

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 07-O-10023 (07-O-10898;
)	07-O-13542; 08-O-10980;
PATRICK DAYTON McNEAL,)	08-O-11302; 08-O-12304;
)	08-O-13502; 08-O-13697;
Member No. 62102,)	08-O-13794; 08-O-13886;
)	08-O-14324; 09-O-10066)
A Member of the State Bar.)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

INTRODUCTION

In this default disciplinary matter, respondent **Patrick Dayton McNeal** is charged with 39 counts of professional misconduct in five client matters and extensive trust accounting violations, including (1) failing to return unearned fees (\$18,000); (2) failing to maintain client funds; (3) commingling; (4) failing to render an accounting; (5) improperly withdrawing from employment; (6) failing to communicate with client; (7) failing to perform services competently; (8) failing to cooperate with the State Bar; and (9) committing acts of moral turpitude.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. As such and given respondent's history of recidivism – six disciplinary records in the past 20 years, the recommended degree of discipline in this matter

leaves no room for debate. Respondent should be disbarred from the practice of law and be ordered to make restitution to five clients.

PERTINENT PROCEDURAL HISTORY

On April 21, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a First Amended Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on June 19, 2009, and respondent was enrolled as an inactive member on June 22, 2009. The matter was submitted for decision on July 9, 2009, following the filing of State Bar's brief on culpability and discipline.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in California on December 20, 1974, and has since been a member of the State Bar of California.

Case No. 07-O-10023 (Rosiles Matter)

On or about April 10, 2006, Lizbeth Rosiles ("Rosiles") employed respondent to represent her husband Ulises Saldierna ("Saldierna"), in a federal criminal case in the U.S. District Court, Central District, *U.S. v. Ulises Saldierna*, case No. SA CR 06-79-DOC. Saldierna was in custody in Santa Ana, California. Respondent signed a written retainer agreement for "[legal] services" up to and including trial to represent Saldierna regarding "Federal Criminal Felony Charges of Possession of Narcotics." Rosiles paid respondent advanced fees of \$10,000 in cash, and gave him a personal check for \$15,000.

In May 2006, Rosiles, on behalf of Saldierna, telephoned respondent at least five times, and left messages on his answering machine for him to telephone her regarding the status of Saldierna's case. Respondent did not return her calls. Rosiles then put a stop payment on her \$15,000 check.

On or about May 4, 2006, Rosiles, on behalf of Saldierna, terminated respondent's legal services and asked for a refund of the \$10,000 advanced fees. Respondent told her that the fees for his services, which comprised of one jail interview of Saldierna, were \$2,500. At no time did respondent provide a written accounting to Rosiles or Saldierna for the advanced fees. Respondent then issued a check for \$7,500 from his general account. This check was returned by the bank to Maria Rosiles due to insufficient funds in respondent's general account. After agreeing to refund \$7,500 to Rosiles, respondent never made good on the check. To date, respondent has not provided an accounting to Rosiles.

On or about January 24, March 14, and August 15, 2007, a State Bar investigator sent a letter to respondent regarding the allegations in the Rosiles matter. The investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents supporting respondent's position. Respondent received the January, March and August letters, but did not respond to them or otherwise cooperate or communicate with the investigator in connection with the Rosiles matter.

Count 1: Failure to Return Unearned Fees (Rules Prof. Conduct, Rule 3-700(D)(2))¹

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

¹ References to rules are to the current Rules of Professional Conduct.

By failing to make good on the insufficiently funded check that he gave to Maria Rosiles for the unearned fees, respondent willfully failed to promptly refund any part of the \$7,500 fee paid in advance that had not been earned, in willful violation of rule 3-700(D)(2).

Count 2: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in her possession and render appropriate accounts to the client. The obligation to render appropriate accounts to the client does not require as a predicate that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

By failing to render appropriate accountings to Rosiles or Saldierna for advanced fees in his possession, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

Count 3: Dishonesty (Bus. & Prof. Code, § 6106)²

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

It is well settled that the “conduct of issuing numerous checks with insufficient funds ‘manifests an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.’” (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324, citing *Tomlinson v. State Bar* (1975) 13 Cal.3d 567, 577.)

In order for the court to conclude that these checks was made to deceive clients beyond the level of suspicion, there must be clear and convincing evidence of respondent’s deliberate dishonesty or corruption or an act involving moral turpitude. Here, the alleged facts demonstrate

² References to sections are to the provisions of the Business and Professions Code.

that respondent wrote one bounced check to Maria Rosiles and not numerous checks with insufficient funds. But by issuing the check insufficiently funded for \$7,500 and then failing to make good the funds after the check bounced, notwithstanding the intervention of the State Bar, the finds that respondent knew at the time the check was written that there were insufficient funds in his general account to cover the check. Such evidence of deception or dishonesty is clear and convincing evidence of dishonesty with an intent to mislead clients, in willful violation of section 6106.

Count 4: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to provide a written response to the allegations in the Rosiles matter as requested in the investigator's letters of January 24, March 14, and August 15, 2007, or otherwise cooperate and participate in the investigation of the Rosiles matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

Case Nos. 07-O-10898 and 07-O-13542 (Union Bank Client Trust Account)

During the period from November 1, 2006, through July 31, 2007, respondent maintained a client trust account at Union Bank of California ("Union Bank CTA"). He issued three insufficiently funded checks.

In or about December 2006, respondent issued check number 3259 in the amount of \$4,000 drawn against his Union Bank CTA. On or about December 11, 2006, Union Bank paid the check against insufficient funds. The balance in respondent's Union Bank CTA was \$448.93.

In or about December 2006, respondent issued check number 3260 in the amount of \$805 drawn against his Union Bank CTA. On or about December 12, 2006, Union Bank returned the

check for insufficient funds. The balance in respondent's Union Bank CTA was a negative \$1,275.95.

In or about August 2007, respondent issued check number 3309836 in the amount of \$2,500 drawn against his Union Bank CTA. On or about August 13, 2007, Union Bank returned the check for insufficient funds. The balance in the account was a negative \$1,335.24.

On or about August 15, 2007, Union Bank charged and paid from respondent's Union Bank CTA a return item fee of \$6. At that time, respondent's Union Bank CTA had a negative balance of \$3,871.24.

Respondent issued the three checks set forth above when he knew or was grossly negligent in not knowing that there were insufficient funds in the Union Bank CTA to pay them. Respondent made no effort to ensure there were sufficient funds in the Union Bank CTA to cover the checks after he had issued the checks.

During the period of November 2006 through July 2007, respondent also left personal funds in his Union Bank CTA for the payment of office and/or personal expenses. He made personal deposits into the account for a total of \$84,021.35 as follows:

<u>Date</u>	<u>Deposit</u>
11/02/06	\$ 2,500.00
11/16/06	15,000.00
11/22/06	10,000.00
12/29/06	6,000.00
01/02/07	8,521.35
01/03/07	2,000.00
01/26/07	5,000.00
03/07/07	3,500.00

04/02/07	2,500.00
04/23/07	1,000.00
05/18/07	5,500.00
05/01/07	3,000.00
06/22/07	500.00
06/30/07	2,500.00
07/06/07	5,000.00
07/12/07	7,500.00
07/19/07	4,000.00

Total: \$84,021.35

During the same time period, respondent repeatedly issued checks drawn upon his Union Bank CTA to pay his office and/or personal expenses as follows:

Date Paid	Amount	Payee	Check No.
11/06/06	\$867.60	World Travel	3247
12/03/06	945.00	Disneyland	3255
12/05/06	125.00	Tai Kwon Do	3253
12/12/06	805.00	Digital Installers	3260
06/26/07	350.00	Salvation Army	3296
07/02/07	350.00	Salvation Army	3299
07/09/07	350.00	Salvation Army	03907792
Total:	\$3,792.60		

The State Bar sent five letters to respondent regarding the Union Bank CTA. The investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received

the letters dated March 15, 2007, May 2, 2007, August 15, 2007, March 7, 2008, and March 26, 2008, but did not respond to those letters or otherwise cooperate or communicate with the investigator in connection with the Union Bank CTA matter.

Counts 5 and 7: Moral Turpitude (§ 6106)

By issuing checks drawn upon the Union Bank CTA when he knew or was grossly negligent in not knowing that there were insufficient funds in the account to pay them and by failing to ensure that there were sufficient funds in the account to pay the checks, respondent committed acts involving moral turpitude in willful violation of section 6106 in counts 5 and 7.

Count 8: Failing to Maintain Client Funds in Trust Account (Rule 4-100(A))

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

Rule 4-100(A) “absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit. Because [respondent] used the account while it was ... denominated a trust account, even if he [did not intend] ... to use for trust purposes, rule [4-100(A)] was violated. The rule leaves no room for inquiry into the depositor’s intent.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

Therefore, by using the Union Bank CTA as his personal and business account and issuing checks for his personal expenses from his CTA, respondent’s personal use of the trust account and the commingling of his personal funds in the CTA were clear and convincing evidence of willful violation of rule 4-100(A).

Counts 6 and 9: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations regarding the Union Bank CTA matter as requested in the State Bar’s letters of March 15, 2007, May 2, 2007, August 15, 2007,

March 7, 2008, and March 26, 2008, or otherwise cooperate and participate in the investigation, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i), in counts 6 and 9.

Case No. 08-O-10980 (Cordero Matter)

On or about June 30, 2007, Rose Cordero ("Rose") employed respondent to represent her son, Edward Cordero ("Edward"), who was in custody in San Bernardino, California, in the case of *People v. Edward Cordero*, San Bernardino County Superior Court case No. MVA701834. Respondent signed a written retainer agreement for "[legal] services" to represent Edward up to and including his preliminary hearing, post preliminary hearing motions, and trial regarding "Criminal Charges of Domestic Violence." Rose paid respondent in advanced fees of \$2,500 on or about June 30, 2007, and \$5,000 on or about July 5, 2007. Respondent deposited the funds into his Union Bank of California client trust account.

Thereafter, respondent did not take any steps to represent Edward. Respondent did not earn any of the fees advanced.

On or about July 8, 2007, on behalf of Edward, Rose telephoned respondent and terminated him as Edward's attorney because respondent had not met with Edward, who was then in custody in Rancho Cucamonga, California. She also asked respondent for a refund of the balance of the advanced fees.

On or about August 31, 2007, respondent's Union Bank CTA had a negative balance of \$3,877.24.

On or about October 9, 2007, respondent sent Rose a check for \$5,000 drawn on his Union Bank CTA, which she cashed. At the time respondent sent the check to Rose, there were no funds belonging to Rose in the Union Bank CTA. Respondent did not return the balance of \$2,500 of advanced fees paid to him by Rose. Nor did he provide a written accounting to Rose

at her request for the balance of the advanced fees. To date, respondent has still not provided an accounting to Rose or Edward.

On or about March 18 and April 7, 2008, a State Bar investigator sent a letter to respondent regarding the allegations in the Cordero matter. In the letters, the investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the two letters.

Respondent failed to respond to the investigator's letters dated March 18, 2008, and April 7, 2008, and failed to otherwise cooperate or communicate with the investigator in connection with the Cordero matter.

Count 10: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to return at the time of his termination from employment, all of the fees advanced by Rose on behalf of his client Edward, respondent failed to refund promptly \$2,500 or part of a fee paid in advance that had not been earned in willful violation of rule 3-700(D)(2).

Count 11: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

By failing to render appropriate accountings to Rose or Edward for advanced fees in his possession, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

Count 12: Dishonesty (§ 6106)

By writing a check against his Union Bank CTA to a client who had no such amount of funds on deposit in his Union Bank CTA, respondent committed an act involving dishonesty in willful violation of section 6106.

Count 13: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations in the Cordero matter as requested in the investigator's letters of March 18, 2008, and April 7, 2008, or otherwise cooperate and participate in the investigation of the Cordero matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

Case No. 08-O-11302 (Jaimes Matter)

On or about July 17, 2007, Miguel Jaimes ("Jaimes") employed respondent to represent him to expunge his convictions in two criminal matters, *People v. Jaimes*, Orange County Superior Court, cases numbered 06CF3862 and 07WM00069. There was no written retainer agreement. The criminal convictions were a pending issue in Jaimes' litigation in the immigration court.

Jaimes paid respondent advanced fees of \$1,500 on or about July 17, 2007, and \$2,000 on or about August 29, 2007. On or about July 18, 2007, respondent deposited the \$1,500 into his Union Bank CTA. Respondent did not deposit the \$2,000 into his Union Bank CTA.

Jaimes was unable to communicate with respondent until in or about December 2007. At that time Jaimes met with respondent at his office and respondent told Jaimes that he would provide Jaimes with some documents regarding his case. At no time did respondent provide any documents to Jaimes and did not further communicate with Jaimes.

Respondent provided no legal services on behalf of Jaimes.

In or about July through in or about December 2007, Jaimes telephoned respondent at least 62 times and left messages with respondent's staff or by voice mail on respondent's cell phone to return his calls. Respondent received all of the messages, but did not return any of Jaimes' telephone messages.

In or about January and February 2008, Jaimes telephoned respondent at least 33 times and left messages with respondent's staff or by voice mail on respondent's cell phone to return his calls. Respondent received all of the messages, but did not return Jaimes' telephone messages.

On or about March 14, 2008, Jaimes sent respondent a letter to the address respondent had given him, which was also respondent's membership records address, inquiring about the status of his criminal cases. Respondent received the letter. Respondent did not respond to Jaimes' letter.

On or about March 18, 2008, Jaimes sent respondent a copy of the March 14, 2008, letter by certified mail, return receipt requested, to respondent's membership records address, inquiring about the status of his criminal cases. Respondent received the letter. Jaimes received the return receipt from the post office. Respondent did not respond to Jaimes' letter.

On or about May 2, 2008, Jaimes sent respondent a certified letter and sent another copy of the letter by express mail to respondent, and asked for a refund of his advanced fees. Respondent received the letters. Jaimes received the return receipt from the post office for the certified letter. Respondent did not respond to Jaimes' letters or refund any of Jaimes' advanced fees.

By performing no legal services on behalf of Jaimes, respondent effectively withdrew from representation of Jaimes. At no time did respondent inform Jaimes that he was withdrawing from employment in Jaimes' case. Nor did respondent take any other steps to avoid reasonably foreseeable prejudice to his client.

Respondent did not earn any of the advanced fees paid by Jaimes. At no time did respondent refund any of the \$3,500 paid by Jaimes. Respondent also did not render an accounting to Jaimes.

On or about August 31, 2007, only two weeks after the deposit of the advanced fees received from Jaimes, respondent's Union Bank CTA had a balance of a negative \$3,877.24.

On or about April 10 and April 30, 2008, a State Bar investigator sent a letter to respondent regarding the allegations in the Jaimes matter. In the letters the investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the April 10, and April 30, 2008, letters.

Respondent failed to respond to the two letters and failed to otherwise cooperate or communicate with the investigator in connection with the Jaimes matter.

Count 14: Failure to Perform Competently (Rule 3-110(A))

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

By performing no legal services on behalf of Jaimes, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 15: Failure to Communicate (§ 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Jaimes' numerous telephone calls over a five-month period in 2007, and a two-month period in 2008, and by failing to respond to Jaimes' letters over a three-month period requesting the status of respondent's efforts to expunge his conviction matters, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in

which respondent had agreed to provide legal services in willful violation of section 6068, subdivision (m).

Count 16: Improper Withdrawal from Employment (Rule 3-700(A)(2))

Rule 3-700(A)(2) states: “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.”

By failing to perform any legal services on behalf of Jaimes, failing to inform Jaimes of his intent to withdraw, and failing to take any other steps to avoid prejudice to his client, respondent willfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of rule 3-700(A)(2).

Count 17: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to return at the time of his termination from employment, the undisputed fees of \$3,500 advanced by his client, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 18: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

The obligation to render appropriate accounts to the client does not require as a predicate that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

Thus, by failing to provide Jaimes with an accounting of the \$3,500 fee, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession in willful violation of rule 4-100(B)(3).

Count 19: Misappropriation (§ 6106)

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

Here, respondent received \$3,500 for the benefit of Jaimes. But after he had deposited the funds into his CTA, the balance fell to -\$3,877.24 only two weeks after the deposit. Therefore, because the balance in respondent's CTA fell below the amount of entrusted funds of \$3,500 to -\$3,877.24 on August 31, 2007, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

Count 20: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations in the Jaimes matter as requested in the investigator's letters of March 18, 2008, and April 7, 2008, or otherwise cooperate and participate in the investigation of the Jaimes matter, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

Case No. 08-O-12304 (Soltero Matter)

On or about February 21, 2007, Walter Soltero ("Soltero") employed respondent to represent him to file a motion to withdraw a guilty plea and vacate criminal charges in *People v. Soltero*, Orange County Superior Court case No. 04NM10140. Soltero paid respondent advanced fees of \$1,500 on or about February 21, 2007, and \$500 on or about April 12, 2007.

Thereafter, respondent did not file a motion to withdraw Soltero's guilty plea or take any steps to represent him.

In or about March or April 2008, Soltero asked respondent by text message for a refund of his advanced fees. Respondent agreed by text message back to Soltero to an unstated partial refund.

Respondent provided no services to Soltero. Respondent did not earn any of the advanced fees paid by Soltero. At no time did respondent refund any of the \$2,000 paid by Soltero. Nor did he provide Soltero with an accounting.

On or about June 18, and July 29, 2008, a State Bar investigator sent a letter to respondent regarding the allegations in the Soltero matter. In the letters the investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the June 18, and July 29, 2008, letters.

Respondent failed to respond to the investigator's letters and failed to otherwise cooperate or communicate with the investigator in connection with the Soltero matter.

Count 21: Failure to Perform Competently (Rule 3-110(A))

By failing to file the motion on behalf of Soltero or take any steps to represent him, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 22: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to return at the time of his termination from employment, all or any of the fees advanced by Soltero, respondent failed to refund promptly any part of the \$2,000 fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 23: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

By failing to provide Soltero with an accounting of the \$2,000 fee, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession in willful violation of rule 4-100(B)(3).

Count 24: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations in the Soltero matter as requested in the investigator's letters of June 18, 2008, and July 29, 2008, or otherwise cooperate and participate in the investigation of the Soltero matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

Case Nos. 08-O-13502; 08-O-13697; and 08-O-13794 (Citizens Bank Client Trust Account)

During the period from January 1, 2005, through December 31, 2008, respondent maintained a client trust account at Citizens Business Bank ("Citizens Bank CTA"). He issued numerous insufficiently funded checks which the bank paid, as follows:

<u>Date of Bank's Payment</u>	<u>Check No.</u>	<u>Amount</u>	<u>Citizens Bank CTA Balance</u>
8/7/08	2272	\$360.00	\$18.79
8/7/08	2275	\$160.00	[-\$1.21]
8/11/08	2265	\$229.00	[-\$247.21]
9/10/08	2283	\$115.00	[-\$492.24]
9/23/08	2291	\$240.00	\$88.02
9/23/08	2295	\$175.00	\$51.02
9/24/08	2293	\$200.00	\$51.02
10/24/08	784	\$160.00	[-\$26.17]
11/3/08	786	\$200.00	\$102.83
12/3/08	799	\$765.03	\$392.06
12/17/08	03	\$1,000.00	[-\$144.58]

Moreover, Citizens Bank rejected several of respondent's insufficiently funded checks, as follows:

<u>Date of Bank's Rejection</u>	<u>Check No.</u>	<u>Amount</u>	<u>Citizens Bank CTA Balance</u>
9/10/08	unavailable	\$331.03	[-\$492.24]
10/8/08	unavailable	\$416.27	\$74.11
10/22/08	unavailable	\$25.00	[-\$63.17]
11/3/08	unavailable	\$725.56	\$102.83

Respondent issued the checks set forth above when he knew or should have known that there were insufficient funds in the Citizens Bank CTA to pay them. Respondent made no effort to ensure there were sufficient funds in the Citizens Bank CTA to cover the checks after respondent issued the checks.

In or about September 2008, respondent caused an electronic transfer in the amount of \$213.91 which was drawn against his Citizens Business Bank CTA. On or about September 22, 2008, Citizens Bank rejected the electronic transfer for insufficient funds. The balance in the account was only \$157.02.

In or about October 2008, respondent caused another electronic transfer in the amount of \$198.09 which was drawn against his Citizens Bank CTA. On or about October 27, 2008, Citizens Bank rejected the electronic transfer for insufficient funds. The balance in respondent's Citizens Bank CTA was only [-\$63.17].

Respondent caused the electronic transfers as set forth above when he knew or was grossly negligent in not knowing that there were insufficient funds in the Citizens Bank CTA to pay the electronic transfers. Respondent made no effort to ensure there were sufficient funds in the Citizens Bank CTA to cover the electronic transfers after respondent initiated the electronic transfers.

During the period of January 2005 through December 2008, respondent left personal funds in his Citizens Bank CTA for the payment of office and/or personal expenses as needed.

During the same time period, respondent made personal deposits into his Citizens Bank CTA for a total of \$110,450 as follows:

<u>Date Of Deposit</u>	<u>Deposit</u>
01/24/05	\$ 200.00
01/28/05	1,600.00
10/01/07	3,000.00
10/08/07	2,500.00
10/11/07	500.00
10/18/07	2,000.00
11/5/07	3,000.00
11/30/07	4,500.00
12/3/07	1,750.00
12/10/07	1,500.00
12/17/07	1,000.00
01/02/08	3,000.00
01/08/08	2,750.00
01/29/08	1,000.00
02/04/08	5,000.00
02/14/08	5,000.00
02/25/08	1,250.00
03/05/08	2,450.00
03/07/08	4,500.00
03/10/08	2,000.00
03/19/08	4,000.00
04/09/08	6,825.00
04/17/08	2,000.00
04/21/08	2,500.00
05/14/08	3,000.00
05/16/08	3,900.00
06/16/08	2,275.00
06/24/08	10,000.00
07/15/08	6,500.00
07/30/08	700.00
08/12/08	2,400.00
09/11/08	1,200.00
09/17/08	1,200.00
09/26/08	4,750.00
10/09/08	2,500.00
10/29/08	2,000.00
11/04/08	2,200.00
11/10/08	1,250.00
12/08/08	250.00

12/11/08	1,500.00
12/31/08	2,000.00

Total \$110,450.00

During the same time period, respondent repeatedly issued checks drawn upon his Citizens Bank CTA to pay his office and/or personal expenses as follows:

<u>Date</u>	<u>Amount</u>	<u>Purchase/Payee</u>	<u>Check No.</u>
01/27/05	\$ 13.65	US Postmaster	2080
02/03/05	599.09	UPSCALS Furnishings	2082
02/15/05	40.00	Salvation Army	2086
10/11/07	1,589.00	Wells Fargo Self Storage	2102
10/19/07	694.00	World Travel	2108
10/18/07	190.64	So. Cal. Ed.	Debit
11/05/07	473.00	AT&T	2111
11/14/07	240.00	South Sunrise	2114
11/18/07	750.00	Farris Insur.	2118
12/14/07	506.40	Orange Cycle	2132
12/20/07	200.00	Target	2138
12/24/07	276.06	T-Mobile	2144
1/03/08	217.06	DMV	2146
01/10/08	455.90	Auto Express	2152
01/18/08	189.23	Auto Express	2156
01/11/08	125.00	DMV	2154
01/11/08	28.00	DMV	2155
01/14/08	270.00	Salvation Army	2157
01/23/08	393.14	AT&T	2161
01/22/08	149.00	DMV	2158
02/14/08	300.00	So. Sunrise Little League	2171
03/01/08	56.00	Ultimate Exposures	2191
03/02/08	140.05	Office Max	2181
03/07/08	70.00	DMV	2141
03/06/08	483.95	AT&T	2140
02/28/08	540.00	Salvation Army	2184
03/01/08	56.00	Ultimate Exposures.	2176
02/21/08	30.00	Peters Canyon PTO	2188
04/18/08	1,055.15	Dell	2182
04/19/08	160.00	Tustin AYSO	2209
04/19/08	150.00	Tustin AYSO	2210
04/10/08	540.00	Salvation Army	2197
05/13/08	262.94	Office Depot	Electronic Transfer
05/05/08	32.00	Peters Canyon PTO	2225
07/14/08	360.00	Salvation Army	2268
07/09/09	229.00	ADT	2285
07/09/09	100.00	ADT	2266

09/30/09	500.00	Salvation Army	789
10/13/09	210.00	Peters Canyon PTO	779
10/13/09	210.72	East Orange Co. Water D.	780
10/18/08	200.00	Choc. Foundation	786
10/30/08	1,600.00	Bill's Tree Design	788
10/14/08	500.00	Salvation Army	778
9/18/08	204.00	Peters Canyon PTO	2294
10/16/08	70.00	Tustin Pub. Schools Found.	783
11/06/08	85.96	T-Mobile	791
11/06/08	262.62	T-Mobile	790
11/26/08	12.00	I.C. Systems	05
11/19/08	260.00	South Sunrise Little League	798
12/02/08	230.00	Bill's Trees	793
12/15/08	1,000.00	I.C. Systems	03
12/05/08	70.02	T-Mobile	2290
12/08/08	250.00	Bill's Trees	2301
12/06/08	200.00	Bill's Trees	00
12/01/08	33.25	Cantrell Photo.	2285
12/10/08	50.00	Tustin Unified School Dist.	2307
11/24/08	10.00	Ident-A-Kid Kath.	00
11/24/08	10.00	Ident-A-Kid John	00
12/12/08	187.79	So. Cal. Ed.	2308
05/28/08	470.68	Fry's	2242
05/17/08	100.00	Tustin AYSO	2233
05/05/08	25.00	Tustin Pub. School Fund	2224
05/08/08	45.00	Tustin USD Nutrition Ser.	228
05/08/08	148.74	Salvation Army	2212
05/14/08	262.94	Office Depot	2230
04/28/08	1,179.74	Dell	2219
05/05/08	273.86	So. Cal. Edison	2226
04/29/08	338.07	The Gas Co.	2220
04/30/08	466.28	AT&T	2221
04/23/08	75.00	Salvation Army	2214
04/23/08	75.00	Salvation Army	2215
06/23/08	79.51	Waste Management	2234
06/17/08	498.62	AT&T	2247
06/13/08	550.00	Green Dump Truck	2245
05/23/08	40.00	Cantrell Photo	2238
06/09/08	143.00	Orange County Water Dept.	2244
05/23/08	270.00	Salvation Army	2332
05/28/08	250.00	Vargas Tree Service	2237
05/28/08	470.68	Frye's	2242
07/01/08	360.00	Salvation Army	2257
06/23/08	360.00	Salvation Army	2248
07/03/08	125.90	House of Imports	2259
07/03/08	86.00	House of Imports	2261
05/12/08	40.00	Cantrell Photo	2239
06/12/08	80.00	Peters Cyn. Elem.	2246

07/28/08	360.00	Salvation Army	2272
07/09/08	229.00	ADT	2265
07/28/08	360.00	Salvation Army	2272
09/19/08	125.00	So. Cal. Gas Co.	2235
09/20/08	25.00	AYSO	772
09/20/08	25.00	AYSO	771
09/18/08	200.00	Peters Cyn. Elem.	2293
09/19/08	125.00	So. Cal. Gas Co.	2295
09/15/08	800.00	West Orange Co. Bar	2290

Total \$26,569.96

A State Bar investigator wrote to respondent regarding the allegations in the Citizens Bank CTA matter on or about September 24, October 3, October 10, October 15, October 20, November 10, November 19, December 12, 2008, and January 16 and February 3, 2009. The investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported his position. Respondent received the 10 letters.

Respondent failed to respond to the investigator's letters and failed to otherwise cooperate or communicate with the investigator in connection with the Citizens Bank CTA matter.

Counts 25, 28, 30, 36 and 38: Moral Turpitude (§ 6106)

By issuing multiple checks and by causing electronic transfers drawn upon the Citizens Bank CTA when he knew or was grossly negligent in not knowing that there were insufficient funds in the account to pay them, and by failing to ensure that there were sufficient funds in the account to pay the checks and the electronic transfers, respondent committed acts involving moral turpitude in willful violation of section 6106 in counts 25, 28, 30, 36 and 38.

Count 26: Commingling (Rule 4-100(A))

By leaving his personal funds in and/or depositing personal funds into his Citizen Bank CTA for withdrawal as needed to pay office and/or personal expenses, and by issuing checks as needed for personal and/or office expenses, respondent improperly used his Citizens Bank CTA as a personal account and commingled funds belonging to respondent in a client trust account.

Therefore, by using the CTA as his personal and business account and issuing checks for his personal expenses from his CTA, respondent's personal use of the trust account and the commingling of his personal funds in the CTA were clear and convincing evidence of willful violation of rule 4-100(A) in count 26.

Counts 27, 29, 31, 37 and 39: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations in the Citizens Bank CTA matter as requested in the State Bar's 10 letters from September 2008 through February 2009, or otherwise cooperate and participate in the investigation, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i), in counts 27, 29, 31, 37 and 39.

However, the misconduct of trust account violations and failure to cooperate with the State Bar underlying many of the counts are the same (i.e., counts 25, 28, 30, 36 and 38 for violation of section 6106 and counts 27, 29, 31, 37 and 39 for violation of section 6068, subdivision (i)). The court will not attach additional weight to the finding of the multiple violations in determining the appropriate discipline to recommend in this matter. Little, if any, purpose is served by duplicative allegations of misconduct. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

Case No. 08-O-13886 (Vazquez Matter)

On or about August 28, 2006, Marisol and Martin Vazquez ("Vazquez") employed respondent to represent Martin Vazquez to file a motion to withdraw a guilty plea and vacate a criminal charge in *People v. Vazquez*, Riverside County Superior Court case No. RIF094817. Vazquez paid respondent advanced fees of \$2,500 on or about August 28, 2006.

Thereafter, respondent did not file a motion to withdraw Martin's guilty plea or take any steps to represent him.

On or about March 11, 2008, Vazquez terminated respondent's employment as Martin's attorney and requested a refund of the advanced fees.

Respondent provided no services to Martin. Respondent did not earn any of the advanced fees paid by Vazquez. At no time did respondent refund any of the \$2,500 paid to him by Vazquez. At no time did respondent render an accounting to Vazquez.

On or about October 15 and November 10, 2008, a State Bar investigator sent a letter to respondent regarding the allegations in the Vazquez matter. In the letters the investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the two letters.

Respondent failed to respond to the letters and failed to otherwise cooperate or communicate with the investigator in connection with the Vazquez matter.

Count 32: Failure to Perform Competently (Rule 3-110(A))

By failing to file the motion on behalf of Martin, or take any steps to represent him, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 33: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to return at the time of his termination from employment, all or any of the fees advanced by Vazquez, respondent failed to refund promptly any part of the \$2,500 fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 34: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

By failing to render appropriate accountings to Vazquez for advanced fees in his possession, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

Count 35: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide a written response to the allegations in the Vazquez matter as requested in the investigator's letters of October 15, 2008, and November 10, 2008, or otherwise cooperate and participate in the investigation of the Vazquez matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

MITIGATING AND AGGRAVATING CIRCUMSTANCES

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ stds. 1.2(e) and (b).)

Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

Aggravation

There are several aggravating factors. (Std. 1.2(b).) They are as follows:

Prior Discipline

Respondent has previously been disciplined for misconduct in six instances, which is an extremely serious aggravating factor. (Std. 1.2(b)(i).)

1. On June 19, 1991, respondent stipulated to a private reproof for misconduct in one client matter that occurred in 1988, including failure to communicate, failure to perform services competently, and failure to return unearned fees. (Case No. 89-O-12959.)
2. On June 17, 1994, the California Supreme Court suspended respondent from the practice of law for six months, that execution of the suspension be stayed, and placed him on probation for three years. Respondent stipulated to two violations

³ Future references to standard(s) or std. are to this source.

in one client matter, including failing to perform competently and failing to communicate. (Supreme Court case No. S039143.)

3. On November 21, 1996, the Supreme Court suspended respondent from the practice of law for 45 days for probation violations. (Supreme Court case No. S039143.)
4. On November 24 1998, the Supreme Court suspended respondent from the practice of law for 18 months, that execution of that suspension be stayed, and placed him on probation for two years for failure to communicate and failure to hold client's property in a place of safekeeping in a one client matter between 1989 and 1994. (Supreme Court case No. S073364.)
5. On October 22, 2003, the Supreme Court again suspended respondent from the practice of law for three years, stayed, and placed him on probation for three years with an actual suspension of one year and until he makes restitution. Respondent was found culpable of unauthorized practice of law, misrepresentation to a client, failure to communicate, failure to perform services competently, failure to return unearned fees and failure to cooperate with the State Bar. (Supreme Court case No. S113480.)
6. On November 4, 2004, the Supreme Court suspended respondent from the practice of law for 60 days for failure to obey court order and to comply with the California Rules of Court, former rule 955. (Supreme Court case No. S127212.)

Multiple Acts of Misconduct

Respondent committed multiple acts of wrongdoing by failing to return unearned fees, failing to perform services, failing to provide an accounting, failing to communicate with his client, committing acts of moral turpitude, commingling personal funds with client funds in his

CTA, improperly withdrawing from employment and failing to cooperate with the State Bar.
(Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) Many of his clients were deprived of their funds.

Indifference

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He had not yet reimbursed his clients of their funds.

Failure to Participate in Proceeding

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety.

(*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(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.

Standard 1.7(b) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges disbarment, citing *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 in support of its recommendation. This court agrees.

Here, like *Rose*, respondent had repeatedly committed misconduct during 21 of the 35 years of his practice. This is respondent's seventh disciplinary proceeding. Probation and

suspension have proven inadequate to prevent continued misconduct. And, no compelling mitigation has been shown.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that this will not happen again. Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Respondent “is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law.” (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the severity of the offense, the serious aggravating circumstances, in particular, his extensive prior disciplinary record, and the lack of any mitigating factors, the court recommends disbarment.

RECOMMENDATIONS

Disbarment Recommended

Accordingly, the court recommends that respondent **Patrick Dayton McNeal** 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.

Restitution

It also recommended that respondent make restitution to the following:

- 1. Lizbeth Rosiles** in the amount of \$7,500 plus 10% interest per annum from May 4, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Lizbeth

Rosiles, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

2. **Rose and Edward Cordero** in the amount of \$2,500 plus 10% interest per annum from July 8, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Rose and Edward Cordero, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. **Miguel Jaimes** in the amount of \$3,500 plus 10% interest per annum from May 2, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Miguel Jaimes, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
4. **Walter Soltero** in the amount of \$2,000 plus 10% interest per annum from March 1, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Walter Soltero, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
5. **Marisol and Martin Vazquez** in the amount of \$2,500 plus 10% interest per annum from March 11, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Marisol and Martin Vazquez, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Respondent must furnish satisfactory proof of payment thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁴

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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: October _____, 2009

DONALD F. MILES
Judge of the State Bar Court

⁴Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)