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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

|  |   |                         |
|--|---|-------------------------|
| In the Matter of                       | ) | Case No. 16-O-17302-LMA |
|  | ) |                         |
| RITA MAE LINGWOOD,                     | ) | DECISION AND ORDER OF   |
|  | ) | INVOLUNTARY INACTIVE    |
| A Member of the State Bar, No. 214145. | ) | ENROLLMENT              |
| _____                                  | ) |                         |

**Introduction<sup>1</sup>**

In this contested disciplinary proceeding, respondent Rita Mae Lingwood (Respondent) is charged with four counts of misconduct.<sup>2</sup> The alleged misconduct includes misappropriation, failing to comply with the laws of California, entering into an unfair business transaction with a client, and making misrepresentations to a trust beneficiary's attorney. This court finds, by clear and convincing evidence that Respondent is culpable of three counts of misconduct and dismisses the fourth count as duplicative. In view of her serious misconduct, as well as the evidence in aggravation and mitigation, the court recommends that Respondent be disbarred.

<sup>1</sup> 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.

<sup>2</sup> At the beginning of the disciplinary hearing in this matter, the Office of Chief Trial Counsel of the State Bar of California dismissed Count Five of the NDC and any reference to Probate Code section 16060.

### **Significant Procedural History**

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 28, 2017. On January 19, 2018, Respondent, through her counsel, James J. Banks, filed her response to the NDC.

A four-day hearing was held before this court on June 12, 2018, through June 15, 2018. Senior Trial Counsel Carla L. Cheung and Deputy Trial Counsel Christina M. Lauridsen represented OCTC. James J. Banks represented Respondent. This matter was submitted for decision on July 2, 2018, after the parties filed their closing briefs.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on June 8, 2001, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

Respondent was a neighbor to Nancy Joan Doyle (Joan) and Robert Doyle (Bob).<sup>3</sup> Respondent prepared the Doyle Family Trust Agreement of Robert S. Doyle and Nancy Joan Doyle (Doyle Family Trust) for Joan and Bob, which they executed on February 26, 2012. Joan and Bob were designated co-trustees. Respondent was designated as successor trustee.

The Doyle Family Trust assets consisted of the Doyles' condominium in Sacramento, bank accounts at Golden One Credit Union and investment accounts at Morgan Stanley and UBS Financial Services (UBS).

Respondent prepared the First Amendment and Restatement of Trust Agreement of Robert S. Doyle and Nancy Joan Doyle, which Respondent, Bob, and Joan executed on June 27, 2015. Respondent replaced Bob as co-trustee of the Doyle Family Trust. Respondent became

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<sup>3</sup> Nancy Joan Doyle and Robert Doyle are referred to by their middle and first names, respectively, for the sake of clarity; no disrespect is intended.

co-trustee with Joan, who by then had been diagnosed with cancer. Joan's daughter, Belinda Draugelis was designated as successor trustee.

Around the time of Joan's stage-4 cancer diagnosis, Bob began displaying signs of dementia, which would later be diagnosed as Alzheimer's disease. Respondent drafted the Durable Power of Attorney for Robert S. Doyle (DPOA), appointing herself and Draugelis as Bob's agents. Bob executed the DPOA on June 27, 2015.

On July 8, 2015, Joan and Respondent, as co-trustees, opened a Golden One Credit Union checking account in the name of the "Doyle Family Trust".

Bob was placed in a residential memory care facility in December 2015. Joan died on February 4, 2016. Since Joan's death, the Doyle Family Trust beneficiaries or contingent beneficiaries have been Bob, Draugelis, and Joan's son, Gerald Drozdowski. At all times herein, Draugelis lived in Virginia and/or South Carolina, and Drozdowski lived in Florida. Following Joan's death, Respondent became the sole trustee of the Doyle Family Trust.

#### **Respondent's Request for a \$60,000 Personal Loan**

Draugelis came to California to be with her mother from approximately December 2015 until mid-February 2016. On March 5, 2016, Respondent sent an email to Draugelis, requesting permission to take a \$60,000 personal loan from "Bob's investment account."<sup>4</sup> The email began with a recitation of Respondent's personal difficulties, specifically her years-long struggle with depression and a financial "hole". The email went on to state, "I checked on the legality of this type of loan to a Trustee and per the Trust (Page 10 paragraph) a loan can be made and there is

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<sup>4</sup> Specifically, Respondent stated that "the idea came to me about borrowing from Bob's investment account."

no breach of fiduciary duty **as long as you would agree** this to be a prudent investment.”<sup>5</sup>

(Emphasis added.)

Respondent’s email provided various terms for the proposed loan. She indicated that she would execute a note for \$60,000, with the note being secured by a deed of trust on her condo. Respondent proposed monthly payments of \$535.50 for 15 years, with the payoff term accelerated by monthly payments of \$750; the payments were to be deposited into an investment account; and Respondent would purchase life insurance payable to the trust.

Respondent’s email further stated, “I hope you will consider my request as I felt this idea could be an answer to my prayers and allow me to consolidate debts, get the deck work done and finally have some breathing room to lower my stress levels.” In closing, Respondent implied that Draugelis’ recently-deceased mother had sent Respondent a message that she would be coming into money soon.

Respondent’s March 5, 2016 email did not advise Draugelis that she could seek the advice of independent counsel. Respondent did not direct her request for a loan to either Bob or Drozdowski, and did not provide Draugelis with a time by which she expected a response.

At the time of Respondent’s request for a loan, she had a Chapter 7 bankruptcy on her credit report, had tens of thousands of dollars in personal debt, and had been deferring payments on her first mortgage.

On March 15, 2016, Respondent deposited a check issued by UBS, made payable to the “Doyle Family Rev. Trust” in the amount of \$70,000, into the Doyle Family Trust account at Golden One Credit Union. The UBS funds were from the account held by the Doyle Family Trust.

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<sup>5</sup> Respondent testified that she thought she had authority as the trustee to make the loan to herself. The court does not find this testimony credible.

On March 30, 2016, Respondent wrote a \$25,147.85 check from Robert Doyle's personal account at Golden One Credit Union and deposited it into the Doyle Family Trust account at Golden One Credit Union. On April 1, 2016, the balance of the Doyle Family Trust account was \$37,302.55

In March 2016, Draugelis consulted and later hired an attorney, Susan Hill, who is licensed in California and certified by the State Bar of California as a specialist in Estate Planning, Trust and Probate Law.

### **Respondent's Unauthorized Taking of Doyle Trust Funds**

On April 1, 2016, without having received consent from Draugelis, or any other Doyle Family Trust beneficiary or contingent trust beneficiary, Respondent wrote a check from the Doyle Family Trust account at the Golden One Credit Union, payable to the Rita M. Lingwood Trust (Lingwood Trust) in the amount of \$30,000. Respondent deposited the April 1, 2016 check into her own Golden One Credit Union account held by the Lingwood Trust.<sup>6</sup> At that time, Respondent did not inform Draugelis, or any other Doyle Family Trust beneficiary or contingent Trust beneficiary, that she had taken the entrusted \$30,000 funds from the Doyle Family Trust and placed it into the Lingwood Trust.

On April 26, 2016, without having received consent from Draugelis, or any other Doyle Family Trust beneficiary or contingent Trust beneficiary, Respondent wrote a second check from the Doyle Family Trust account at Golden One Credit Union, payable to the Lingwood Trust in the amount of \$30,000. Respondent deposited the April 26, 2016 check into her own Golden One Credit Union Lingwood Trust checking account. At that time, Respondent did not inform Draugelis, or any other Doyle Family Trust beneficiary or contingent beneficiary, that she had taken the additional \$30,000 from the Doyle Family Trust account at Golden One Credit Union.

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<sup>6</sup> Respondent is the trustee and sole beneficiary of the Lingwood Trust.

### **Respondent's Execution of a Promissory Note and Deed of Trust**

In April 2016, despite not having any agreement from Draugelis or any other Doyle Family Trust beneficiary, Respondent executed a \$60,000 promissory note payable to the Doyle Family Trust, bearing interest at five percent per annum from April 1, 2016, and payable in installments of \$600 on the first day of each month, beginning May 1, 2016. On April 27, 2016, Respondent executed a Deed of Trust and Assignments of Rents, securing a \$60,000 promissory note referenced in, but not attached to, the Deed of Trust. Based on the timing of the Deed of Trust, the court finds that Respondent did not execute the promissory note until after she had withdrawn the entire \$60,000 from the Doyle Family Trust.

### **Respondent's Spending of Doyle Trust Funds on Personal Expenditures and Debts**

On May 2, 2016, Draugelis sent an email to Respondent, expressly denying Respondent's request to take a loan. In the email, Draugelis stated, "This time has been a very difficult time for me and my family as I am constantly distracted by the weight of the events of the past 10 months. **I do not agree to authorize a personal loan, or any loan, to you from the trust.**" (Emphasis in original.)

Respondent replied to Draugelis' email a few hours later, but did not disclose that she had already taken \$60,000 from the Doyle Family Trust account. When Respondent received Draugelis' email on May 2, 2016, the ending balance of the Lingwood Trust checking account was \$33,079.18.

Despite having received this email and still having \$33,079.18, Respondent continued to spend the entrusted Doyle Trust funds on her own personal expenditures and debts.

Between April 1, 2016, (the day she deposited the first check) to May 2, 2016 (the day she learned she did not have any authorization) Respondent spent entrusted funds of the Doyle

Family Trust on personal expenditures and the repayment of outstanding debts, including the following transactions:

- April 5, 2016 phone payment on Respondent's Capital One credit card in the amount of \$2,853.12;
- April 5, 2016 check payable to Cleon Lingwood in the amount of \$3,000 (Respondent owed Cleon Lingwood for unpaid services as a bookkeeper);
- April 12, 2016 check payable to Sunny Groom in the amount of \$456.00;
- April 12, 2016 check payable to Oakwood HOA in the amount of \$3,307.00 (Respondent had been in arrears with her homeowner's association fees);
- April 15, 2016 ACH debit payable to Cash Call in the amount of \$7,215.00 (Respondent had a personal loan of approximately \$10,000 with Cash Call);
- April 18, 2016 cashier's check payable to the IRS in the amount of \$2,500.00; and
- April 4, 2016 check payable to the County of Sacramento in the amount of \$1,115.74.

After May 2, 2016, with the knowledge that she did not have any authority to use the entrusted funds, Respondent continued to spend the entrusted funds of the Doyle Family Trust on personal expenditures and the repayment of outstanding debts, including the following transactions:

- May 3, 2016 check payable to Liz Gray in the amount of \$13,093.00. Ms. Gray, held the first mortgage on Respondent's personal residence; and
- May 19, 2016 a cashier's check, payable to the county of Sacramento in the amount of \$5,315.00.

Respondent also wrote checks payable to herself, and made cash withdrawals, totaling \$15,100. Respondent used some of those funds to improve the deck attached to her

condominium. By June 30, 2016, the ending balance of the Lingwood Trust account was \$1,391.04.

On May 26, 2016, Hill sent Respondent a letter, reiterating Draugelis' denial of permission to take a personal loan and asking Respondent to inform them "whether or not [Respondent] borrowed any money from Mr. Doyle or the Doyle Family Trust at any time." The letter also requested Respondent's resignation as trustee of the Doyle Family Trust.

On June 1, 2016, Respondent wrote back to Hill, and made the following misleading statements: "The loan request was never for a personal loan. Having not received a response from your client I did not make a loan from any of Robert Doyle's personal assets. After reviewing the statements on the investment accounts and realizing how much money had been lost and wanting to find a way to insure some income from investments I did make a real estate investment loan from The Doyle Family Trust to my Trust, executed a note and recorded a deed of trust securing the loan with my personal residence. A copy of the note and deed of trust are attached. It was my intent that within 2 to 3 years I would refinance the loan and payoff the mortgage."

On June 10, 2016, Hill sent Respondent a letter, demanding that Respondent immediately repay the Doyle Family Trust funds taken in full. The same day, Respondent replied to Hill, stating that she was unable to repay the funds at that time but would refinance her residence to repay the loan. Between receiving Draugelis' email denying permission for the loan May 2, 2016, and responding to Hill's demand for repayment on June 10, 2016, Respondent spent over \$30,000 of the funds taken from the Doyle Family Trust.

Respondent resigned as trustee to the Doyle Family Trust and resigned as Robert S. Doyle's attorney on June 15, 2016. On October 24, 2016, Draugelis filed a complaint against

Respondent with the State Bar. On March 10, 2017, Respondent repaid the balance of the loan in full from the proceeds of her personal residence.<sup>7</sup>

## **Conclusions**

### ***Count One - (§ 6106 [Moral Turpitude - Misappropriation])***

OCTC charged Respondent with willfully violating section 6106 by withdrawing \$60,000 from the Doyle Family Trust bank account without authorization. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent is culpable of the misconduct alleged in Count One.

On April 1, 2016, Respondent withdrew \$30,000 from the Doyle Family Trust account and deposited those funds into the Lingwood Trust account that Respondent controlled. Later, on April 26, 2016, Respondent withdrew an additional \$30,000 from the Doyle Family Trust account and again deposited the funds into the Lingwood Trust. Respondent requested permission from Draugelis to take a \$60,000 personal loan from the trust, but Respondent never received consent from her. Respondent did not have authorization to withdraw \$60,000 in funds from the Doyle Family Trust and she knew that she had not received such authorization. Respondent used the funds for her home deck improvement, personal debts, checks made payable to herself, and cash withdrawals totaling \$15,100. Because Respondent knew that she had to seek permission to withdraw \$60,000 from the Doyle Family Trust account, she failed to seek that authorization and she withdrew \$60,000 from the trust for personal expenditures, the

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<sup>7</sup> Respondent maintains that she made \$600 payments each month before she repaid the loan in full. A loan requires an agreement regarding the loan amount and the loans' terms. However, there was no "loan" because none of the beneficiaries agreed to loan Respondent \$60,000.

court finds Respondent culpable of intentionally misappropriating \$60,000, in willful violation of section 6106.<sup>8</sup>

***Count Two - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])***

***Count Three - (Rule 3-300 [Avoiding Interests Adverse to a Client])***

OCTC charged Respondent with violating section 6068, subdivision (a), by willfully failing to support the laws of the state of California, which include Probate Code sections 16002 and 16004.<sup>9</sup> Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. OCTC also charged Respondent with willfully violating rule 3-300 by entering into a business transaction with persons whom she owed a fiduciary duty. Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; 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 do so; and the client thereafter consents in writing to the terms of the transaction/acquisition.

Respondent owed a fiduciary duty to the beneficiaries of the Doyle Family Trust.

When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct. [Citation.]

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<sup>8</sup> The court has considered and rejects Respondent's contention that she believed that the Doyle Family Trust documents gave her the authority to withdraw \$60,000 in funds from the Doyle Family Trust account.

<sup>9</sup> Probate Code section 16002 provides in relevant part that a trustee has a duty to administer the trust solely in the interest of the beneficiaries. Probate Code section 16004 provides in relevant part that a trustee has a duty not to use or deal with trust property for the trustee's own profit or for any purpose unconnected with the trust, and not to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

Here, respondent assumed fiduciary duties toward the beneficiaries when [she] became trustee of the trust. [Citation.] Thus, even though the beneficiaries were not [her] 'clients' [Citation], respondent may be disciplined as if they were [her] 'clients' as the result of [her] fiduciary relationship with them. [Citation.]

*(In the Matter of Hultman (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 307.)*

In March 2016, Respondent requested a personal loan from Draugelis via email. Respondent provided proposed terms of the loan, but she never advised Draugelis that she could seek the advice of independent counsel. In addition, Respondent never requested a loan from Drozdowski, never provided the loan's terms to Drozdowski, and neither Draugelis nor Drozdowski consented to the terms of the loan.

In April 2016, Respondent twice withdrew \$30,000 from the Doyle Family Trust account. Respondent withdrew those funds before she executed a deed of trust, securing the purported loan with her condominium. Thus, the promissory note was not secured when she withdrew the funds and there was no loan at that time. Respondent is culpable of willfully violating rule 3-300 by entering into a business transaction with the beneficiaries of the Doyle Family Trust where the terms were not fair and reasonable; the \$60,000 transaction was not secured when Respondent withdrew the funds from the Doyle Family Trust account; Respondent failed to advise the beneficiaries in writing that they could seek the advice of independent counsel; and the beneficiaries never consented to the terms of the transaction in writing.

The court finds that the section 6068, subdivision (a), violation is cumulative to the rule 3-300 violation. (See *In the Matter of Hultman, supra*, 3 Cal. State Bar Ct. Rptr. at p. 304.)

"The misconduct underlying both violations, respondent's self-dealing as trustee, is the same."

*(Ibid.)* "[L]ittle, if any, purpose is served by duplicative allegations of misconduct." (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.) As such, Count Two is dismissed with prejudice.

***Count Four - (§ 6106 [Moral Turpitude - Misrepresentation])***

Respondent is charged with willfully violating section 6106 by making four false and misleading statements to Draugelis' attorney, Hill.<sup>10</sup> The court finds that Respondent violated section 6106 by making three false and misleading statements to Hill.

In Respondent's June 1, 2016 email to Hill, Respondent stated that her loan request was never for a personal loan, that she did not make a loan from Bob's personal assets, and that she made a real estate investment loan from the Doyle Family Trust to her own trust that was secured with her own personal residence. These were intentionally false and misleading statements. Respondent's March 5, 2016 email to Draugelis clearly requested a personal loan from Bob's investment account. Moreover, although Respondent did not take funds directly from Bob's personal assets, on March 30, 2016, Respondent wrote a \$25,147.85 check from Bob's personal account at Golden One Credit Union and deposited it into the Doyle Family Trust account. Two days later on April 1, 2016, when the balance of the trust was \$37,302.55, Respondent removed \$30,000 and deposited it into the Lingwood Trust account. Finally, Respondent's characterization of her removal of the \$60,000 from the trust as a real estate investment loan was not true. Respondent did execute a promissory note and Deed of Trust, but she failed to notify Hill that she had only done so after she had already withdrawn the \$60,000 from the Doyle Family Trust and deposited it into the Lingwood Trust account. Thus, the court finds clear and convincing evidence that Respondent willfully violated section 6106 by intentionally making false and misleading representations to Hill.

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<sup>10</sup> The court does not find clear and convincing evidence that Respondent made a misrepresentation regarding the Golden One Credit Union's durable power of attorney requirements.

## **Aggravation<sup>11</sup>**

OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds five aggravating circumstances.

### **Multiple Acts of Wrongdoing (Std. 1.5(b).)**

Respondent committed two separate acts of moral turpitude and engaged in self-dealing. The court assigns this factor moderate weight in aggravation.

### **Concealment (Std. 1.5(f).)**

Respondent's misconduct is surrounded by concealment. Respondent tried to conceal her misappropriation of \$60,000 by characterizing it as a real estate investment loan. This is a significant aggravating factor.

### **Significant Harm to the Client (Std. 1.5(j).)**

Respondent caused significant harm to the Doyle Family Trust. Trust funds had to be used to hire Hill so that Hill could restore the misappropriated funds from Respondent. This is a significant aggravating factor.

### **Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

Respondent fails to appreciate the wrongfulness of her misconduct and blames Draugelis for her wrongdoing. During the hearing on this matter, Respondent indicated that her misconduct could have been avoided if Draugelis had not delayed in responding to her email requesting a loan. Moreover, up until trial, Respondent argued that the "loan" was a legitimate investment for the trust; Respondent stated that she wished she would have told Draugelis about the "loan"; and throughout the trial, Respondent kept referencing the amount of equity in her condominium, as though that fact made her conduct appropriate. Respondent's statements and excuses demonstrate that she fails to realize that she did not have the authority to remove

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<sup>11</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

entrusted funds without authorization, which does not give the court confidence that Respondent would not engage in such misconduct in the future. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].) The court assigns significant weight to this aggravating factor.

**High Vulnerability of Victim (Std. 1.5(n).)**

The Doyle Family Trust assets were used for Bob's care. Respondent owed a fiduciary duty to Bob, who was elderly and had Alzheimer's, but Respondent breached that fiduciary duty by misappropriating funds that were for his benefit and by engaging in self-dealing. This is a significant aggravating circumstance.

**Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds clear and convincing evidence of three mitigating circumstances.

**Lack of Prior Discipline (Std. 1.6(a).)**

Respondent practiced law for nearly 15 years before she engaged in the misconduct in this matter. A mitigating circumstance may include "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious." (Std. 1.6(a).) Respondent's misappropriation of \$60,000 is serious. Where the misconduct is serious, the lack of a prior discipline record is most relevant if the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) Respondent has shown a lack of insight into her wrongdoing. "Consequently, [the court is] not persuaded by [her lengthy] record of discipline-free practice that [she] will avoid future misconduct." (*In the Matter of Song*

(Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.) Thus, the court assigns only minimal mitigating credit under standard 1.6(a) for her long discipline-free record.

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Limited weight is assigned to Respondent's cooperation because she stipulated to facts that were easily proven. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts is mitigating if relevant and assisted prosecution of case].)

**No Good Character (Std. 1.6(f).)**

Respondent presented the testimony of nine witnesses at trial and declarations from three individuals who attested to her good character. The witnesses consisted of former clients, friends and a single attorney. The witnesses described her as compassionate and giving. They also indicated that she performs pro bono work. However, the court does not afford any mitigation for good character because at least three of the witnesses received entrusted funds that Respondent misappropriated from the Doyle Family Trust. In addition, the witnesses parroted Respondent's belief that the misappropriated funds were a "loan" and that Draugelis should have responded to Respondent's loan request sooner. Finally, Respondent's witnesses do not represent a "wide range of references in the *legal* and general communities." (Std. 1.6(f), italics added.)

**Community Service**

The court affords Respondent moderate mitigation for her community service endeavors. Respondent serves as an advisory board member of Sunrise Parks and Recreation. She is also a

member of the coalition of concerned legal professionals and homeowner's association member and is on the board of her own homeowner's association.<sup>12</sup>

In sum, the weight of the aggravating circumstances far outweigh the mitigating factors.

### Discussion

The primary purposes of attorney discipline are 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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

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.) Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).)

Standards 2.1(a) (disbarment for intentional or dishonest misappropriation), 2.4 (suspension for improperly entering into a business transaction adverse to a client), and 2.11 (disbarment or actual suspension for an act of moral turpitude) apply in this matter. The sanction in standard 2.1(a) is most severe and provides that disbarment is the presumed sanction for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."

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<sup>12</sup> The court notes that Respondent was involved in volunteer activities over 40 years ago. The mitigation afforded stems from her activities since she became an attorney in 2001.

Although standard 2.1(a) is not an inflexible rule (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022 [noting that former standard 2.2(a) “should be viewed as a guideline”]), the court is mindful that “[i]n all but the most exceptional of cases, [willful misappropriation] requires the imposition of the harshest discipline.” (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29 [disbarment warranted for willful misappropriation where compelling mitigating circumstances did not clearly predominate and restitution made three years later only at demand of client’s attorney].) Severe discipline is especially warranted when an attorney intentionally takes a client’s funds and “answers the client’s inquiries with lies and evasions.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

Respondent misappropriated over \$60,000 that she attempted to disguise as a loan after she withdrew the funds. She chose to put her own interests above the professional and ethical duties she owed to Bob and the trust beneficiaries. At the time Respondent misappropriated entrusted funds, she was in a “deep hole.” During trial, Respondent explained that she meant that she was in “deep trouble.” Respondent explained to Draugelis that her financial difficulties resulted from the failure to obtain payment from a client. As she stated in her March 5, 2016 email, a “loan” would allow her to “consolidate debts, get the deck work done and finally have some breathing room to lower [her] stress levels.” Many attorneys experience comparable financial difficulties, and, “[w]hile these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities.” (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 522.) “Misappropriation of a client’s funds simply cannot be excused or substantially mitigated because of an attorney’s needs, no matter how compelling.” (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709; see also *Grim v. State Bar, supra*, 53 Cal.3d at p. 31 [“It is precisely when the attorney’s need or desire for funds is greatest

that the need for the public protection afforded by the rule prohibiting misappropriation is greatest”].)

After Respondent misappropriated the Doyle Family Trust funds, she made misrepresentations to conceal her wrongdoing. In similar cases where attorneys have taken entrusted funds, particularly where concealment or deceit is present, the result has been disbarment.<sup>13</sup>

The record does not establish any exceptional circumstances to depart from recommending the appropriate discipline of disbarment under standard 2.1(a). (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) To protect the public and the courts and to maintain the integrity of the legal profession, the court recommends that Respondent be disbarred.

## RECOMMENDATIONS

### **Discipline - Disbarment**

It is recommended that Respondent Rita Mae Lingwood, State Bar Number 214145, be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

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

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<sup>13</sup> See, e.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarred for \$29,000 intentional misappropriation followed by deceit to victims and State Bar despite 12 years of discipline-free practice and emotional problems]; *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511 (disbarred for \$40,000 misappropriation and intentionally misleading client despite mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar); *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583 (disbarred for \$66,000 intentional misappropriation surrounded by deceit, lack of restitution, and multiple acts despite 14 years of discipline-free practice).

of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>14</sup>

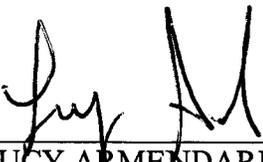
**Costs**

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

**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: August 17, 2018

  
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LUCY ARMENDARIZ  
Judge of the State Bar Court

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<sup>14</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

**CERTIFICATE OF SERVICE**

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

I am a Court Specialist 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 August 17, 2018, 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:

JAMES JOSEPH BANKS  
BANKS & WATSON  
901 F ST STE 200  
SACRAMENTO, CA 95814

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

CARLA L. CHEUNG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2018.



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Bernadette Molina  
Court Specialist  
State Bar Court