

PUBLIC MATTER

FILED

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos. 15-O-14843
	)	(16-O-12919)-LMA
KURT KEVIN ROBINSON,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 108095.	)	INVOLUNTARY INACTIVE
_____	)	ENROLLMENT

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

In this contested disciplinary proceeding, respondent Kurt Kevin Anderson (Respondent) is charged with 14 counts of misconduct in two matters. The alleged misconduct includes: misappropriation (two counts); failing to timely withdraw attorney's fees (two counts); failing to cooperate in a State Bar investigation; commingling; failing to maintain client funds in trust (three counts); failing to perform legal services with competence; and failing to obey a court order (three counts).

On the first day of trial, Respondent admitted to the facts and culpability in nine of the fourteen counts – failing to timely withdraw attorney's fees (two counts), failing to cooperate, commingling (two counts), failing to perform legal services with competence, and failing to obey court orders (three counts). This court finds by clear and convincing evidence that Respondent is

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



culpable of the misconduct in those nine counts. The Office of Chief Trial Counsel of the State Bar of California (OCTC) dismissed the remaining five counts.

In view of his serious misconduct, and in light of Respondent's three prior records of discipline involving Respondent's failure to perform legal services with competence, Respondent has demonstrated that he is unwilling or unable to fulfill his ethical responsibilities. Thus, despite evidence of some mitigation, the court recommends that Respondent be disbarred.

### **Significant Procedural History**

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on August 29, 2017. On October 10, 2017, Respondent filed his response to the NDC.

The court held a six-day trial that took place on January 12, 2018, January 22, 2018, February 8, 2018, February 20, 2018, April 19, 2018, and May 31, 2018.<sup>2</sup> Senior Trial Counsel Danielle A. Lee represented OCTC. Respondent represented himself. On the first day of trial, January 12, 2018, Respondent admitted to the facts and culpability for Counts Two, Four, Five, Six, Seven, Eleven, Twelve, Thirteen, and Fourteen. OCTC dismissed Counts One, Three, Eight, Nine and Ten. This matter was submitted for decision on May 31, 2018.

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

#### **Facts**

#### **Case No. 15-O-14843 – The Client Trust Account Matter**

On March 1, 2015, Respondent received \$3,211.95 in funds from a client. On the same date, Respondent deposited those funds into his Wells Fargo Bank client trust account (CTA). The amount of Respondent's attorney's fees totaled \$3,211.95, and those fees became fixed by March 1, 2015. Respondent did not withdraw his attorney's fees until May 29, 2015.

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<sup>2</sup> The trial schedule was made to accommodate Respondent's witnesses and the court's other trial matters.

On March 11, 2015, Respondent's client C.C. wrote a check payable to Respondent in the amount of \$2,000. On the same date, Respondent deposited the check into his CTA. The amount of Respondent's fees totaled \$2,000, and those fees became fixed on March 11, 2015. Thereafter, Respondent failed to withdraw \$300 of the \$2,000 in fees that he received.

Between February 2015 and September 2015, Respondent issued the following checks or electronic withdrawals from his CTA for the payment of personal expenses.

CHECK NO.	PAYEE	AMOUNT
1003	Ana Gonzales	\$ 117.00
9002	Fudenna Bro., Inc.	\$ 1,364.30
1002	Sylvia Rodezno	\$ 160.00
9003	Fudenna Bro., Inc.	\$ 1,364.30
1003	Ana Gonzales	\$ 150.00
0003	Sylvia Rodezno	\$ 120.00
1003	Sylvia Rodezno	\$ 100.00
1002	Bernadette Valdellon	\$ 200.00
1002	Sylvia Rodenzo	\$ 45.00

The following checks had "CA IOLTA ACCT" imprinted on the front of the check: (1) check number 1003, payable to Ana Gonzales for \$117.00; (2) check number 1003 payable to Sylvia Rodenzo for \$100; and (3) check number 1002, payable to Bernadette Valdellon for \$200.00.

The remaining checks did not have "CA IOLTA ACCT" imprinted on the front of the check.

The \$1,364.30 checks made payable to Fudenna Bro., Inc., were for Respondent's office space.

In addition to paying personal expenses from funds in his CTA, from March 2015 through September 2015, Respondent deposited his personal funds into his CTA. Those personal funds included the following.

DATE OF DEPOSIT	AMOUNT	FORM OF DEPOSIT
March 2, 2015	\$ 2,500.00	Check
March 5, 2015	\$ 1,000.00	Electronic Check
March 11, 2015	\$ 2,000.00	Cash
March 20, 2015	\$ 1,900.00	Cash
May 7, 2015	\$ 800.00	Cash
May 11, 2015	\$ 400.00	Cash
May 21, 2015	\$ 1,250.00	Cash
May 23, 2015	\$ 2,000.00	Check

May 26, 2015	\$ 500.00	Check
June 1, 2015	\$ 700.00	Check
July 2, 2015	\$ 6,200.00	Check
July 7, 2015	\$ 1,100.00	Cash
August 4, 2015	\$ 1,500.00	Check
September 23, 2015	\$ 116.65	Cash

Wells Fargo Bank notified the State Bar that on three different instances, Respondent's CTA held insufficient funds. Respondent's account did not have sufficient funds on June 10, 2015, June 27, 2015, and September 9, 2015.

On March 31, 2016, Wells Fargo Bank sent Respondent an email regarding the overdraft that occurred in September 2015. Wells Fargo stated that in March 2015 "the IOLTA portion of the imprinted name no longer [appeared] on the face of the check." Wells Fargo apologized for failing to make Respondent aware of the change and apologized "about the confusion between [Respondent's] accounts due to the change in imprinted names on temporary checks."<sup>3</sup> Wells Fargo understood that having multiple accounts "can be confusing without recognizing the imprinted name on the face of the check you are actually trying to write the check on."

In 2016, OCTC requested information from Respondent regarding the circumstances surrounding the insufficient funds in his CTA. On October 19, 2016, OCTC sent an email to Respondent requesting his "CTA journal, ledger cards, and monthly reconciliation for August 1, 2015 to November 30, 2015." On October 19, 2016, Respondent provided his account journal, client ledgers and reconciliation from August 2015 through October 2015.

On October 20, 2016, OCTC sent Respondent an email requesting his CTA reconciliations and account journals for June and July 2015. On the same date, Respondent sent OCTC an email objecting "to providing information outside the scope of the period subpoenaed." In addition, Respondent stated he needed "more notice and the ability to discuss [the additional information requested] with counsel." Thereafter, OCTC sent Respondent three

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<sup>3</sup> Respondent maintained more than one bank account at Wells Fargo.



emails regarding the additional information requested, and Respondent replied to each email but failed to provide OCTC with his June and July 2015 CTA account information as requested.

### **Conclusions**

#### ***Count Two - (Rule 4-100(A)(2) [Failure to Timely Withdraw Funds])***

OCTC charged Respondent with willfully violating rule 4-100(A)(2) by failing to timely withdraw \$3,211.95 from his CTA once his interest in those funds became fixed. Rule 4-100(A)(2) requires an attorney to withdraw funds undisputedly belonging to the attorney or firm from his CTA at the “earliest reasonable time” after the attorney’s right to those funds becomes fixed. Respondent received \$3,211.95 in client funds on March 1, 2015. He deposited the funds into his CTA on the same date. Respondent’s interest in the \$3,211.95 became fixed on March 1, 2015, but Respondent did not withdraw his fees until May 29, 2015. Respondent admitted culpability, and the court finds Respondent culpable of willfully violating rule 4-100(A)(2).

#### ***Count Four - (Rule 4-100(A)(2) [Failure to Timely Withdraw Funds])***

OCTC charged Respondent with willfully violating rule 4-100(A)(2) by failing to timely withdraw the \$2,000 from his CTA once his interest in those funds became fixed. Respondent received \$2,000 from his client C.C. on March 11, 2015, and he deposited those funds into his CTA. On the same date, Respondent’s fees of \$2,000 became fixed, yet Respondent failed to withdraw \$300.00 of those fees, and they remained in his CTA. Respondent admitted culpability, and the court finds Respondent culpable of willfully violating rule 4-100(A)(2).

#### ***Count Five - (§ 6068, subd. (i) [Failure to Cooperate])***

The NDC alleges that Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to OCTC’s October 19, 2016 and October 20, 2016 emails. 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. Here, Respondent provided his CTA journal, ledger cards, and monthly reconciliations as OCTC requested in its October 19, 2016 email. However, although Respondent remained in communication with OCTC, Respondent failed to provide the CTA information as requested by OCTC in its October 20, 2016 email. Thus, Respondent is culpable of willfully violating section 6068, subdivision (i), by failing to cooperate.

***Count Six - (Rule 4-100(A) [Commingling Personal and Client Funds])***

OCTC charged Respondent with willfully violating rule 4-100(A) by paying his personal expenses from his CTA. Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. The use of a trust account to pay personal and business expenses is a clear violation of rule 4-100(A). (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426.) Respondent paid his personal expenses from funds in his CTA on at least nine separate occasions from February 2015 through September 2015. As such, the court finds Respondent willfully violated rule 4-100(A).

Although Respondent admitted to the misconduct in Count Six, he maintains that he committed the rule 4-100(A) violation through no fault of his own. Respondent contends that Wells Fargo's failure to imprint "IOLTA ACCT" on the front of his checks caused him to violate the rule because he has more than one account at Wells Fargo and he confused his personal account with his CTA. The court rejects Respondent's contention because three of the checks that Respondent wrote from his CTA to pay his personal expenses had "CA IOLTA ACCT" imprinted on the front.

***Count Seven - (Rule 4-100(A) [Commingling Personal and Client Funds])***

The NDC alleged that Respondent violated rule 4-100(A) by commingling his personal funds with client funds in his CTA. Respondent deposited his personal funds into his CTA on 14 occasions from March 2015 through September 2015. Thus, Respondent is culpable of violating rule 4-100(A).

Although Respondent admitted that he committed the misconduct in Count Seven, he asserts that the tellers at Wells Fargo caused his rule violation. Respondent contends that the tellers at Wells Fargo completed the deposit slips and deposited the funds into his CTA rather than his business or personal account. The court rejects Respondent's contention. Rule 4-100(A) is "violated merely by an attorney's failure to deposit and manage trust account money in the manner designated by the rule. [Citation.] Furthermore, while an attorney cannot be held responsible for every detail of office operations, he or she has a 'personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds.' [Citation.]" (*In the Matter of McKiernan, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 425-426.)

**Facts**

**Case No. 16-O-12919 – The Jabbar Matter**

Almas Jabbar hired Respondent to represent her in *Weiss Law PC v. Almas Akbari Jabbar*, Alameda County Superior Court case No. HGI 5756959. On June 18, 2015, the superior court issued a case management order that set a pretrial conference for September 11, 2015; required the parties to file any motions in limine, a trial brief, witness lists, and exhibit lists at least five days before the pretrial conference; and set the trial for September 21, 2015, at 9:30 a.m. Respondent received the superior court order.

On August 24, 2015, the superior court issued an order that required Respondent to file pretrial documents on September 4, 2015; appear in person at the pretrial conference on September 11, 2015; and appear in person at trial on September 21, 2015. Respondent received the superior court order.

On August 26, 2015, the superior court issued a tentative case management order directing Respondent and opposing counsel to appear in person for the previously scheduled pretrial conference. The court also ordered that all pretrial filings were due on or before September 4, 2015.<sup>4</sup> Respondent received the tentative case management order.

Respondent did not to file any pretrial documents, and he failed to appear at the September 11, 2015 pretrial conference. In addition, neither he nor Jabbar were present at trial on September 21, 2015.

Instead of appearing at trial on September 21, 2015, at 9:30 a.m., Respondent sent attorney Bernadette Valdellon to appear on his behalf. Valdellon was not prepared to go forward with the trial. The superior court noted that Jabbar and her attorney of record failed to appear “at the time of pre-trial and trial, and no pre trial [sic] documents were filed or received as directed in the tentative case management order published on the register of actions on 8/26/2015.” The court ruled that the case would proceed as a “prove up” hearing. Thereafter, the plaintiff made an oral motion to strike Jabbar’s answer and enter a default. The court asked if Valdellon objected to the motion and Valdellon responded “no.” The court found in favor of the plaintiff in the amount of \$22,872.28. Respondent arrived at court after 11:00 a.m., after the court entered Jabbar’s default.

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<sup>4</sup> California Rules of Court, rule 3.1308(a)(1) provides that “The tentative ruling will become the ruling of the court if the court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.” The court takes judicial notice of the Local Rules of the Superior Court of California, County of Alameda, rule 3.30(d), which adopts California Rules of Court, rule 3.1308(a)(1).

On October 1, 2015, Respondent filed a motion for reconsideration of the order to strike Jabbar's answer, which the superior court denied on November 18, 2015. On December 9, 2015, Respondent filed a motion to set aside the default and default judgment, which the superior court denied on February 17, 2016. On February 18, 2016, the superior court entered judgment against Jabbar and ordered her to pay plaintiff's attorney's fee as well.

### **Conclusions**

#### ***Count Eleven - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

OCTC charged Respondent with willfully violating rule 3-110(A) by failing to comply with several court orders, failing to timely submit all pretrial filings, failing to appear in person for the final pretrial conference, and failing to appear at trial. Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent admitted that he willfully violated rule 3-110(A). The court finds that by failing to submit any pretrial documents, appear at the pretrial conference and appear at trial Respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).<sup>5</sup>

#### ***Count Twelve - (§ 6103 [Failure to Obey a Court Order])***

In Count Twelve, Respondent is charged with willfully violating section 6103 by failing to comply with the superior court's June 18, 2015 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. The court's June 18, 2015 order set a pretrial conference for September 11, 2015; required the parties to file

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<sup>5</sup> The court does not consider Respondent's failure to comply with court orders as evidence of his failure to perform with competence as those facts more properly support culpability as charged in Counts Twelve through Fourteen.

any pretrial motions and documents at least five days before the pretrial conference; and set the trial for September 21, 2015, at 9:30 a.m. Respondent received the superior court order, but he: (1) failed to appear at the pretrial conference; (2) failed to file any pretrial documents or motions; and (3) failed to timely appear at trial. Respondent admitted that he is culpable of failing to comply with the court's June 18, 2015 order, and the court finds Respondent culpable of willfully violating section 6103.

***Count Thirteen - (§ 6103 [Failure to Obey a Court Order])***

In Count Thirteen, Respondent is charged with willfully violating section 6103 by failing to comply with the superior court's August 24, 2015 order. The court order required Respondent to file pretrial documents on September 4, 2015; appear in person at the pretrial conference on September 11, 2015; and appear in person at trial on September 21, 2015. Respondent received the superior court order, but he failed to comply with any of the court's directives. Respondent admitted that he is culpable of failing to comply with the court's August 24, 2015 order, and the court finds Respondent culpable of willfully violating section 6103.

***Count Fourteen - (§ 6103 [Failure to Obey a Court Order])***

In Count Fourteen, OCTC charged Respondent with willfully violating section 6103 by failing to comply with the superior court's August 26, 2015 tentative case management order.<sup>6</sup> The court directed Respondent to appear in person for the previously scheduled pretrial conference and ordered that all pretrial filings were due on or before September 4, 2015. Respondent did not to file any pretrial documents, and he failed to appear at the September 11, 2015 pretrial conference. Respondent received the superior court order, but he failed to comply with any of the court's directives. Respondent admitted that he is culpable of failing to comply

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<sup>6</sup> Pursuant to California Rules of Court, rule 3.1308(a)(1) and Local Rules of the Superior Court of California, County of Alameda, rule 3.30(d), the tentative ruling became final.

with the court's August 26, 2015 order, and the court finds Respondent culpable of willfully violating section 6103.

**Aggravation<sup>7</sup>**

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

**Prior Record of Discipline (Std. 1.5(a).)**

Respondent has three prior records of discipline.

**Robinson I**

Pursuant to an order of the State Bar Court on February 23, 1993, Respondent was publicly reprimanded. Respondent stipulated that he failed to perform legal services with competence and failed to communicate in a single client matter. The misconduct took place from 1985 until 1988. *Robinson I* was based on Respondent's filing of an improper claim against a government entity and the failure to cure the error before the limitations period had run. Respondent's misconduct was aggravated by his three years of practice at the time his wrongdoing began. The mitigating factors were Respondent's cooperation, lack of experience, and establishing the Champs Foundation in 1985, which is a nonprofit organization with the mission to better equip underprivileged youngsters with the tools to leave constructive, fulfilling lives.

**Robinson II**

On January 12, 1995, the Supreme Court ordered that Respondent be suspended from the practice of law for six months, stayed, and placed on probation for two years. *Robinson II* involved a single client matter where Respondent stipulated to failing perform legal services with competence and failing to keep his clients reasonably informed of significant developments.

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<sup>7</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

*Robinson II* was based on Respondent's repeated failure to appear at court hearings that occurred primarily in 1992. His clients' action was dismissed for failure to prosecute within the statutory period. Respondent's misconduct was aggravated by *Robinson I*.

### ***Robinson III***

On February 8, 2010, the Supreme Court ordered that Respondent be suspended from the practice of law for four years, stayed, and placed him on probation for four years subject to conditions, which included a two-year period of suspension and until he paid restitution and provided proof of his rehabilitation, fitness to practice, and learning and ability in the general law. In *Robinson III*, Respondent was found culpable of misconduct that occurred in 2005 and 2006 in two client matters. In the first client matter, Respondent failed to provide his client with periodic billing statements and a final accounting. In the second client matter, Respondent failed to perform legal services with competence. A default judgment was entered against Respondent's client after Respondent failed to appear at trial on his client's behalf. Respondent's misconduct was aggravated by *Robinson I* and *II*, multiple acts of wrongdoing, significant harm to his client, and indifference; but tempered by Respondent's kidney disease and transplant, good character, and extensive community service.

Respondent's prior record of discipline is a significant aggravating factor. His three priors and his current disciplinary matter involve areas of common concern – Respondent failed to perform legal services with competence, which caused his clients to forfeit their potential legal claims and defenses in court. As in this current disciplinary proceeding, Respondent's priors demonstrate that Respondent fundamentally failed to fulfill his ethical obligations to his clients.

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

Respondent commingled his personal and client funds in his CTA, paid personal expenses from his CTA, failed to perform legal services with competence, failed to cooperate



with OCTC and failed to obey three court orders. The court assigns moderate aggravation because the trust account violations were the same repeated violations, and the three court orders that Respondent violated were separate court orders requiring him to carry out the same obligations.

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

Respondent fails to appreciate the wrongfulness of his misconduct. During these proceedings, Respondent attempted to blame Jabbar for the judgment entered against her. He introduced evidence that the settlement conference judge in the superior court action informed Jabbar about the trial date and that Jabbar was late to court on the date of trial. He tried to paint the picture that Jabbar was at fault for the entry of the default judgment, but he failed to recognize that as her attorney, Respondent had the ethical responsibility to be in court and be there on time. Respondent's blame of Jabbar for his own ethical shortcomings demonstrates he is unwilling or unable to acknowledge or appreciate the true nature of his conduct. Significant weight is assigned to Respondent's lack of insight because it makes him an ongoing danger to the public and legal profession. (*In the Matter of Layton* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].)

**Mitigation**

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

**Good Character (Std. 1.6(f).)**

Respondent presented character testimony from eight witnesses. Respondent's character witnesses consisted of four attorneys, former clients, friends and prior individuals that Respondent has mentored. Respondent's character witnesses demonstrated a general

understanding of the alleged misconduct and attested to his honesty, good character, and integrity. Respondent's character witnesses also praised his compassion and dedication to serving underserved communities and his commitment to mentorship. The witnesses especially lauded his encouragement of underserved communities to pursue a legal profession.

Respondent's good character evidence warrants great weight in mitigation. (See *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 811 [seven character witnesses that knew the attorney well warranted great weight].)

#### **Commitment to Community Service**

Respondent has provided clear and convincing evidence that he is committed to community service. He mentors young people, provides pro bono work and is the founder of the Champs Foundation. Respondent's organization mentors youth through football and offers camps. Respondent's character witnesses also offered testimony regarding his dedication to his community service endeavors. Respondent has demonstrated the "zeal in undertaking pro bono work" that constitutes a mitigating factor. (See, e.g., *Rose v. State Bar* (1989) 49 Cal.3d 646, 665-666 [numerous pro bono activities seeking to advance the rights of handicapped people, lecturer for the California Continuing Education of the Bar, guest lecturer at Loyola of Los Angeles School of Law, recipient of certificate for outstanding contributions, etc.].) However, the mitigating weight of Respondent's community service is somewhat diminished because he has already been afforded mitigation in his prior discipline matters for his community service activities. Thus, the court assigns moderate weight to Respondent's community service.

In sum, the court finds that Respondent's mitigation is outweighed by the aggravating factors.

## Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).)

Respondent's misconduct is governed by standards 2.2(a) (three-month actual suspension for commingling), 2.7(c) (suspension or reproof for failing to perform with competence), 2.12(a) (disbarment or actual suspension for violating a court order), and 2.12(b) (reproof for failing to cooperate). Because the court is required to apply the most severe of the applicable standards (std. 1.7(a)), standards 2.2(a) and 2.12(a) are the most apt.

Standard 2.2(a) provides that actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds. Standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney . . . is actual suspension or disbarment. At a minimum, Respondent's misconduct calls for a three-month actual suspension.

The court must also consider standard 1.8(b). Standard 1.8(b) provides that, if a member has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in any of the prior matters; (2) the prior and current matters demonstrate a pattern of misconduct; or (3) the prior and current matters demonstrate an unwillingness or inability to conform to ethical responsibilities. Respondent's case meets at least two of these criteria. In *Robinson III*, Respondent was actually suspended for two years and until he complied with standard 1.2(c)(1). Additionally, an overarching theme of Respondent's current and former misconduct is his failure to perform legal services with competence and his indifference. This demonstrates his inability or unwillingness to conform to ethical responsibilities.

Section 1.8(b) provides for a departure from the presumptive discipline of disbarment, where "the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct." The exception does not apply to this case because the significant aggravating factors outweigh Respondent's mitigation, and the prior and current misconduct occurred at different time periods.

The court is mindful that disbarment is not mandatory in every case of two or more prior disciplines, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate].) But, Respondent has provided no reason for this court to depart from the standards. (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776 [if the court deviates from the presumptive discipline, the court must explain the reasons for doing so].)

At the time Respondent committed the misconduct in this matter, the Supreme Court had already sanctioned Respondent with a two-year actual suspension and until he provided proof of

his rehabilitation, fitness to practice, and learning and ability in the general law. Even with that substantial suspension and two other prior disciplines, Respondent has committed the same misconduct that underlies those priors. In addition to failing to perform legal services with competence, Respondent violated his CTA obligations, failed to cooperate with OCTC and failed to obey court orders. The Supreme Court has stated that “[o]ther than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney” than willful violation of court orders. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Thus, “because the lesser sanctions of probation and suspension ‘have proven inadequate to prevent [Respondent] from continuing his injurious behavior towards the public’ [citation], [this court] would be remiss in [its] duty to the public, the legal profession and the courts if [it] were to approve any sanction less severe than disbarment. [Citations.]” (*Twohy v. State Bar* (1989) 48 Cal.3d 502, 516.)

In light of Respondent’s three prior records of discipline, his unwillingness or inability to conform to his ethical obligations, and the aggravating factors that outweigh the mitigating circumstances, the court adopts the presumptive discipline suggested by standard 1.8(b) and recommends that Respondent be disbarred to protect the public, the courts, and the legal profession.<sup>8</sup>

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<sup>8</sup> See e.g., *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 (disbarment where attorney with two prior disciplines incompetently represented several clients and had multiple aggravating factors and no mitigation); *Kent v. State Bar* (1987) 43 Cal.3d 729 (disbarment where attorney with three prior disciplines performed with incompetence and had no compelling mitigation).

## RECOMMENDATIONS

### Discipline - Disbarment

It is recommended that Respondent Kurt Kevin Robinson, State Bar Number 108095, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

### California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>9</sup>

### Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

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<sup>9</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

**Order of Involuntary Inactive Enrollment**

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

Dated: August 9, 2018

  
\_\_\_\_\_  
LUCY ARMENDARIZ  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 9, 2018, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KURT KEVIN ROBINSON  
38930 BLACOW RD STE-B2  
FREMONT, CA 94536

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

Danielle A. Lee, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 9, 2018.

  
\_\_\_\_\_  
Vincent Au  
Court Specialist  
State Bar Court