

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos.: 09-O-18300-LMA
)	(10-O-07868; 11-O-10439;
ANTHONY DENCIO AGPAOA,)	11-O-11319; 11-O-11477;
)	11-O-13134; 11-O-16178);
Member No. 189749,)	11-O-15853 (11-O-18199;
)	11-O-19326) (Cons.)
A Member of the State Bar.)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Introduction¹

In this disciplinary proceeding, respondent Anthony Dencio Agpaoa is charged with 24 acts of misconduct stemming from multiple client matters. The charged misconduct includes failing to perform with competence, failing to refund unearned fees, failing to obey a court order, failing to release a client file, failing to account, commingling, failing to communicate, failing to report judicial sanctions, issuing checks against insufficient funds, failing to cooperate in disciplinary investigations, misrepresentation, and misappropriation of client funds. The court finds, by clear and convincing evidence, that respondent is culpable on 21 of the 24 charges. Based upon the serious nature and extent of culpability, as well as the applicable mitigating and

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

aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing two notices of disciplinary charges on December 8, 2011 and March 6, 2012. Respondent filed responses to the notices of disciplinary charges on January 17 and April 20, 2012, respectively. The two matters were consolidated on April 18, 2012.

A six-day trial was held on July 10, 11, 12, 13, and 16, and August 7, 2012. The State Bar was represented by Deputy Trial Counsel Maria Oropeza. Respondent represented himself. Following closing briefs, the court took this matter under submission on August 23, 2012.²

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on September 3, 1997 and has been a member of the State Bar of California at all times since that date.

This court's findings of fact are based on the responses to the notice of disciplinary charges and the evidence and testimony introduced at this proceeding.

The Gizaw Matter – Case No. 09-O-18300

Facts

On November 4, 2003, Corey Polster-Gizaw (Corey) and her husband Wosen Gizaw (Wosen) hired respondent to represent them in an immigration matter. Corey and respondent signed a fee agreement on that date. Wosen was a native and citizen of Ethiopia seeking legal residence in the United States.

² On September 10, 2012, the State Bar filed a motion to strike portions of respondent's closing brief. Respondent did not file a timely response. Good cause having been shown, the court **STRIKES** all portions of respondent's closing brief that refer to facts not in evidence or settlement negotiations.

In or around 1996, Wosen filed an application for asylum to remain in the United States. On March 21, 1996, Wosen's application for asylum was denied and he was ordered to be removed from the United States. Wosen appealed the decision. On May 29, 1998, the United States Board of Immigration Appeals (BIA) denied Wosen's appeal.

At the time the Gizaws hired respondent, they informed him that there had been a previous asylum petition filed, but that they didn't know the status of the petition. They explained to him that they were married on September 8, 2003, and they wanted to adjust Wosen's immigration status.

On or about April 14, 2006, respondent filed a motion to reopen the BIA matter on Wosen's behalf. On July 11, 2006, the BIA denied the motion.

On August 8, 2006, respondent filed a petition for review of the BIA's decision with the United States Court of Appeals for the Ninth Circuit, in a case entitled, *Wosen D. Gizaw v. U.S. Attorney General*, case no. 06-15326. The Ninth Circuit transferred the appeal to the Eleventh Circuit, which was the proper venue. On February 26, 2008, the Eleventh Circuit Court remanded the matter back to the BIA.

On August 12, 2008, the BIA again denied Wosen's motion to reopen the BIA matter. On September 8, 2008, Corey paid respondent \$2,500 toward a \$5,000 fee to file a Petition for Review.

On September 12, 2008, respondent filed a petition for review with the United States Court of Appeal for the Eleventh Circuit. On October 2, 2008, the Court of Appeal for the Eleventh Circuit dismissed the appeal because the petition was filed late. Respondent failed to inform his clients of the dismissal.

On January 6, 2009, respondent filed a motion to reissue the BIA's August 12, 2008 decision denying Wosen's motion to reopen. He filed the motion without getting permission or notifying his clients of the filing.³ Respondent requested the reissuance so that he could have

³ Respondent testified that he informed the Gizaws that the appeal was dismissed and that he was filing a motion to reissue; however, in light of the credible evidence to the contrary, the court found respondent's testimony on this subject implausible.

another opportunity to file a timely petition for review to the Eleventh Circuit Court of Appeals. On March 11, 2009, the BIA denied his motion.

On May 19, 2009, respondent's assistant and wife Miranda Agpaoa (Miranda) sent an email informing Corey and Wosen that they would need to provide respondent with a \$340 check made out to the "U.S. Dept. of Homeland Security" to be used as a filing fee to file an application to adjust status. On May 26, 2009, Corey mailed a money order for \$340 to respondent, payable to the "U.S. Dept. of Homeland Security."

On June 5, 2009, respondent's staff crossed out "U.S. Dept. of Homeland Security," and wrote in on top, "Law Office of Anthony Agpaoa," and deposited the funds into a bank account. Respondent did not subsequently file an application for adjustment of status.

On July 28, 2009, Corey mailed two money orders to respondent in the amounts of \$400 (no. 1125468) and \$70, respectively, both payable to the "Department of State." Corey sent the money orders to pay an immigrant visa application processing fee, and an affidavit of support processing fee.

On August 12, 2009, respondent crossed out the listed payee, "Department of State," and wrote in "Anthony D. Agpaoa, Esq." Respondent endorsed the back of the money orders and cashed them. Respondent did not pay either the immigrant visa application or affidavit of support processing fees.

In September, 2009, Corey and Wosen terminated respondent and hired attorney Erich Straub (Straub) to handle the immigration matter. On September 16, 2009, Corey wrote an email to Miranda requesting that respondent forward the entire file to Corey by that end of the week.

On October 8, 2009, Straub faxed and mailed a letter to respondent requesting Wosen's case file from respondent. Respondent received the letter, but did not reply or turn over the file.

On October 20, 2009, Straub emailed respondent, requesting the case file. On October

21, 2009, Straub faxed, emailed, and mailed a letter to respondent requesting the case file. Respondent received the letter, but did not reply or turn over the case file.

Subsequent to October 8, 2009, Davorin Odracic, an attorney working with Straub, repeatedly telephoned respondent to request the file. Respondent did not respond to Straub's telephone calls. Time was of the essence since Wosen had been detained by the U.S. Immigration and Customs Enforcement (ICE) since September 2009. Respondent, however, never did turn over the client file.

Conclusions

Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to timely file Wosen's petition for review with the Eleventh Circuit Court of Appeals, and by filing a motion to reissue the BIA's August 12, 2008 decision without notifying his clients or getting their permission, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Two – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. By failing to promptly turn over Wosen's case file, respondent, failed to promptly release all client papers and property at the request of the client upon termination of employment, in willful violation of rule 3-700(D)(1).

Count Three – Section 6106 [Moral Turpitude]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. ““There is no doubt that the wilful misappropriation of a client’s funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) By altering three of his client’s money orders (totaling \$810), making them payable to himself, cashing them, and failing to use the funds for the intended purpose, respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

The Creason Matter – Case No. 10-O-07868

Facts

On May 30, 2008, Yvonne Creason (Creason) employed respondent to handle a marriage dissolution matter in the San Mateo Superior Court entitled, *Yvonne Marie Creason v. Richard Michael Balison*, case no. FAM-05-8805.

On April 20, 2009, respondent sent Creason a billing statement, covering a period from May 30, 2008 through April 20, 2009. On April 22, 2009, respondent made a \$6,243.68 charge to Creason’s credit card.

On May 26, 2009, respondent made a \$5,000 charge to Creason’s credit card. Subsequently, Creason requested that respondent provide a billing statement to account for his fees.

On June 13, 2009, respondent made a \$3,500 charge to Creason’s credit card. On June 18, 2009, Creason emailed respondent and told him she had not authorized the \$3,500 credit card charge on June 13, 2009. On June 20, 2009, Creason emailed respondent and requested a billing statement. Respondent never provided another billing statement⁴ or fully accounted for all of the charges he made on Creason’s credit card.⁵

⁴ Respondent’s testimony that he fully accounted for the credit charges was not credible.

⁵ Creason testified that respondent made multiple unauthorized credit card charges. This testimony, however, is contradicted by some of Creason’s email communications with respondent. The court also notes that, other than Creason’s June 18, 2009 email, there is little

On July 14, 2009, respondent filed, on Creason's behalf, a motion seeking a qualified domestic relations order and a determination as to the date of separation between Creason and her husband. In the motion, respondent contended that the date of separation between Creason and her husband was March 30, 2008.⁶ The court set a hearing in this motion for August 6, 2009. On August 6, 2009, the court, upon the parties' request, continued the qualified domestic relations hearing to October 26, 2009.

On September 24, 2009, respondent and Creason were present for an order to show cause regarding modification of child custody (the custody matter) in the San Mateo County Superior Court, before Commissioner Kathleen McKenna. On that date, the court informed the parties that the next hearing in the custody matter would be December 14, 2009.

On October 21, 2009, respondent and opposing counsel, Patricia Burke (Burke), again stipulated to continue the qualified domestic relations hearing until December 21, 2009. On October 26, 2009, the court granted the continuance.

On December 8, 2009, Burke contacted respondent via email and requested a continuance of the December 14 hearing in the custody matter. On December 8, 2009, respondent replied to Burke, via email, stating, "What is the purpose of this hearing. Let's continue this. [Creason] is in the vicinity."

On December 9, 2009, respondent emailed Burke, stating, in relevant part, "[Creason] is in the area but I don't want her appearance on Monday. But she will fight to have this appearance since she feels that she has no home and hasn't seen the kids"

On December 11, 2009, respondent contacted Burke and told her that Creason was ill and could not attend the December 14, 2009 hearing in the custody matter. Respondent had Burke co-sign a letter to the court stating that Creason was ill, and requesting a continuance from December 14, 2009 to January 21, 2010. Respondent faxed the letter to the court.

tangible evidence supporting her assertion that respondent's credit card charges were unauthorized.

⁶ In subsequent pleadings, respondent noted that the date of separation would affect the parties' pension and annuity distribution.

Prior to December 14, 2009, Creason flew to California from Michigan to attend the custody matter hearing. On December 14, 2009, Burke faxed a correspondence to Commissioner McKenna in which she stated that the parties stipulated to a continuance of the hearing in the custody matter, and requested the court grant a continuance. On December 14, 2009, Commissioner McKenna continued the custody matter hearing to January 21, 2010.

On December 21, 2009, the court continued the hearing regarding the qualified domestic relations order until January 21, 2010, the same date as the custody matter hearing.

On January 21, 2010, respondent failed to appear in court on behalf of Creason. Without respondent's appearance, the court established the date of separation as February 2, 2000, nearly eight years earlier than respondent had requested in his moving papers.

On January 22, 2010, respondent emailed Creason and wrote, "I am preparing a motion for reconsideration now." On January 25, 2010, respondent emailed Creason in response to an email she wrote him entitled, "Motion Filed?" Respondent wrote, "No. I have to file a motion for a new trial not a reconsideration. I will finish is (sic) it as soon as I can."

On January 25, 2010, Creason wrote an email to respondent stating, in part, "Why now do you say a new trial is what you want to do for case #FAM058805? No more jokes, Tony, what are you doing. (sic) You have \$28,000 of my money. What are you doing really?"

Immediately thereafter, respondent responded to Creason's email, stating, "Oh please. If you are unhappy you can replace me. I will sign immediately. Stop the antics. I will send you substitution (sic) tomorrow." Later that day, Creason wrote an email to respondent stating, "Does this mean you have done nothing?"

On January 26, 2010, Creason emailed respondent stating, in relevant part, "Tony, after research I have learned that we have ten days to file a motion for reconsideration. . . . Please do this." That same day, respondent emailed Creason and wrote, in part, "reconsideration is not proper under the circumstances. But if you insist I will file one."

On February 5, 2010, Creason emailed respondent stating, in relevant part, "Have you heard back from the judge regarding my case? The date of separation is way off . . . This is a time sensitive matter that bares (sic) a huge (sic) on the rest of my life."

On February 7, 2010, Creason's parents, Mary and Bill Creason, sent an email to respondent stating, "Dear Tony, We just visited the San Mateo County Superior Court case site online, and we see no action on [Creason's] behalf. We are terribly disappointed. We urge you to file your motion at once."

On February 8, 2010, respondent sent an email to Creason's parents stating, in relevant part, "Please do not contact me or tell me what to do. I am on doctor's orders right now to stay put. Not to work." Respondent added, "If I receive any more emails from you I will withdraw from this case."

On February 8, 2010, respondent emailed Creason, stating, in part, "I am on doctor's order's (sic) right now to stay put and not to work until he clears me. . . . I am having someone else help me on this motion . . ." That same day, Creason replied to respondent's email, writing, in relevant part, "Can you tell me the name of the attorney you are working with? If you wish to excuse yourself could I be the first person you let know. (sic)"

Respondent never filed a motion for reconsideration or a motion for new trial. During his representation of Creason, respondent had a physical confrontation with her in which the police were called.

Conclusions

Count Four – Section 6106 [Moral Turpitude]

The State Bar alleged that respondent made unauthorized charges to Creason's credit card totaling at least \$14,743.68. The court finds that this allegation was not supported by clear and convincing evidence. The tangible evidence before the court indicates that Creason only complained to respondent about one charge being unauthorized. And after that single complaint, the record indicates that there were no subsequent emails or letters regarding unauthorized or improper charges. Since respondent continued to represent Creason for more than seven months after the alleged unauthorized charges, the court would have expected to see emails or letters

demanding a refund. Instead, the communications between respondent and Creason appeared to be normal and generally amicable during this time period. In addition, there is no indication in the record that Creason challenged any of these charges directly with her credit card company.

Based on the lack of clear and convincing evidence, Count Four is dismissed with prejudice.

Count Five – Section 6106 [Moral Turpitude]

The State Bar alleged that respondent knowingly made false statements to Commissioner McKenna and Burke when he informed them that Creason was ill. The court finds that this allegation was not proven by clear and convincing evidence. The evidence indicates that Creason was a severe alcoholic and that respondent referred to her as “ill,” rather than divulging her alcoholism. Therefore, the court finds that respondent’s conduct does not rise to the level of moral turpitude. Consequently, Count Five is dismissed with prejudice.

Count Six – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney’s possession. By failing to provide a full accounting of his fees to Creason despite her repeated requests, respondent failed to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count Seven – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By failing to appear at the January 21, 2010 court date on behalf of Creason and failing to subsequently file a motion for reconsideration or for new trial, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

The Cuellar Matter – Case No. 11-O-10439

Facts

On December 19, 2009, Jose Magana-Cuellar (Cuellar) and his wife, Maria Suarez (Suarez), hired respondent to handle an immigration matter. Cuellar is a foreign national who married Suarez, a United States Citizen. They paid respondent a total of \$3,500 to file and prosecute a petition for alien relative application with the Department of Homeland Security, United States Citizenship and Immigration Services Department (USCIS). A 1-130 application is used to establish a relationship between an American citizen and an alien relative who wishes to immigrate to the United States.

On January 5, 2010, Cuellar informed respondent, via facsimile, that he moved into a new residence. Respondent failed to submit the change of address form to USCIS.

On August 23, 2010, the USCIS mailed a notice to Cuellar's prior address that the USCIS scheduled a mandatory interview of Cuellar and Suarez for October 4, 2010. The notice stated on its face, "Failure to appear or respond will result in the denial of your application." The USCIS mailed a courtesy copy of the notice to respondent. Cuellar and Suarez were unaware of the scheduled mandatory meeting.

Prior to October 4, 2010, Cuellar met with respondent. Although the USCIS had mailed notice of the mandatory interview to respondent, he did not inform Cuellar of the interview. Instead, respondent told Cuellar that he would meet with Cuellar and Suarez after respondent received notice of the mandatory USCIS interview. Respondent did not inform Cuellar or Suarez of the scheduled October 4, 2010 interview, so they did not attend it.

On November 5, 2010, the USCIS mailed notice to respondent and to Cuellar's former address, in which USCIS informed Cuellar and Suarez that their petition for alien relative had been denied. The notice stated that USCIS did not receive a change of address from Cuellar. The notice also stated Cuellar could either file a motion to reopen the matter or submit an entirely new application. Respondent never informed Cuellar or Suarez of the USCIS denial of their petition for alien relative application.

On November 10, 2010, respondent wrote a letter to the USCIS, stating that he would

reschedule the meeting or file a motion to reopen the proceedings. In the letter he explained that Cuellar was not at fault for missing the appointment, that Cuellar had previously informed respondent of his new address, and that respondent did not inform Cuellar of the October 4, 2010 mandatory interview because he “assumed that he already knew about it.”⁷

On November 12, 2010, Suarez discovered that she and Cuellar had missed the October 4, 2010 mandatory interview. That same day, Suarez telephoned respondent’s office numerous times. Respondent did not return the calls.

On November 15, 2010, Cuellar went to respondent’s office, accompanied by attorney Lauren Nishimura (Nishimura). Nishimura had been working with Cuellar, *pro bono*, on an asylum claim. They met with respondent. Nishimura told respondent that if he had a copy of the change of address form purportedly filed, they could file a motion to reopen. Respondent told Cuellar to return to his office later that day. Cuellar left and returned to respondent’s office, unaccompanied by Nishimura, approximately two hours later. Respondent informed him that he could not find proof of the change of address filing. Respondent had Cuellar sign a new change of address form. Respondent backdated the change of address form to March 5, 2010.

On November 17, 2010, Cuellar and Nishimura went to respondent’s office. Nishimura told respondent that she understood from Cuellar that respondent could not find proof of the change of address form. Respondent showed the backdated change of address form to Nishimura. When Nishimura alleged that the backdated document constituted fraud, a physical altercation occurred between Cuellar, Nishimura, and respondent. The police department was called.

Conclusions

Count Eight – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

⁷ At trial, respondent testified that he informed Cuellar of the October 4, 2010 interview. This testimony conflicted with respondent’s November 10, 2010 letter and was not credible.

By failing to submit Cuellar's change of address form and failing to inform Cuellar and Suarez of their mandatory USCIS interview in the immigration matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Nine – Section 6068, subd. (m) [Failure to Communicate]

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 notify Cuellar of the October 4, 2010 USCIS mandatory interview, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in willful violation of section 6068, subdivision (m). However, since the conduct used to establish respondent's culpability in Count Nine has already been used to establish culpability in Count Eight, the charges are duplicative and the court assigns no additional weight to Count Nine.

Count Ten – Section 6106 [Moral Turpitude]

By having Cuellar sign a change of address form on November 15, 2010, and backdating it to March 5, 2010, respondent committed an act involving moral turpitude, dishonesty and corruption, in willful violation of section 6106.

The Sanctions Matter – Case No. 11-O-11319

Facts

On April 30, 2007, the Honorable Barbara Jones, Presiding Justice of the First Appellate District, Division 5, entered an order sanctioning respondent and his client, jointly and

severally, \$6,500 for filing a frivolous appeal in the matter of *Estate of Francis Cueny, Robert Schafer v. Georgia Fuller*, case no. A114354, Court of Appeal of the State of California, First Appellate District, Division 5. The sanction was payable to Robert Schafer, the plaintiff in the action.

On or about July 10, 2007, Robert Schafer assigned his interest in the sanction to his attorney, Mark Johnson. On August 1, 2007, respondent wrote to Mark Johnson and stated that he would pay the full amount of the sanction “within a short period of time.” Respondent, however, never paid the sanction and failed to report it to the State Bar, in writing, within 30 days of respondent’s knowledge of its imposition.

Conclusions

Count Eleven – Section 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney’s profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. By failing to pay the \$6,500 sanction, in violation of the Court of Appeal’s April 30, 2007 order, respondent disobeyed or violated an order of the court, in willful violation of section 6103.

Count Twelve – Section 6068, subd. (o)(3) [Failure to Report Sanctions]

Section 6068, subdivision (o)(3) provides that within 30 days of knowledge, an attorney has a duty to report, in writing to the State Bar, the imposition of judicial sanctions against the attorney of \$1,000.00 or more which are not imposed for failure to make discovery.

Respondent’s failure to report the First Appellate Court’s April 30, 2007 order imposing sanctions against respondent and his client, jointly and severally, in the amount of \$6,500, to the

State Bar, in writing, within 30 days of respondent's knowledge of the imposition of judicial sanctions, demonstrates a willful violation of section 6068, subdivision (o)(3).

The Client Trust Account Matter – Case No. 11-O-11477

Facts

At all relevant times herein, respondent maintained a client trust account at Far East National Bank (CTA). Respondent repeatedly deposited non-client funds into his CTA, thereby commingling these funds in his CTA, as follows:

<u>Date</u>	<u>Amount Deposited</u>	<u>Type of Deposit</u>
11/04/10	\$200	Cash
11/12/10	\$3,500	Cash
11/15/10	\$1,400	Cash
11/30/10	\$200	Cash
11/30/10	\$900	Cash
11/30/10	\$300	Cash
12/03/10	\$900	Cash
12/08/10	\$800	Cash
12/21/10	\$200	Cash
12/23/10	\$240	Cash
12/24/10	\$133	Cash
01/04/11	\$300	Cash
01/05/11	\$900	Cash
01/10/11	\$300	Cash
01/18/11	\$900	Cash
01/20/11	\$1,900	Cash
02/02/11	\$272	Cash
02/02/11	\$900	Cash
02/09/11	\$1,900	Cash
02/14/11	\$300	Cash
02/16/11	\$1,300	Cash
02/25/11	\$2,500	Cash
03/15/11	\$700	Cash
04/26/11	\$500	Cash
05/17/11	\$600	Cash
05/17/11	\$600	Cash
06/09/11	\$100	Cash
08/01/11	\$200	Cash
08/31/11	\$200	Cash
09/01/11	\$1,500	Cash
09/08/11	\$1,200	Cash
09/21/11	\$80	Cash
10/05/11	\$1,100	Cash

10/06/11	\$500	Cash
10/11/11	\$200	Cash

Respondent repeatedly made payments for non-client purposes out of his CTA, as follows:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
11/08/10	2020	Cash ⁸	\$100.00
11/16/10	2022	DP550, LLC (rent)	\$4,700.00
11/16/10	2262	Cash	\$100.00
11/18/10	2021	Cash	\$100.00
11/19/10	2265	Cash	\$100.00
11/19/10	2266	Cash	\$200.00
12/21/10	2035	DP550, LLP (rent)	\$2,000.00
11/22/10	2260	Cash	\$250.00
11/23/10	2274	Cash	\$200.00
11/24/10	2267	Staples	\$99.63
11/29/10	2261	Staples	\$49.95
12/01/10	2271	Staples	\$424.07
12/06/10	2014	Dr. Dan Kalshan	\$226.00
12/06/10	2034	Cash	\$500.00
12/09/10	2037	Cash	\$100.00
12/13/10	2040	Cash	\$120.00
12/13/10	2659	Cash	\$250.00
12/15/10	2270	Cash	\$60.00
12/16/10	2045	Cash	\$100.00
12/20/10	2042	Cash	\$200.00
12/21/10	2049	Cash	\$100.00
12/27/10	2047	Staples	\$33.99
12/27/10	2051	Cash	\$40.00
12/31/10	1727	Mom's Pharmacy	\$318.00
01/04/11	2055	DP550, LLP (rent)	\$800.00
01/04/11	Debit	Best Buy	\$133.03
01/05/11	2062	Cash	\$100.00
01/14/11	2072	DP550, LLP (rent)	\$2,800.00
01/19/11	2272	Walgreens	\$153.99
01/20/11	2069	Cash	\$100.00
01/21/11	2074	Cash	\$200.00
01/25/11	2076	Cash	\$100.00
01/27/11	2052	Utrecht Art Supplies	\$86.44
01/28/11	2063	Dr. Dan Kalshan	\$226.00
01/31/11	2064	Walgreens	\$119.33
01/31/11	2082	Cash	\$100.00

⁸ Respondent's testimony that checks made out to "cash" were for his clients was not credible.

02/01/11	2084	Cash	\$100.00
02/03/11	2083	Cash	\$400.00
02/10/11	2078	Walgreens	\$169.99
02/14/11	2086	Cash	\$700.00
02/24/11	2089	Cash	\$500.00
02/22/11	2090	Cash	\$200.00
02/25/11	2092	Cash	\$300.00
02/28/11	2091	DP550, LLP (rent)	\$2,800.00
02/28/11	2096	Cash	\$100.00
02/28/11	2096	Cash	\$100.00
03/02/11	2093	Staples	\$131.38
03/02/11	2102	Cash	\$400.00
03/07/11	2098	Astound	\$20.58
03/08/11	1099	Qwest	\$46.50
03/08/11	2104	Cash	\$100.00
03/23/11	2031	Miranda Agpaoa	\$400.00
03/29/11	2108	DP550, LLC (rent)	\$2,800.00
03/29/11	Debit	Best Buy	\$122.12
03/29/11	Debit	Best Buy	\$73.00
03/30/11	2117	Cash	\$100.00
03/31/11	3111	Dr. Dan Kalshan	\$225.00
04/01/11	2110	Magic Flute	\$20.70
04/05/11	2118	Cash	\$200.00
04/08/11	2127	Cash	\$300.00
04/11/11	2116	Walgreens	\$83.95
04/11/11	2120	Walgreens	\$200.59
04/11/11	2125	Cash	\$100.00
04/12/11	2120	Cash	\$100.00
04/13/11	2123	Rite Aide	\$190.39
04/18/11	2134	Cash	\$200.00

On January 18, 2011, respondent issued check number 2077 from his CTA, in the amount of \$19. On January 22, 2011, respondent issued check number 2067 from his CTA, in the amount of \$383.25. On February 1, 2011, respondent withdrew \$100 by writing a check (number 2084) from his CTA, made out to "Cash." By the time these three transactions were presented for payment, on or about February 1, 2011, there were insufficient funds in the CTA (\$324.32) to honor the checks. The bank honored all the aforementioned transactions, resulting in a CTA balance of -\$177.93. Respondent knew or should have known that he had insufficient funds in his CTA to pay all three checks.

On April 21, 2011, respondent issued check number 2142 from his CTA, in the amount of \$1000. On April 26, 2011, respondent issued check number 2145 from his CTA, in the amount of \$1000. By the time these checks were presented for payment, on or about April 27, 2011, there were insufficient funds in the CTA (\$1,504.79) to honor the checks. Regardless, respondent's bank honored both checks, leaving a balance of -\$515.17. Respondent knew or should have known that he had insufficient funds in his CTA to pay both checks.

Conclusions

Count Thirteen – Rule 4-100(A) [Commingling]

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. By depositing non-client funds into his CTA and making non-client payments from his CTA as noted above, respondent deposited or commingled personal funds in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

The Carranza Matter – Case No. 11-O-13134

Facts

On July 30, 2009, Tiffany Vargas (Vargas) and Jose Vargas Carranza (Carranza), hired respondent to prepare and file with the Department of Homeland Security, USCIS, a 1-130 petition for alien relative, and a 1-485 application to register permanent residence or adjust status, on behalf of Carranza. Respondent informed Vargas and Carranza that his fee was \$3,500, not including a \$1,500 filing fee. Carranza paid respondent \$1,500 toward the filing fee.

On September 14, 2009, Vargas sent a check payable to respondent for \$300, as partial payment toward legal fees. Respondent, however, never performed the work for which he was hired.

Between October 12, 2009 and April 9, 2010, Vargas called and left telephone messages for respondent, requesting a return call and status update. Specifically, Vargas called respondent and left messages on the following dates: October 12, 22, and 27, 2009; November 2, 16, and 30, 2009; December 2, 7, and 10, 2009; January 13 and 26, 2010; February 5, 11, and 23, 2010; and April 9, 2010. Respondent never returned Vargas' calls or communicated with her or Carranza in any way.

On October 16, 2009, Vargas emailed respondent, requesting that he contact her. Respondent did not respond to this email.

On February 24 and July 28, 2010, Vargas and Carranza sent certified letters demanding the return of the unearned fee. To date, respondent has not refunded any fees.

On July 27, 2010, Carranza visited respondent's office and requested a refund of the filing fee and the attorney's fees from respondent. Respondent and respondent's staff called Carranza names and threatened to call the police.

On June 15, 2011, the State Bar sent a letter to respondent, through his attorney, Arthur Margolis, regarding the Carranza matter. The State Bar's letter requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the complaint. Respondent received this letter, but failed to provide a written response to the allegations of misconduct in the complaint.⁹

Conclusions

Count Fourteen – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

⁹ The court did not find credible respondent's testimony that he gave the requested information to his prior counsel, who then failed to provide it to the State Bar.

By failing to perform any work on behalf of Carranza in the immigration matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Fifteen – Section 6068, subd. (m) [Failure to Communicate]

By failing to respond to Vargas' or Carranza's email, certified letters, or numerous telephone calls, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count Sixteen – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not returning any portion of the \$300 in unearned fees, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

Count Seventeen – Section 6106 [Moral Turpitude]

By taking his clients' \$1,500 for filing fees, then failing to file any documents on their behalf, and failing to return the unused filing fee despite client demands, respondent misappropriated \$1,500 of his clients' money. Said conduct involved moral turpitude, dishonesty, or corruption, and was in willful violation of section 6106.

Count Eighteen – Section 6068, subd. (i) [Failure to Cooperate]

Section 6068, subdivision (i) provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. By failing to provide a written response to the State Bar

investigator's letter, respondent failed to cooperate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

The Qalliu Matter – Case No. 11-O-16178

Facts

On February 13, 2009, Rosemarie Qalliu (Qalliu) hired respondent to represent her in an immigration matter. On that same day, she paid him \$2,500 in advanced fees. Between February 13, 2009 and June 3, 2011, respondent performed work on behalf of Qalliu.

On June 3, 2011, Qalliu met with respondent regarding his filing an application on behalf of Qalliu to get permanent resident status. Qalliu made a check payable to respondent for \$1,070, which consisted of: (1) a \$985 filing fee to file a 1-485 application to register as a permanent resident (green card application); and (2) an \$85 required biometrics fee. The check cleared on or about June 4, 2011, but respondent never filed the green card application on Qalliu's behalf, and never paid either the filing fee or biometrics fee.

Between August 10 and August 18, 2011, Qalliu called respondent's office several times seeking a status update on her green card application. Respondent never returned these telephone calls and never informed Qalliu that he did not file a green card application on her behalf.

On August 18, 2011, Qalliu wrote a letter to respondent at his official membership records address, requesting information about the green card application. Respondent did not respond to the letter. Qalliu contacted the State Bar; and, in October 2011, respondent refunded the \$1,070 to Qalliu.

Conclusions

Count Nineteen – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By failing to file a green card application on behalf of Qalliu, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Twenty – Section 6106 [Moral Turpitude]

The State Bar alleged that respondent misappropriated Qalliu’s \$1,070. The evidence before the court, however, does not demonstrate misappropriation by clear and convincing evidence. Consequently, Count Twenty is dismissed with prejudice.

Count Twenty-One – Section 6068, subd. (m) [Failure to Communicate]

By failing to respond to Qalliu’s letter and telephone calls, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent agreed to provide legal services, in willful violation of section 6068, subdivision (m).

The Second Client Trust Account Matter – Case Nos. 11-O-15853; 11-O-18199; 11-O-19326

Facts

On the dates mentioned below, respondent used his CTA account for personal purposes, specifically, to pay personal debts unrelated to client matters and to receive small cash withdrawals over an extended period of time. Specifically, respondent made the following payments from the account for respondent’s personal expenses unrelated to client matters from the trust account:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount of Payment</u>
05/02/2011	2141	Staples	\$65.68
05/02/2011	2144	Staples	\$34.42
05/02/2011	2149	Cash	\$200.00
05/03/2011	2136	Walgreens	\$102.98
05/09/2011	2160	Cash	\$200.00
05/20/2011	2174	Cash	\$40.00
05/23/2011	2167	Staples	\$498.73
06/27/2011	2182	Cash	\$50.00
07/05/2011	2183	Mom’s Pharmacy	\$175.00
07/05/2011	2189	Cash	\$600.00
07/06/2011	2188	Cash	\$150.00
07/25/2011	2722	Cash	\$300.00
07/27/2011	2723	Cash	\$1,500.00
08/04/2011	2196	Cash	\$150.00
08/18/2011	2195	Walgreens	\$167.99

09/08/2011	2201	David Cohen, Esq. (memo: rent)	\$1,500.00
09/14/2011	2210	Robert's Market	\$38.96
09/16/2011	2209	St.(illegible) Chinese Bay School	\$1,175.00
09/21/2011	2213	Staples	\$352.60
10/05/2011	2177	Walgreens	\$47.99
10/06/2011	2169	David Cohen, Esq.	\$1,500.00

Respondent issued the following checks and electronic payments, drawn on his CTA, when he knew or should have known that that there were insufficient funds to satisfy the debits when they were presented for payment, as follows:

<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Date Presented</u>	<u>Result</u>
2194	Anthony Agpaoa	\$316.00	08/02/2011	Returned for Insufficient Funds
2170	U.S. Department of Homeland Security	\$155.00	10/07/2011	Paid by bank against Insufficient Funds
2208	CVS Pharmacy	\$184.99	10/25/2011	Returned for Insufficient Funds

As to each of the non-sufficient fund (NSF) check transactions noted above, the State Bar received notifications that respondent's bank had received checks and debits drawn on the CTA against insufficient funds. On September 15, 2011, the State Bar sent respondent a letter requesting a written explanation for NSF check no. 2194. On October 27, 2011, the State Bar sent respondent's counsel, on behalf of respondent, a letter requesting a written explanation for that same check.

On December 6, 2011, the State Bar sent respondent's counsel, on behalf of respondent, a letter requesting a written explanation for NSF check no. 2170. On January 26, 2012, the State Bar sent respondent's counsel, on behalf of respondent, a letter requesting a written explanation for NSF check no. 2208.

Respondent's counsel thereafter advised the State Bar that he was no longer representing respondent. On February 2, 2012, the State Bar sent a letter to respondent, requesting a written explanation for the NSF check no. 2208.

Respondent received each of these letters shortly after they were sent, but failed to respond or otherwise cooperate or participate in the State Bar's investigation.

Conclusions

Count One – Rule 4-100(A) [Commingling]

By using his CTA for personal purposes and making non-client payments from his CTA between May 2 and October 6, 2011, respondent deposited or commingled personal funds in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Two – Section 6106 [Moral Turpitude]

While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) Respondent's issuance of three NSF checks from his CTA at a time respondent knew or should have known there were insufficient funds to cover these checks, amounts to, at a minimum, conduct involving gross negligence. Consequently, the State Bar has proven, by clear and convincing evidence, that respondent's grossly negligent handling of his CTA constitutes a willful violation of section 6106.

Count Three – Section 6068, subd. (i) [Failure to Cooperate]

By failing to provide a written response to the State Bar investigator's letters requesting information regarding the NSF checks, respondent failed to cooperate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

Aggravation¹⁰

Indifference toward Rectification/Atonement

The evidence before the court illustrates respondent's indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Rather than acknowledging his misconduct and attempting to make amends, respondent engaged in verbal and physical confrontations with his clients.

The court further notes, in the Creason matter, that respondent twice threatened to withdraw when questioned regarding his failing to perform.

Multiple Acts/Pattern of Misconduct

Respondent was found culpable of 21 acts of misconduct. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Harm to Client/Public/Administration of Justice

Respondent's misconduct resulted in significant financial harm to some of his clients and the denial of Cuellar's petition for alien relative. (Std. 1.2(b)(iv).)

Mitigation

No Prior Record of Discipline

Respondent had practiced law in California for nine years prior to the commencement of the instant misconduct. (Std. 1.2(e)(i).) During that span, he had no prior record of discipline. Respondent's tenure of discipline-free practice is entitled to some weight in mitigation.

¹⁰ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Extreme Emotional Difficulties

At the time of his misconduct, respondent was suffering from the effects of alcoholism and substance abuse. (*Read v. State Bar* (1991) 53 Cal.3d 394, 424-425 [Severe emotional problems which can be related to misconduct at issue can be considered to have a mitigating effect]; Std. 1.2(e)(iv).) At trial, respondent testified that he has been sober since June 1, 2012. While the court applauds respondent's recent commitment to his sobriety, the lack of expert testimony on this subject warrants limited weight in mitigation.

Discussion

Standard 1.3 provides that the primary purposes of 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.)

In determining the appropriate level of discipline, this 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.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. 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. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation

of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

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.)

The State Bar recommends disbarment. The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

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

In addition to the standards, the court also looked to *Chang v. State Bar* (1989) 49 Cal.3d 114, and *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, for guidance.

In *Chang*, the attorney was found culpable, in a single-client matter, of misappropriating \$7,900 in client funds, failing to provide his client with an accounting, and making

misrepresentations both to his client and to the State Bar. In aggravation, the attorney's misconduct caused significant harm and he never acknowledged the impropriety of his actions. No mitigating circumstances were found. The Supreme Court ordered that the attorney be disbarred.

The present case is more egregious than *Chang*. While respondent misappropriated less money, he has been found culpable on 21 counts of misconduct, including two counts of misappropriation. All together, respondent's misconduct involved 5 client matters, a judicial sanctions matter, and extensive client trust accounting violations.

In *Brimberry*, the attorney committed serious misconduct in four separate matters. In the first matter, the attorney signed her client's signature without authorization, made a deliberate misrepresentation to the superior court, misappropriated \$2,000 in excess of an agreed \$500 fee, and was grossly negligent in her representation of a minor client. In the second matter, the attorney offered a client an illegal finder's fee. In the third matter, the attorney knowingly filed false pleadings asserting that the case had settled, appeared in court without authorization, and made false representations to the court. In the fourth matter, the attorney failed to refund unearned fees and failed to account. In aggravation, the attorney committed multiple acts of misconduct, made dishonest representations to the State Bar Court, caused significant harm to her clients, demonstrated indifference to rectifying her misconduct, and displayed a lack of candor and cooperation. In mitigation, the attorney presented four character witnesses; however, this finding was substantially discounted because the witnesses did not know the extent of the attorney's wrongdoing. In recommending disbarment, the Review Department noted, among other things, that the attorney had become an advocate against her client and that she threw aside the lawyer's fundamental duty of honesty in pursuit of personal gain.

The present case is roughly similar to *Brimberry*. Like the attorney in *Brimberry*, respondent engaged in extensive misconduct involving multiple client matters. While not involving the same level of deceit, the present case involves considerably more instances of failing to perform, failing to communicate, and the mishandling of respondent's client trust account over an extended time period.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent Anthony Dencio Agpaoa, State Bar Number 189749, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Corey Polster-Gizaw and Wosen Gizaw in the amount of \$340 plus 10 percent interest per year from June 5, 2009;
- (2) Corey Polster-Gizaw and Wosen Gizaw in the amount of \$470 plus 10 percent interest per year from August 12, 2009; and
- (3) Tiffany Vargas and Jose Vargas Carranza in the amount of \$1,800 plus 10 percent interest per year from February 24, 2010.

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

The court also recommends that respondent be ordered to pay the \$6,500 sanction ordered by the Court of Appeal of the State of California, First Appellate District, Division 5, in the matter of *Estate of Francis Cueny, Robert Schafer v. Georgia Fuller*, case no. A114354.

California Rules of Court, Rule 9.20

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹¹

Costs

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

Order of Involuntary Inactive Enrollment

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

Dated: October _____, 2012

LUCY ARMENDARIZ

¹¹ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Judge of the State Bar Court