FILED DECEMBER 19, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **ANTHONY I. FURR**, **Member No. 61204**, A Member of the State Bar.	**Case No. 95-C-10195-PEM; 00-N-13588 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

This consolidated contested disciplinary proceeding is based upon the felony conviction of respondent Anthony I. Furr on February 3, 2000,[1] of violations of Penal Code section 136.1, subdivision (c)(2) [conspiring to dissuade a witness from testifying]; Penal Code section 136.1, subdivision (c)(4) [dissuading a witness from testifying for pecuniary gain]; Penal Code section 138, subdivision (a) [offering to bribe a witness]; and Penal Code section 182, subdivision (a)(5) [conspiring to pervert or obstruct justice] and upon respondent's failure to comply with California Rules of Court, rule 955[2] (renumbered to rule 9.20, effective January 1, 2007). The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented in this proceeding by Deputy Trial Counsel Sherrie McLetchie. Respondent represented himself in propria persona.

In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

---

[1] Upon his conviction, respondent was sentenced to a term of three years in state prison. On February 26, 2003, respondent's conviction was affirmed by the Court of Appeal, Third Appellate District. Respondent's Petition for Review was denied by the California Supreme Court on May14, 2003.

[2] All references to rule 955 are to California Rules of Court, rule 955.

II. Significant Procedural History

In light of respondent's February 3, 2000 felony convictions and pursuant to rule 951(a) of the California Rules of Court (renumbered to rule 9.10(a), effective January 1, 2007) and Business and Professions Code section 6102, the Review Department of the State Bar Court (Review Department) issued and served an order on March 15, 2000, suspending respondent from the practice of law pending the final disposition of this proceeding. The Review Department ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of its March 15 order. The order became effective April 17, 2000.

On April 7, 2000, the Review Department of the State Bar Court issued an order setting forth an additional basis for the interim suspension imposed by its March 15, 2000 order. The Review Department concluded, based on the record of conviction, that the Penal Code violations of which respondent was convicted involved moral turpitude.

Thereafter, by order filed on October 31, 2005, the Review Department referred this proceeding to the Hearing Department of the State Bar Court for a hearing and decision recommending the discipline to be imposed.

The State Bar Court issued a Notice of Hearing on Conviction in case No. 95-C-10195 on November 4, 2005. A copy of said notice and a Notice of Assignment and Notice of Initial Status Conference were properly served upon respondent on that same date. Respondent filed an answer to the Notice of Hearing on December 19, 2005.

On November 7, 2005, the State Bar properly filed and served a Notice of Disciplinary Charges (NDC) at respondent's official membership records address, alleging respondent failed to comply with Rule 955. Pursuant to rule 103 of the Rules of Procedure of the State Bar, respondent was required to file a response to the NDC within 20 days after its service. Respondent did not do so.

On November 10, 2005, a copy of the Notice of Assignment and Notice of Initial Status Conference in case No. 00-N-13588 was properly served on respondent.

On December 12, 2005, at the initial status conference, the court stated that respondent's response to the NDC was overdue and verbally ordered respondent, who appeared telephonically,

to file a response by December 19, 2005. The court also ordered case numbers 95-C-10195 and 00-N-13588 consolidated.

On February 15, 2006, respondent filed an "amended" response to the November 7, 2005 NDC.

On February 28, 2006, the court filed an order pursuant to a status conference held on February 27, 2006, setting the trial in consolidated case No. 95-C-10195 and 00-N-13588 to take place on September 5, 6, and 7, 2006, and ordering that the parties' pretrial statements and proposed exhibits be due by July 20, 2006. The State Bar filed its pretrial statement, including a proposed witness list on July 20, 2006; respondent did not file a pretrial statement or witness list by July 20, 2006.

On July 27, 2006, the State Bar filed a motion for evidentiary sanctions asking that the court preclude respondent from presenting exhibits or witnesses at trial.

At an August 7, 2006 pretrial conference, the parties stipulated to some of the facts underlying the State Bar's charges. The State Bar memorialized these stipulated facts in a document entitled, "Stipulation as to Undisputed Facts," which was filed with this court on August 7, 2006. At the time of the August 7, 2006 pretrial conference, respondent still had not filed his pretrial statement and proposed exhibits. The court gave respondent until August 11, 2006, to file a pretrial statement and proposed exhibits. On August 11, 2006, respondent again failed to file a pretrial statement and proposed exhibits. On August 14, 2006, the State Bar filed a notice of respondent's failure to comply with the court order. On August 18, 2006, respondent filed an opposition to the State Bar's motion for evidentiary sanctions. On August 23, 2006, respondent filed his pretrial statement, but did not lodge his proposed exhibits with the court. Although respondent promised to get the exhibits to the court by August 25, 2006, he did not do so. On August 25, 2006, the State Bar filed its second notice regarding respondent's failure to comply with the court orders. The court received no explanation from respondent as to why he had not lodged his exhibits. On August 30, 2006, respondent brought at least three boxes of proposed exhibits to the court.

By minute order filed August 30, 2006, the court ordered that respondent not be allowed to introduce any exhibits into evidence at trial due to his noncompliance with the court's orders. The

order, however, did allow respondent to present witnesses at trial.

A two-day trial was held on September 5 and 6, 2006. Following receipt of the State Bar's "Statement Re Portions of Exhibit 1 [Trial Transcript] Which the State Bar Requests the Court to Consider" (State Bar's Statement), this court took the proceeding under submission on September 25, 2006.[3]

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1974, and has since been a member of the State Bar of California.

B. Case No. 95-C-10195

Respondent's culpability is conclusively established by the record of his conviction. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090,1097.) Respondent is presumed to have committed all of the elements of the crimes of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

1. Respondent's Conviction

Pursuant to a four-count information filed July 31, 1998, in Shasta County Superior Court case No. 97F5890, entitled *People of the State of California v. Anthony Furr and Monica Glazebrook, Defendants*, respondent was charged with violations of one felony count each of Penal Code sections 136.1(c)(2) [conspiring to dissuade a witness]; 136.1, subdivision (c)(4) [dissuading a witness from testifying for gain]; section 138, subdivision (a) [offering to bribe a witness]; and section 182, subdivision (a)(5) [conspiring to pervert or obstruct justice]. On February 3, 2000, after a jury trial, respondent was convicted of each of the four counts. (State Bar Exhibit 2.)

By order filed April 7, 2000, the Review Department of the State Bar Court concluded that all crimes of which respondent was convicted were offenses involving moral turpitude.

---

[3]The court gave respondent an opportunity to file a response to the State Bar's "Statement." Respondent did not file a response.

On July 5, 2000, respondent was sentenced to a term of three years in state prison. Respondent was incarcerated in June 2000 through April 2001, when he was released pending appeal. By unpublished opinion, filed February 26, 2003, the Court of Appeal affirmed respondent's conviction. On May 14, 2003, the California Supreme Court denied respondent's petition for review. Respondent returned to prison in the spring of 2003 and was released in March 2004. Respondent will remain on parole until April 2007.

2. Facts and Circumstances Surrounding Respondent's Conviction

On July 22, 1994, Becky G. (Becky), went to the home of Charles Trautwein (Trautwein) to cut his hair. After leaving his home, Becky reported to the Redding Police Department that Trautwein had raped her. On July 26, a complaint was filed charging Trautwein with raping Becky. Trautwein was arrested and released the same day on a $100,000 bail bond.

On August 8, 1994, respondent met with Trautwein and introduced him to respondent's investigator, Monica Glazebrook (Glazebrook). Trautwein gave Glazebrook $2,400 to conduct an investigation regarding the rape case. On August 13, Trautwein retained respondent to represent him.

On August 11, Glazebrook went to a hair salon in Redding where Becky's mother, Kaye H. worked as a hair dresser. Glazebrook mentioned that she was opening a business and needed some employees. When Kaye H. said that her daughter, Becky, might be interested in a position, Glazebrook left her telephone number with Kaye H. and told her to have Becky call if she were interested in a job.

Becky contacted Glazebrook. On September 1, 2004, the two women met and Glazebrook hired Becky to work as a salesperson in her new company. During the course of the meeting Glazebrook mentioned that her mother had been attacked in a hotel, whereupon Becky told Glazebrook about the incident leading to her rape. Glazebrook appeared very sympathetic. Over the next few weeks Becky worked with Glazebrook in her residence. While Becky was working at Glazebrook's residence, Glazebrook asked her how the rape case was going. Becky expressed frustration with the district attorney's office. Glazebrook warned Becky that testifying in a rape case is a very grueling experience. Glazebrook did not disclose that she was working for Trautwein and

respondent as a defense investigator on the rape case.

At some point, Glazebrook asked Becky if she planned on suing Trautwein in a civil action. She explained that Becky could get money for the damage that Trautwein had caused her. Becky refused Glazebrook's suggestion that Becky call Trautwein to discuss settling a claim for damages. After Becky's refusal Glazebrook said she would call an attorney friend of hers and ask a few questions about it. However, Glazebrook did not disclose the identity her "attorney friend."

On September 14, 1994, Trautwein appeared in the rape case, waived his right to a preliminary hearing, and was bound over for trial. In waiving his right to a preliminary hearing Trautwein gave up his opportunity to observe Becky's demeanor and to obtain a transcript of prior testimony with which to impeach Becky at trial.[4] On September 26, Trautwein did not appear at his arraignment. Bail was forfeited and a bench warrant for his arrest was issued.

On October 5, 1994, Trautwein was taken into custody. On the same day respondent and Glazebrook met with Becky and her boyfriend, Donny Callahan (Callahan). The purpose of the meeting, which Glazebrook had arranged, was to discuss the possibility of Becky suing Trautwein for damages as the result of the rape. At the meeting respondent and Glazebrook introduced themselves to one another as if they had never before met. After Glazebrook and respondent introduced themselves to one another, Glazebrook introduced respondent to Callahan and Becky.

Respondent and Glazebrook tape-recorded the meeting. Respondent told Becky that he represented Trautwein in regard to a possible civil settlement. However, respondent did not advise Becky that he was representing Trautwein in the criminal rape case. During the course of the meeting, respondent presented Becky with a declaration for her to sign in support of a motion to reduce Trautwein's bail. Respondent told Becky that it was necessary for her to sign the declaration so that Trautwein could obtain money being held in his bail account and use the funds obtained therefrom to pay $16,000 to Becky in settlement of her civil claims.

Respondent also gave Becky a five-page document entitled, "RELEASE OF CIVIL CLAIMS

---

[4]The prosecutor in respondent's criminal proceeding argued that respondent had Trautwein waive his right to a preliminary hearing because he knew that Trautwein was going to pay Becky not to testify at his trial.

AND AGREEMENT TO ENTER JUDGMENT." According to the terms of the release, Becky agreed to release all claims for civil damage against Trautwein in exchange for a payment of $8,000 within 14 days and another payment of $8,000 within the next 120 days. The release stated that Becky was not required to withhold any testimony in any criminal prosecution. However, it also stated that pursuant to Code of Civil Procedure sections 128, subdivision (d) and 1219, subdivision (b) she need not testify in any criminal prosecution should she elect not to testify. The release further stated that Becky acknowledged that before executing the release and agreement to enter the judgment, she should be represented by an attorney. Becky signed the release at the October 5, 1994 meeting.

On the tape Becky stated that she was disappointed with the district attorney's office. She also stated that if there were any way possible she would not be testifying against Trautwein, especially if she had the money within a week. Respondent then advised Becky that it was up to her whether she testified, but that her decision could not have anything to do with Trautwein, Glazebrook, or respondent, as it was illegal to be involved in any kind of obstruction of justice.

Sometime after the October 5 meeting, Glazebrook informed Becky that she had no more work to offer Becky because things were slow.

On October 7, Trautwein was arraigned, the bail bond was exonerated, the forfeiture was set aside, and the trial was set for November 29, 1994.

A week after the October 5 meeting, respondent went to the Wild Heifer restaurant and met with Becky. Respondent gave Becky an $8,000 money order, but he did not have the complaint or stipulated judgment that he had promised to prepare.

On October 25, Becky went to the district attorney's office and gave the documents that she had received from respondent to Deputy District Attorney Beatty (Beatty) and Beatty's investigator, Fred Carelli (Carelli). Becky told Beatty and Carelli that the settlement agreement had nothing to do with whether she would testify at the criminal trial.

On October 27, Becky made a tape-recorded telephone call to respondent from the district attorney's office in which she arranged to meet respondent at the Wild Heifer restaurant on October 29 to collect the second $8,000 payment. However, Becky sent Callahan in her stead to meet

respondent because she was too upset to go.

Respondent's wife, Sara Stratton (Stratton) and respondent met with Callahan on October 29. Respondent gave him the second $8,000 payment. At the meeting respondent stated to Callahan that there should be another agreement whereby Becky would receive more money, a secured housing arrangement, and a share of Trautwein's estate, provided that she would agree not to testify against Trautwein in the criminal case.

Callahan told Becky that respondent wanted to meet with her later that day to sign some documents and discuss additional benefits in exchange for not testifying. Becky and Callahan met with respondent at the C.R. Gibb's restaurant in Redding later that evening. At that meeting respondent told Becky that she could have a 10 percent share in Trautwein's trust fund as well as money for an apartment in a gated community in exchange for not testifying at the criminal trial. Respondent then presented Becky with a document entitled "Statement of Rebecca G," which respondent stated was an example of a paper that he was going to write up. The document stated that Becky had decided not to testify in the criminal proceeding, that the decision was her own, and that she had not been influenced by anyone else, including respondent. Respondent told Becky that, if she agreed to the terms set out in the statement, she could get up to a million dollars by not testifying. Respondent also gave Becky a copy of Code of Civil Procedure section 1219,[5] which had been referenced in the release Becky signed on October 5.

The next day Becky was subpoenaed to appear at Trautwein's trial. Becky told district attorney Beatty that the district attorney's office was interfering with Becky's negotiations with respondent. Becky, however, did not tell Beatty about the newest offer that respondent had made at the C.R. Gibbs restaurant.

On November 7, Beatty and respondent attended a settlement conference in the Trautwein criminal case that was secretly tape-recorded by the district attorney. In that settlement conference Beatty informed respondent that she was going to file a motion to allege two prior rape convictions,

---

[5]Section 1219 of the Code of Civil Procedure provides that a victim of sexual assault may not be punished for contempt when the contempt consists of refusing to testify regarding the sexual assault.

which would make Trautwein a potential "three strikes" defendant.

During the conference respondent claimed he had been unable to reach Becky for two months. He questioned whether Becky was a willing witness and asked Beatty if she would agree to a continuance of the trial date because he was not currently Trautwein's attorney due to an argument between them. Beatty refused to continue the trial date. Respondent did not disclose his October 5 meeting with Becky or the fact that he had given Becky $16,000. He also did not disclose that he had hired Glazebrook as an investigator.

On November 15, Becky and her attorney met with Beatty. After Beatty told Becky that she could find herself in trouble if she were accepting money from Trautwein or receiving a bribe, Becky told Beatty what had transpired at the October 29 meeting with respondent at the C.R. Gibbs restaurant.

Becky also made a phone call to respondent from Beatty's office on November 15. Respondent assured Becky that everything was working out exactly as he said it would. Becky made yet another phone call from the district attorney's office to Glazebrook which was recorded. Becky asked if respondent was "on the up and up." Glazebrook replied that respondent and Trautwein were looking out for Becky. At some point Glazebrook told Becky that respondent and Trautwein were willing to give Becky another $15,000, as well as pay for a trip to Cancun whenever she wanted to go.

On November 18, officers searched Glazebrook's residence and found a micro cassette in her answering machine. The tape included an excerpt of a conversation between Glazebrook and respondent in which respondent expressed his concern that Trautwein was a "three strikes" candidate, and that Trautwein, therefore, needed to have Becky settle the case. Respondent also stated that he and Glazebrook should videotape Trautwein giving Becky $10,000 and then give the tape to Beatty and claim that Becky was in fact bribing Trautwein.

On November 22, Carelli tape-recorded a phone conversation with respondent. Respondent told Carelli that Glazebrook was his investigator and that she performed paralegal duties. Respondent also informed Carelli that the settlement agreement between Trautwein and Becky was totally legitimate and that Becky was the one that initiated the subject of settling the case.

3. Respondent's Contentions

Respondent testified as follows: Trautwein thought Becky had stolen a watch valued at $1,500. Thus, Trautwein hired Glazebrook to help him recover it. Respondent then advised Glazebrook to look in Redding pawnshops for the watch. After Glazebook had done so and not found the watch, respondent suggested that Glazebrook set up a business, go to the salon where Becky's mother was working, hire Becky and see if the watch surfaced. Thereafter, Glazebrook set up a business and hired Becky. While working for Glazebrook, Becky confided in her that she was interested in suing Trautwein for damages because he had "big bucks."

Respondent further testified that based on what he learned from Glazebrook, he did not believe a rape had occurred because Trautwein used a wheel chair and was reported to be impotent. Respondent, who thought that Trautwein would be convicted due to his prior sexual assault convictions, further reasoned that there was a strong chance that Trautwein would then lose a substantial amount of his money in the event of civil suit. Respondent, therefore, decided it would be best for Trautwein to try and settle any civil claims for a minimal amount. Trautwein authorized respondent to pay Becky $20,000.

Respondent also testified that he expressly advised Becky that the civil settlement agreement had no bearing on her obligation to testify at the criminal trial. He denied that he had offered Becky money not to testify. According to respondent, it was always Becky who suggested that she receive money to settle her claim for civil damages.

Respondent asserted that he had done nothing wrong. It was respondent's contention that he stood in the way of his client harming Becky, that his greatest fault was trusting Glazebrook, and that he had acted out of idealism in that he was fighting the policy of the Shasta County District Attorney's office that did not allow a victim of sexual assault to settle a civil claim against the perpetrator prior to the resolution of the criminal case.

Respondent maintained that he had been convicted only because he had an incompetent attorney at his criminal trial and the prosecutor misled the jury. Respondent also argued that he had carried out the desires of his client and Becky; and thus he should be commended for his actions. According to respondent there was no harm done given that Becky received the agreed upon

$16,000.

It was also respondent's position that he had not tried to conceal anything in his dealings with Becky. He glossed over the fact that he never told Becky that Glazebrook was hired as an investigator in Trautwein's criminal case and that respondent was representing Trautwein in the criminal matter.

Just as the jury in respondent's criminal case rejected respondent's version of the facts, so does this court. This court finds respondent's testimony totally lacking credibility.

4. Conclusion of Law

As set forth, *ante*, the Review Department of the State Bar Court, based on the record of conviction, concluded that the violations of Penal Code sections 136.1, subdivision (c)(2), 136.1, subdivision (c)(4), 138, subdivision (a), and 182, subdivision (a)(5), of which respondent was convicted, involved moral turpitude.

C. The Rule 955 Matter (Case No. 00-N-13588)

On March 15, 2000, the Review Department of the State Bar Court served and filed an order (interim suspension order) in *In re Anthony I. Furr*, case No. 95-C-10195, interimly suspending respondent from the practice of law effective April 17, 2000, and requiring respondent to comply with the California Rules of Court, rule 955, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the interim suspension order. Therefore, respondent's affidavit of compliance was due no later than May 27, 2000.

In his testimony, respondent acknowledged receiving the interim suspension order.

Respondent did not file the affidavit pursuant to rule 955, subdivision (c) by the due date of May 27, 2000.

On November 7, 2005, the State Bar filed the Notice of Disciplinary Charges alleging respondent's failure to comply with rule 955.

On April 7, 2006, respondent signed a Stipulation As to Undisputed Facts in State Bar case Nos. 95-C-10195 and 00-N-13588, wherein respondent stipulated that he first filed a declaration regarding compliance with rule 955 on August 7, 2006, some six years after the 955 affidavit was due.

In addition to being untimely, respondent's August 7, 2006 declaration was defective. In paragraph six of his declaration, respondent stated that he "obtained substitute counsel for [his] few remaining clients." However, it became clear at trial that respondent had transferred cases to a disbarred attorney. Respondent's transfer of client cases without ensuring that the individual to whom the cases were transferred was in fact entitled to practice law in the State of California was irresponsible.

In paragraph seven respondent stated that prior to his incarceration in the summer of 2000, he attempted to locate "the only remaining client whose matter was not completed." Yet, in his trial testimony, respondent admitted that he saw a box of open client files shortly before he was incarcerated. Additionally, respondent's declaration did not specifically state, as is required by rule 955, that respondent informed opposing counsel of his suspension and consequent disqualification to act as an attorney after the effective date of the suspension or that he filed notices of his suspension with the courts where litigation was pending. In fact, respondent admitted in his trial testimony that he had not notified opposing counsel of his suspension from the practice of law and had not filed any notices with the courts of record. Finally, respondent's affidavit did not set forth an address where communications could be directed to him as required by subdivision (c) of rule 955.

Because respondent's compliance declaration was both defective and untimely it was rejected by the Office of Probation.

Respondent failed to comply with the requirements of rule 955 within the time specified in the May 15, 2000 interim suspension order issued by the Review Department. "Willfulness" in the rule 955 context does not require bad faith; rather, it requires only a "'general purpose or willingness' to commit an act or permit an omission." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Therefore, the State Bar established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Review Department of the State Bar Court in its March15, 2000 interim suspension order.

Violation of Section 6103

Accordingly, respondent's failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

The record reveals that before respondent's misconduct started, he had been admitted to the practice of law for 20 years with no prior record of discipline. Such a lengthy period of practice coupled with misconduct which is not deemed serious would be a mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty Sanctions for Prof. Misconduct, std. 1.2(e)(i).)[6] However, respondent's lack of a prior record of discipline cannot outweigh either the seriousness of respondent's offenses and the aggravating circumstances. (See *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 .)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

The misconduct found in this proceeding evidences multiple acts of misconduct. Respondent conspired to dissuade a witness from testifying, dissuaded a witness from testifying for pecuniary gain, conspired to obstruct justice, and offered to bribe a witness. Respondent also failed to comply with a court order by not complying with the requirements of rule 955 as ordered by the Review Department. (Std. 1.2 (b)(ii).)

Respondent's misconduct was clearly surrounded by concealment, bad faith, and dishonesty. Respondent deliberately failed to disclose to Becky that he was representing Trautwein in the criminal matter. Respondent also deliberately failed to disclose to Becky that Glazebrook was his investigator and was working with him on Trautwein's behalf. (Std. 1.2(b)(iii).)

Respondent's misconduct significantly harmed the administration of justice. (Std. 1.2(b)(iv).) Respondent, an officer of the court, engaged in acts of dishonesty and ethical violations. By

[6]All further references to standards are to this source.

dissuading a witness from testifying for pecuniary gain, by conspiring to obstruct justice, and by offering a bribe to a witness, respondent interfered with the honest administration of justice.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Despite overwhelming evidence to the contrary, respondent insisted during the disciplinary hearing that he had done nothing wrong. Rather, he argued that his conduct was neither bad nor illegal and was in fact "commendable." He insisted that his acts did not involve conduct that would disgrace the profession. Respondent asserted that although he was Trautwein's criminal defense attorney, he was aiding the victim of the crime of which Trautwein stood accused to obtain a civil settlement against Trautwein. According to respondent, he was trying to protect both Trautwein and Becky. Respondent also argued that there was no harm as "Becky got her $16,000." Respondent's use of specious and unsupported arguments revealed his lack of appreciation for his obligations as an attorney, as well as his lack of insight into his misconduct.

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6 provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purpose of imposing disciplinary sanctions. If two or more acts of professional misconduct are found in a single disciplinary proceeding and different sanctions are prescribed by the standards for those acts, the sanction recommended shall be the more or most severe of the different applicable sanctions.

In this case, the standards provide for the imposition of sanctions ranging from actual suspension to disbarment. (Standards 2.6(b) and 3.2.) The more severe sanction is found at standard 3.2 which states:

> Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances predominate, shall disbarment not be imposed. . . .

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (In *the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245. 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id*. at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) Conviction of a crime involving moral turpitude, either inherently or in the facts and circumstances, warrants disbarment absent the existence of compelling mitigating circumstances. (*In re Prantil* (1989) 48 Cal.3d 227, 234-235.)

As set forth, *ante*, the Review Department of the State Bar Court, based on the record of conviction, concluded that the violations of Penal Code sections 136.1, subdivision (c)(2); 136.1, subdivision (c)(4); 138, subdivision (a); and 182, subdivision (a)(5), of which respondent was convicted, involved moral turpitude.

The State Bar urges disbarment, while respondent insists that he has done nothing wrong and should be commended for his actions.

In support of its disbarment recommendation, the State Bar cites to several cases in its Pretrial Statement. The court finds two of the cases cited by the State Bar to be particularly instructive: *In re Hanley* (1975) 13 Cal.3d 448 and *In re Weber* (1976) 16 Cal.3d 578.

In *Hanley*, on an attorney's conviction of bribing a witness not to testify, the Supreme Court determined the case involved moral turpitude, placed the attorney under interim suspension, and referred the matter to the Disciplinary Board of the State Bar for a recommendation on the issue of discipline. The disciplinary board recommended disbarment. The Supreme Court agreed with the recommendation of the Disciplinary Board, noting that "[the attorney's] offenses. . .are of a nature which inherently call for disbarment." (*In re Hanley*, *supra*, 13 Cal.3d 448, 455.)

In *Weber*, the Disciplinary Board of the State Bar recommended disbarment of an attorney, who had been convicted of soliciting another to offer a bribe in an attempt to suppress a murder investigation which focused on the attorney's client. The Supreme Court's interim order of suspension established that the attorney's behavior in attempting to suppress the investigation involved moral turpitude. The court pointed out that an attorney is charged with guarding the integrity of the criminal justice system and that Weber used his position as an attorney to undermine it. Moreover, the Supreme Court cited the lack of contrition in the attorney's attitude toward the disciplinary system, noting that Weber was less than forthright and never took full responsibility for the events which led to his conviction. (*In re Weber*, *supra*, 16 Cal.3d 578, 580-581.)

In this consolidated matter, respondent's conduct, like the attorneys in *Hanley* and *Weber*, have been found to involve moral turpitude. Like the attorney in *Weber,* respondent had an obligation to guard the integrity of the criminal justice system, but chose to undermine it by attempting to dissuade a witness from testifying and by offering a bribe to a witness. Like the attorney in *Weber*, respondent demonstrated a lack of contrition. In his testimony, respondent stated that he had not harmed the administration of justice, that what he did was legal, and that he was merely carrying out the wishes of his client and the victim.

As to the rule 955 matter, the court finds *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322 and *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192 instructive. In *In the Matter of Babero*, *supra*, 2 Cal. State Bar Ct. Rptr. at 330-334, the court found that the attorney's efforts at compliance with rule 955 were inadequate and his failure to comply was aggravated by submission of an inaccurate declaration regarding those efforts, as well as by his transfer of cases to successor counsel in an irresponsible manner. Thus, disbarment was appropriate.

Similarly, respondent's efforts at compliance with rule 955 were inadequate, and like the attorney in *Barbero*, respondent's failure to comply with rule 955 was aggravated by his transfer of cases in an irresponsible manner and by his submission of an inaccurate and untimely declaration regarding his efforts to comply.

In *In the Matter of Rose*, *supra*, 3 Cal. State Bar Ct. Rptr. 192, the court reduced the

attorney's level of discipline from disbarment to two years actual suspension for his probation violations and to nine months of actual suspension, to run concurrently, for his failure to timely comply with rule 955. The court found that the attorney attempted to file the affidavit required by rule 955 within two weeks of when it was due, but claimed that he did not have to comply with rule 955 because he had not practiced law. The court found that the attorney's unilateral and ill-conceived interpretations of disciplinary orders demonstrated a tendency toward interpreting important and significant court orders in such a way as to fit his needs, which might negatively impact future clients and thus raised concern about the need to protect the public.

In the instant matter, respondent, like the attorney in *Rose*, attempted to file a rule 955 affidavit after the due date. However, there is a significant difference in the attempt by the attorney in *Rose* to file his 955 affidavit within two weeks of when it was due, and respondent's attempt to file his affidavit six years after it was due. Moreover, unlike the attorney in *Rose*, respondent's declaration was rejected, and when he was filing his affidavit, respondent had not given notices of his suspension to opposing counsel and the courts, as was required by rule 955. To date respondent has not filed a declaration that complies with the requirements of rule 955.

Thus, respondent's wilful failure to comply with rule 955 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181,1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys.

Ultimately, this court's recommendation of the appropriate degree of discipline must rest on a balanced consideration of all relevant factors with due regard to the purposes of imposing discipline: protection of the public, preserving integrity of and public confidence in the legal profession, and the maintenance of high professional standards. (*In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 690.)

Having considered the facts and the law, the court recommends disbarment. The gravity of the misconduct and the aggravating factors present herein clearly predominate over respondent's lack

of prior record. The nature and extent of respondent's felony convictions of conspiracy to dissuade a witness from testifying, dissuading a witness from testifying for pecuniary gain, offering a bribe to a witness, and conspiracy to pervert or obstruct justice, alone, establish his unfitness to practice law. Additionally, respondent's failure to acknowledge and take responsibility for his misconduct is of great concern to this court. Respondent's gross lack of insight into his misconduct is yet one more factor that leads the court to recommend disbarment as the only means to protect the public from the risk of similar future misdeeds. Moreover, it would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Review Department of the State Bar Court's order requiring respondent to comply with rule 955.

VI. Discipline Recommendation

It is hereby recommended that respondent **Anthony I. Furr** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VII. 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.

VIII. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment will become effective three calendar days from the date of service of this order.

Dated: December 19, 2006

PAT McELROY
Judge of the State Bar Court