating factors.

Standard 1.8(b) provides that, if an attorney has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

(1) Actual suspension was ordered in any one of the prior disciplinary matters;

(2) The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or

(3) The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

In the instant matter, standards 1.8(b)(1) and 1.8(b)(3) are applicable, as respondent has two prior records of discipline, and the prior disciplinary matters and the misconduct in this present matter demonstrate that respondent is unable or unwilling to conform to his ethical responsibilities. Furthermore, no compelling mitigation has been shown to predominate.

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

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

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

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

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

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

Standard 2.8(b) provides, in pertinent part, that reproval is appropriate for a violation of an attorney's duties under Business and Professions Code section 6068, subdivision (o).

The State Bar recommends that respondent be disbarred. The court agrees.

The amount of money respondent misappropriated from his client Hartshorn was not insignificantly small. Moreover, the mitigating circumstances in the present case are neither insignificant, nor "compelling." Respondent's misappropriation did not result from gross negligence or from his failure to supervise the conduct of others. Instead, his misuse of his client's funds was willful and intentional.

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

An attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Consequently, respondent had flagrantly breached his fiduciary duties by violating rules 4-100(A) and 4-100(B)(4) and section 6106.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession.

Therefore, in all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

In *Chang v. State Bar* (1989) 49 Cal.3d 114, attorney Chang was found culpable, in a single-client matter, of misappropriating $7,900 in client funds, failing to provide his client with an accounting, and making misrepresentations both to his client and to the State Bar. In mitigation, Chang, unlike respondent, had no prior record of discipline in eight years of practice prior to the misconduct. In aggravation, Chang never acknowledged the impropriety of his conduct.

In determining that Chang should be disbarred, the Supreme Court noted that Chang's lack of candor to the State Bar investigator and the State Bar Court, the seriousness of the misconduct, and his lack of remorse or restitution gave reason to doubt whether Chang could conform his future conduct to the professional standards demanded of California attorneys. (*Id.* at p. 129.) Similarly, in the instant matter, respondent's lack of candor in his statements to the superior court judge in the *Buchwald* matter, his serious misconduct, and his failure to make any efforts to repay his client the funds that he misappropriated give this court concern that respondent has taken no steps toward rehabilitation and is not willing to conform his conduct to the professional standards required of attorneys in this State.

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

find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors. He was disbarred.

In sum, the record in the instant matter fails to establish a compelling reason to justify a departure from the disbarment recommendation provided for in standard 2.1(a). Even if respondent had not been found culpable of misappropriating client funds in this matter, disbarment still would be the appropriate level of discipline under standard 1.8(b) in light of respondent's two prior records of discipline, one of which also involved findings of misappropriation. Accordingly, the court recommends that respondent be disbarred.

Recommendations

Disbarment

It is recommended that respondent Charles Greg Lester, State Bar Number 160084, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Brian David Hartshorn as set forth below:

(1) $1,000 plus 10 percent interest per year from August 12, 2013; and

(2) $11,071.60 plus 10 percent interest per year from February 26, 2014.

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

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

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

Order of Involuntary Inactive Enrollment

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

Dated: July 27, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 27, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

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

CHARLES G. LESTER
LAW OFFICE OF GREG LESTER
527 N AZUSA AVE # 182
COVINA, CA 91722

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

CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 27, 2015.

Bernadette C.O. Molina
Case Administrator
State Bar Court