FILED MAY 28, 2015

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **ROBERT MICHAEL BALL,** **Member No. 138482,** A Member of the State Bar.	)	**Case No.: 14-O-03862-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Robert Michael Ball** (Respondent) is charged here with five counts of misconduct involving a single client. The counts include willfully violating: (1) section 6068, subdivision (a), of the Business and Professions Code[1] (failure to comply with law – unauthorized practice of law); (2) section 6106 (moral turpitude – misrepresentation); (3) section 6068, subdivision (m) (failure to inform client of significant development); (4) rule 3-300 of the Rules of Professional Conduct[2] (business transaction with a client); and (5) section 6068, subdivision (i) (failure to cooperate with State Bar investigation). In view of Respondent's misconduct and the aggravating factors, the court recommends, inter alia, that Respondent be disbarred from the practice of law.

[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.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on January 13, 2015. On February 10, 2015, Respondent filed his response to the NDC, denying all allegations and any culpability.

On February 23, 2015, an initial status conference was held in the matter at which time the case was scheduled to commence trial on May 13, 2015, with a three-day trial estimate.

Trial was commenced on May 13, 2015, and completed on May 15, 2015. The State Bar was represented at trial by Senior Trial Counsel Kimberly G. Anderson. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar at all relevant times.

Case No. 14-O-03862 (Alexander Matter)

In September 2010, Fena Alexander (Alexander) contacted Respondent regarding complaints she had about her employment at American Express. Respondent was eligible to practice at the time, but was aware that a recommendation of this court, that he be actually suspended for seven months, was then pending with the California Supreme Court. That recommendation was based on a Stipulation re Facts, Conclusions of Law and Disposition, executed by Respondent on June 22, 2010, and approved and filed by this court on July 6, 2010, in which Respondent had agreed to the seven-month suspension.

Respondent met with Alexander in September 2010 and investigated her complaints regarding her employment circumstances. Her complaints focused on being overwhelmed with work by her employer; concerns that her health was suffering as a result; and her unhappiness that, as an "exempt" employee, she was not being paid overtime for the excess hours she was required to work. Respondent advised her that her health issues would be subject to worker's compensation procedures and remedies, but he indicated to Alexander that there was a basis to seek overtime wages by challenging Alexander's classification as an exempt employee. In late September, 2010, a series of emails from Respondent to Alexander make clear that Respondent was recommending that she file a complaint against American Express, both on behalf of herself and as a representative of a class of similarly situated individuals, seeking past overtime pay. A comparable suit had just been filed at that time by American Express employees in Phoenix. (See Ex. 32 ["There is a statute of limitations so its [sic] best to move asap. Also, since the other lawsuit was just filed, we don't want anyone to beat us to the punch for salaried workers.")

On October 5, 2010, Respondent and Alexander entered into a fee agreement whereby Respondent agreed to act "as counsel concerning employment related matters." The agreement authorized Respondent to act as Alexander's counsel in litigation and "to take all steps necessary to perfect any judgment or settlement[.]" (Ex. 8, p. 1.) As compensation for his services, Alexander agreed to pay Respondent $10,000 as a "non-refundable true retainer" and to receive 45 to 50 percent of any recovery, depending on when the recovery was made. The fee agreement also provided that, should it "become necessary for Attorneys to withdraw from representation of Client, Client shall pay Attorney for Attorney's time spent on client's case at Attorneys' regular hourly rate of $450 per hour." At the same time that Respondent was advising Alexander that she needed to act quickly to file her lawsuit and was having her enter into this agreement with

him to file the case, he did not advise her that he had agreed to be disciplined for past misconduct and was expecting to be suspended for seven months in the foreseeable future.

After meeting with Respondent and executing the retainer agreement, Alexander began gathering information regarding other American Express employees who might have been misclassified as "exempt" personnel.

On October 26, 2010, the Supreme Court filed and served its order suspending Respondent for seven-months, effective November 25, 2010. The order also required Respondent to comply with California Rules of Court, rule 9.20, which require Respondent, inter alia, to provide written notification of his suspension to all of his clients via certified mail within 30 days after his suspension became effective. He provided neither written nor oral notice to Alexander regarding his pending or actual suspension until after his suspension had been terminated in 2011.

Despite the fact that Respondent was suspended after November 25, 2010, he continued to communicate with Alexander regarding evidence supporting the planned class action and the status of the filing of the action. These communications, including Respondent's own communications, make clear, and this court finds, that Respondent had not terminated the prior retention agreement or completed his representation of Alexander prior to or during his suspension; that he did not inform her prior to or during his suspension that he was not able to provide services on her behalf or give legal advice to her; and that she was continuing to communicate with him during his suspension based on her understanding that he was still entitled to practice law. By way of examples, these communications included the following:

> On January 11, 2011, Alexander sent an email to Respondent[3] informing him that she had found a document strongly supporting her contention that

[3] All of Alexander's emails to Respondent were addressed to rmball**law**@msn.com. [Emphasis added.]

a group of employees were being misclassified. In response, Respondent emailed, "Thanks, Fene, you are the best!" (Ex. 12, pp. 1-2.)

On January 13, 2011, Alexander emailed Respondent, forwarding a document that caused her to emphasize that her class action should be filed quickly: "I'm sure you would agree that we want to get **our case** filed before they decide to make a change to exemption status classification. . . . Just want to keep you abreast of what's going on within the company." (Ex. 12, p. 3.)

On January 20, 2011, Alexander forwarded to Respondent another document which she described as "also evidence." In response, Respondent emailed back within minutes, "Thanks for the info. Im [sic] a little under the weather but I want to meet soon (without giving you the flu) to discuss material." (Ex. 12, pp. 4-5.)

On February 11, 2011, Alexander again emailed Respondent "to get an update of the status of my future case." She went on to state: "I thought it was critical that we move quickly to prevent someone else from filing first[.] It has now been approx. 6 months, and I'm getting a bit discouraged. [¶] As I discussed when we last spoke, I'm ready to resign from this company. I'm hoping I can stay a few months after the case has been filed to see if they retaliate, so for me, it's important that we get moving as soon as possible. I realize you're busy with other clients so I'm trying to be as patient as possible. However; if this is not going to happen soon, I'm ready to move on." (Ex. 12, p. 7.) In apparent response to this email, Respondent replied on February 14, 2011: "Oh no, part of the process has been to make sure nobody else has. There is a service that we use. Just waiting for Neal to wrap up a case in about a week so we can file yours. Hope for us all to meet this week. What day is best for you." (Ex. 12, p. 8.) To this email, Alexander responded the same day, "Ok, sounds good!" She then provided days she was available for the proposed meeting.

The meeting with Respondent and attorney Neal did not get scheduled for either of the days that Alexander indicated she was available. On February 22, 2011, the day after the last date proposed by Alexander, Respondent emailed her to state, "Sorry for the delay. I'm just returning to work today after taking a couple days off last week." (Ex. 12, p. 11.)

After a meeting was held by Respondent, Alexander, and attorney Neal [who was described by Respondent to Alexander as being a class action attorney who was being added to Respondent's trial team for her proposed class action], Neal's office forwarded to Alexander on March 3, 2011, a retainer agreement that named only Neal's office and required Alexander to agree that his office would be entitled to 40-45% of any settlement. Promptly after she received this proposed fee agreement, Alexander expressed her concern to Respondent about adding Neal as counsel in her

> contemplated case, given her existing fee agreement with Respondent: "Considering the fact that I'm currently responsible for 50% of any settlement reached, plus fees, it's not economically feasible for me to pay another 40-45% and expect to receive enough money that makes this endeavor worth my pursuit. [¶] Is it possible for you and your team to litigate this case without another firm? If not, how can we make this worthwhile for everyone?" (Ex. 12, p. 15.) In response, Respondent emailed Alexander on the following day, "Its [sic] one fee. You pay nothing more than you have already agreed to." (Ex. 12, p. 16.)
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> As a follow-up to the issue of how Alexander should deal with the proposed Neal fee agreement, she emailed Respondent on March 6, 2011, stating, inter alia: "I'm referring to Mr. Neal's office. They sent their retainer to me, but I'm not sure if I should be entering into a separate agreement with them. I'm trying to get your advise [sic] on how to handle their request. [¶] Their retainer states that they're asking for 40-45% of all moneys received from my case. If I sign that agreement, it seems to me like I'll be entering into that agreement with them, under those terms. You're my attorney and I trust your advise, so I'm trying to determine how to handle their retainer." (Ex. 12, p. 19.)
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> On March 9, 2011, Respondent replied to Alexander's email. He did not indicate that he was not able to provide her with legal advice, that he was not her attorney, or that he was then suspended to practice law. Instead, he asked her to call him when she got a chance.

Alexander signed the agreement with the Neal firm, and Neal then filed the class action on her behalf. Respondent was not listed as co-counsel in the matter and did not participate in it as counsel of record until after his suspension had ended. Alexander, however, believed that Respondent was actively involved in the handling of the case, and she continued to consult with him about it. Again, by way of example, Alexander sent an email to Respondent on March 30, 2011, with the reference line "Expanding our Class." In her email, she indicated, "Hi Robert, I wanted to share a 'Yin [sic] in which we may be able to expanding our class to include client managers. . . .When you have time I'd like to explain in greater detail." (Ex. 12, p. 22.) In response, Respondent emailed Alexander on the same day to state, "Great! Cant [sic] wait to discuss."

On August 7, 2012, after Respondent's suspension ended, Respondent substituted into Alexander's case. After Respondent had become counsel of record in the case, a comment from opposing counsel during the first day of Alexander's deposition in the case alerted her to Respondent's prior discipline. When she inquired of Respondent the next day about the comment, he disclosed to her for the first time his prior suspension.

In mid-2012, Respondent discussed with Alexander the possibility that she could become an investor in a new business venture being created by him. On June 7, 2012, Alexander executed a Beauty FX Joint Venture Investor Agreement and provided checks to Respondent totaling $50,000 to become a "principle" with Respondent in a business being created by him. Although Respondent acknowledged at trial that he was involved in this proposed business, the manner of his involvement was not set forth in the joint venture agreement provided by Respondent to Alexander. At no time, either before or after Alexander executed this joint venture contract, did Respondent advise Alexander in writing of the nature of his involvement in the transaction or of all of the terms of it. He also did not advise her that she could seek the advice of an independent lawyer of her choice. Finally, he did not obtain Alexander's written consent to all of the terms of the transaction.[4]

Although the joint venture agreement provided for "a quarterly return of 50% ($25,000 per each $50,000 every three months," Alexander never received any return on her investment. When it appeared to Alexander that no significant efforts were being made to make the proposed business a viable business, she demanded that Respondent return her money. While Respondent

[4] By way of example, there is nothing in the joint venture agreement that mentions Respondent. Further, while the written agreement required Alexander to pay $50,000 to become a principle, Respondent had her execute two separate checks: one check, for $35,000, was addressed to Beauty FX as the payee; the other, for $15,000, was addressed to Res Ipsa Loquitar, a Nevada corporation of which Respondent was the President, Secretary, Treasurer and sole Director. This company was also not disclosed or discussed in the joint venture agreement.

did return $15,000 of the invested funds and promised to return the balance, no additional funds have ever been received by Alexander. As a result, she filed a complaint with the State Bar.

On August 21, 2014, an investigator from the State Bar sent a letter to Respondent, advising him that a complaint had been filed against him by Alexander and asking him to respond in writing to various issues raised by her complaint and to provide various designated documents. The letter provided a deadline of September 4, 2014, for Respondent's written response and document production. The letter also stated that, if Respondent needed an extension of the deadline, he was required to make the request in writing and provide good cause for the extension.

Respondent received the letter and then contacted the investigator by phone to request an extension of the deadline. The investigator indicated that she was willing to provide a two-week extension, but still required that Respondent comply with the requirement that the extension request be in writing. After receiving this oral extension of the deadline, Respondent did nothing further to respond to the requests contained in the letter. Indeed, he also did not provide any of the requested documents during the course of the instant proceeding.

Count 1 – Business and Professions Code Sections 6068, subd. (a), 6125, and 6126 [Failure to Support Laws/Unauthorized Practice of Law]
Count 2 - Section 6106 [Moral Turpitude – Concealment/Misrepresentation]
Count 3 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In these counts the State Bar alleges that Respondent had a duty to disclose to Alexander the fact that he was being suspended as a result of the Supreme Court order filed on October 26, 2010 and effective November 25, 2010; that his failure to disclose his suspension represented both a failure to communicate a significant development to his client in violation of section 6068, subdivision (m), and an act of moral turpitude in violation of section 6106; and that his concealment of his suspended status, when coupled with his ongoing activities and

communications with Alexander after his suspension became effective, represented the unauthorized practice of law, in violation of sections 6068, subdivision (a); 6125, and 6126. As discussed more fully below, this court agrees with these allegations.

Section 6068, subdivision (m)

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to "keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." Respondent had agreed to provide legal services for a period that extended beyond the commencement of his actual suspension on November 25, 2010. That Respondent had become ineligible to provide her legal advice or to file the anticipated lawsuit on her behalf after that date was a significant development. His failure to affirmatively notify her of that fact was a willful violation of his obligation under section 6068, subdivision (m). (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 577.)

Section 6106

Under section 6106, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice . . . ." (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.) Acts of moral turpitude include omissions, concealment and affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) "No distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes creating false impression by concealment as well as by affirmative misrepresentations].)

Respondent's actions in concealing his suspension from Alexander and holding himself as entitled to practice law were, at a minimum, grossly negligent, and they constituted acts of moral turpitude in willful violation of the prohibition set forth in section 6106. (*In the Matter of Wyrick, supra*.)

Section 6068, subdivision (a)

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125, provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail." Where it is contended in a State Bar disciplinary proceeding that a member has violated sections 6125 and 6126, the appropriate method of charging those violations is by charging a violation of section 6068, subd. (a). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.) That is what the State Bar has done here.

It is well-established that a suspended attorney "cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law when in fact he or she is or will be on suspension." (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91, citing *In re Naney* (1990) 51 Cal.3d 186, *Arm v. State Bar* (1990) 50 Cal.3d 763, and *Caldwell v. State Bar* (1975) 13 Cal.3d 488.) Respondent accepted employment by Alexander at a time when he knew that he was going to be suspended

in the foreseeable future without disclosing that fact to her. After he was actually suspended, he did not notify Alexander of his suspension, despite obligations to do so arising from section 6068, subdivision (m), and the Supreme Court order that he comply with rule 9.20 of the California Rules of Court. Finally, he left undisturbed Alexander's ongoing belief that he was eligible to act on her behalf and that he either was or soon would be doing so. This conduct by Respondent constituted a violation of the prohibition against the unauthorized practice of law, in willful violation of sections 6068, subdivision (a); 6125; and 6126.

While Respondent's actions violated multiple sections of the State Bar Act, those violations all arise from the same course of conduct. Accordingly, for purposes of assessing discipline, Respondent's culpability of counts 1 and 3 will be treated as duplicative, and the court finds no need to assess any additional discipline as a consequence of them. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

Count 4 – Rule 3-300 [Business Transaction with Client]

In this count the State Bar alleges that Respondent failed to satisfy the requirements of rule 3-300 when he entered into the business transaction with Alexander regarding Beauty FX.

Rule 3-300 provides:

> A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:
>
> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
>
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
>
> (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

While the State Bar does not allege that the transaction entered into by Respondent and Alexander was either unfair or unreasonable, the evidence is clear and convincing that Respondent failed to comply with the requirements that (1) the terms of the transaction be fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; (2) he advise his client in writing that she may seek the advice of an independent lawyer of the her choice; and (3) he then obtain his client's written consent to the terms of the transaction. These omissions by Respondent constituted willful violations by him of rule 3-300.

Count 5 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068, subdivision (i), subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

By failing to provide a written response or any documents to the State Bar, as he was requested to do by the August 21, 2014 letter of the State Bar's investigator, Respondent willfully violated section 6068, subdivision (i). (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, [5] std. 1.5.) The court finds the following with respect to aggravating circumstances.

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

Prior Discipline

Respondent has been disciplined on three prior occasions.

Respondent's first discipline occurred in 2007, when the Supreme Court issued an order (S149271) in case numbers 03-O-02545, 03-O-04082, 04-O-13606, 05-O-02475, and 05-O-03032, effective April 5, 2007. In that order, Respondent was suspended for sixty (60) days, stayed, and placed on probation for one year with conditions not including any period of actual suspension. The misconduct occurred between 2001 and 2003 and included violations of rule 3-110(A) [failure to perform legal services with competence]; section 6068, subdivision (m) [failure to communicate with client]; and section 6068, subdivision (i) [failure to cooperate in a State Bar investigation].

Respondent was again disciplined by the Supreme Court, effective November 25, 2010, in case numbers 05-O-04060, 07-O-12895, 08-O-10230, 08-O-10514, 08-O-11389, 09-O-11282, and 10-O-02115. As noted above, he was suspended for two years, stayed, and placed on probation for two years, with conditions of probation including seven months of actual suspension. The misconduct in those matters included twenty-two violations in eight client matters, including failure to perform legal services with competence [rule 3-110(A)]; failure to refund unearned fees [rule 3-700(D)(2)]; failure to communicate with a client [section 6068, subd. (m)]; failure to provide accountings [rule 4-100(B)(3)]; failure to cooperate in a State Bar investigation [section 6068, subd. (i)]; and acts of moral turpitude [section 6106]. This misconduct occurred between 2000 and 2008.

Respondent's third disciplinary proceeding is case No. 13-O-17308 and results from his violation of various conditions of the probation ordered in 2010. A decision was handed down by this court on January 22, 2015, finding that Respondent was culpable of multiple violations of the conditions of that probation, in willful violation of section 6068, subdivision (k), and

recommending that he be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with conditions of probation including that he be actually suspended from the practice of law for the first one year of probation.[6] The Notice of Disciplinary Charges (NDC) was filed in that matter on May 13, 2014. In that case, in contrast to the present proceeding, mitigating circumstances included Respondent's cooperation, his candor, and his recognition of his misconduct.

Although the impact of the third discipline is reduced pursuant to the analysis set forth *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, Respondent's prior record of discipline is nonetheless a significant aggravating factor. (Std. 1.5(a).)

Multiple Acts of Misconduct

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

Lack of Candor

Respondent displayed a lack of candor with this court during his testimony in this matter. By way of example, his testimony that his representation of Alexander ended prior to the beginning of his suspension belied by the email correspondence to and from Alexander during the period of his suspension. 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* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-3.)

[6] Although the recommendation in that matter is not yet final, the matter may be treated as a record of prior discipline. (Rules of Proc., rule 5.106.)

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.5(g).) He fails to demonstrate any realistic recognition of or remorse for his wrongdoings and instead continues to deny any violations of his professional obligations. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Mitigating Factors

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

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle*

(2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.8(b). Application of that standard suggests that disbarment is the appropriate discipline to be recommended.

Standard 1.8(b) provides:

> If a member 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."

Respondent has been disciplined on three prior occasions with actual suspension having previously been ordered; there are no compelling mitigating circumstances here; and the misconduct here occurred after the misconduct in the first two disciplines. In addition, portions of the acts of misconduct here occurred during the time that Respondent was actually suspended as a result of his second discipline, and all of the misconduct occurred while he was on

probation, demonstrating his unwillingness or inability to conform to his ethical responsibilities. This conclusion is buttressed by Respondent's many failures to comply with the conditions of that probation, resulting in his third discipline. Worse, when Respondent received and then ignored the State Bar investigator's letter in August 2014, he had already been previously disciplined on two separate occasions for failing to cooperate in a State Bar investigation. Despite those two prior disciplines, Respondent failed to respond in 2014 to State Bar inquiries about Alexander's complaints against him.

A review of the case law also confirms that disbarment is the appropriate discipline to recommend here. (See *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.)

Given the misconduct in the present matter, the many instances in which Respondent has failed to comply with his professional obligations, his demonstrated lack of insight and candor in this proceeding, and the ongoing lack of success of the State Bar's disciplinary process in motivating him to comply with his professional obligations, disbarment is both appropriate under the standards and necessary to protect the public and the profession from future misconduct.[7]

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Robert Michael Ball,** Member No. 138482**,** 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.

[7] This disbarment recommendation does not depend on the outcome of the pending recommendation in case No. 13-O-17308 and will be unaffected by any subsequent dismissal or modification of that recommendation. (Rules Proc., rule 5.106(E).)

Restitution

The court further recommends that Respondent be ordered to make restitution to Fena Alexander in the amount of $35,000 plus 10 percent interest per year from June 7, 2012, (or to the Client Security Fund to the extent of any payment from the fund to Fena Alexander, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

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

Costs

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

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Robert Michael Ball,** Member No. 138482, 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).)[8]

Dated: June _____, 2015.

DONALD F. MILES
Judge of the State Bar Court

[8] 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.)