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OCT 04 2018

STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-O-11865-YDR
)	
RICK L. RAYNSFORD,)	AMENDED DECISION AND
)	ORDER OF INVOLUNTARY
A Member of the State Bar, No. 105157.)	INACTIVE ENROLLMENT
_____)	

Introduction¹

Rick L. Raynsford (Respondent) is charged with seventeen counts of misconduct in a single client matter. Specifically, Respondent is charged with aiding in the unauthorized practice of law (UPL); engaging in UPL; failing to comply with the laws of California; failing to maintain client funds in his client trust account (CTA); misrepresentation by omission; misappropriation; failing to obey a court order; failing to comply with the conditions of his probation; collecting an illegal advanced fee; failing to include the written statement required by Civil Code section 2944.6; and commingling. The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.² In his response to the Notice of Disciplinary Charges (NDC), Respondent admitted culpability as to the

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.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

misappropriation alleged in Count Eleven.³ This court finds, by clear and convincing evidence, that Respondent is culpable of 11 counts of misconduct. In light of his serious misconduct, as well as the evidence in aggravation and the lack of mitigation, the court recommends that Respondent be disbarred.

Significant Procedural History

On March 1, 2018, OCTC initiated this proceeding by filing a NDC in case number 16-O-11865. Respondent filed a response to the NDC on April 16, 2018. The parties filed a stipulation as to admission of documents on June 26, 2018.

Trial was held from June 26, 2018, through June 28, 2018. OCTC was represented by Deputy Trial Counsel Jaymin Vaghashia. Respondent represented himself. On the last day of trial, OCTC filed a motion to amend Count Thirteen of the NDC to conform to proof. Respondent filed an opposition to the motion to amend on July 6, 2018. For the reasons set forth below, this court denies OCTC's motion to amend.

The case was submitted for decision on July 6, 2018. OCTC filed its closing argument brief on July 20, 2018. Respondent filed his closing argument brief on July 23, 2018.

Motion to Amend

On June 28, 2018, OCTC filed a Motion to Amend Notice of Disciplinary Charges to Conform to Proof (motion to amend). The motion to amend seeks to amend Count Thirteen by adding an allegation that Respondent transferred funds from his CTA to Forgotten Soldiers, LLC. Respondent filed an opposition to the motion to amend on July 6, 2018.

³ Paragraph 23 of the NDC alleges that “[B]etween on or about April 9, 2013 and on or about May 14, 2013, Respondent willfully and intentionally misappropriated \$127,527.05, that Respondent’s client was entitled to receive. Respondent thereby committed an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.” During trial, Respondent sought to rescind the paragraph 23 admission as to culpability regarding paragraph 23. Nevertheless, as discussed *infra*, this court found Respondent culpable of the charges set forth in paragraph 23 of the NDC.

Rule 5.44(C) of the Rules of Procedure of the State Bar Court states that the court may permit an amendment of the initial pleading during or after a contested trial. The trial court has wide discretion when it comes to motions to amend pleadings at trial. (*Burr v. Pacific Indemnity Co.* (1942) 56 Cal.App.2d 532, 560.)

OCTC's motion to amend was filed on the last day of trial. OCTC has had Respondent's CTA records since June 1, 2016, and it had the opportunity to ascertain information about Forgotten Soldiers, LLC during the discovery process. OCTC has failed to explain why it failed to do so. Moreover, springing this on Respondent at the very end of trial is unduly prejudicial.

Accordingly, OCTC's motion to amend is **DENIED**, no good cause having been shown.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1982, and has been a member of the State Bar of California at all times since that date.

Case No. 16-O-11865 – The Ramos Matter

Facts

A dispute arose between Ariel Ramos and his mortgage loan servicer, American Home Mortgage Servicing, Inc. (American Home)⁴ when Ramos fell behind in his mortgage payments after his lender added homeowner's insurance to Ramos's mortgage. Initially, Ramos attempted to bring the loan current, but the lender refused to accept Ramos's payments because the lender had already started the foreclosure process. Ramos hired Southland Law Center (Southland) on May 3, 2011. On May 26, 2011, Ramos executed a retainer agreement with Southland for Southland to represent him "in negotiating for a postponement of a trustee sale on a mortgage"

⁴ During the time frame relevant here, in May 2012, American Home changed its name to Homeward Residential. However, for the sake of continuity and, as Homeward Residential was known and initially engaged in transactions with Ramos under the name of American Home, this court will refer to both Homeward and American Home Mortgage Servicing, Inc., as American Home.

for Ramos's Oceanside home. Respondent, the only lawyer employed by Southland, entered into the fee agreement with Ramos on behalf of Southland, which he operated from 2011 through 2014. In pertinent part, the fee agreement between Ramos and Southland provided:

Client hires . . . Firm to represent Client in negotiating for a postponement of a trustee sale on a mortgage regarding property known as the address of: 365 La Soledad Way, Oceanside, CA 92057 for Homeowner known as Ariel Ramos.

. . . .

[C]lient agrees to pay the firm a flat fee for the ordinary services in connection with the referenced matter a fee of \$1,500.00. Client agrees fees are earned upon Firm successfully negotiating with Lender to postpone a trustee's sale, for the above described property. **This matter is a contingency matter whereby Client only owes the \$1,500.00 flat fee upon Firm successfully negotiating with Lender a sales postponement.**

. . . .

CLIENT SHALL BE ENTITLED TO A FULL REFUND FOR THE ABOVE DESCRIBED PROPERTY IF A POSTPONEMENT IS UNSUCCESSFUL. CLIENT SHALL PAY FEES UPON THE ACHIEVEMENT OF A POSTPONEMENT OF A FORECLOSURE/TRUSTEES SALE.

(Emphasis in original.)

On May 6, 2011, Respondent deposited a check from Ramos, payable to Southland in the amount of \$3,000. The memo of the check, dated May 3, 2011, reflected that it was for a "retainer fee." Respondent also deposited checks from Ramos in the amount of \$1,500 that were dated June 1, July 3, August 5, August 29, September 28, and November 1, 2011. Each check was annotated with the words "Monthly Service/Retainer" or "Retainer Fee."

At the time that Ramos retained Southland, Scott Samuel was a Southland employee. Samuel employed Mike Hatcher, who provided intake services to Southland clients. Samuel's duties included "taking inbound inquiry calls, setting up appointments," interviewing and screening prospective clients and accepting the prospective client if the individual met certain criteria. Hatcher's duties entailed taking inbound inquiry calls and communicating with

prospective clients. Respondent did not closely monitor Samuel's and Hatcher's work. Neither Samuel nor Hatcher was an attorney admitted to practice law in California.

Ramos met with Hatcher when he first visited Southland in early May 2011. Hatcher "accepted" Ramos as a client and Ramos paid Southland \$3,000 that day. Hatcher advised Ramos to file an emergency Chapter 7 bankruptcy petition to stop the trustee's sale and told Ramos which documents he needed to file the petition. Hatcher also told Ramos that he needed to provide Hatcher with the \$1,799 bankruptcy filing fee as quickly as possible. Ramos forwarded a cashier's check in the amount of \$1,799 to Hatcher on May 16, 2011, as Hatcher requested.⁵

On May 6, 2011 at 1:42 p.m., Samuel sent Ramos an email informing Ramos, "worse case, we may have to do an emergency bankruptcy filing to stop the sale. This will buy us the necessary time we need. I believe Mike Hatcher told me that he discussed this with you." At 2:13 p.m., Ramos inquired, "how does the attorney, Rick Raynsford want to approach this? Time is extremely of the essence. Please let me know." At 5:54 p.m., Samuel responded "Rick concurs that an emergency bankruptcy chapter 7 filing will be the best way. It will buy us 15-30 days before it is dismissed so we will file it the morning of the sale. I will have Mike get you the necessary documentation next week so we can have everything prepared and ready to file ahead of time."

On or about June 23, 2011, Respondent filed a lawsuit on Ramos's behalf, captioned *Ariel V. Ramos v. American Home Mortgage Servicing Inc., et al.*, San Diego Superior Court case No. 37-2011-00055649-CU-OR-NC (the American Home case).

⁵ This cashier's check from Ramos was made payable to Southland Law Center: Attn. Mike Hatcher.

American Home was a corporation headquartered in Texas, with a branch office in Irvine, California. At that time, C. T. Corporation, located in Los Angeles, California, was listed as American Home's agent for service of process on the California Secretary of State website.

Initially, Respondent attempted to personally serve the American Home case summons, civil cover sheet and complaint (the documents) at American Home's branch office in Irvine, California. When the branch manager refused to accept the documents, Respondent had the documents mail-served to the American Home branch office. The documents were mailed back to Respondent with a note directing him to serve the documents on CT Corporation at an address in Dallas, Texas.

Bryan Raynsford, Respondent's son, filled out the proof of service. He stated under penalty of perjury that the documents had been served by substituted service on July 4, 2011, and by mail-service on July 5, 2011.

On September 27, 2011, Respondent filed his first request for entry of default in the American Home case. However, the court clerk rejected Respondent's first request stating that the proof of service was defective because it did not name the authorized agent for service of process.⁶ On March 23, 2012, Respondent filed a second request for entry of default against American Home that was virtually identical to the first request. Nevertheless, default was entered against American Home on the date the second request was filed.

On July 3, 2012, Respondent filed a request for entry of judgment against American Home on behalf of Ramos, in the amount of \$254,155. The request for judgment was supported by a declaration executed by Ramos. The superior court entered judgment in favor of Ramos on July 11, 2012. A writ of execution against American Home was issued on October 26, 2012. Pursuant to the default judgment and writ of execution, American Home was given notice of a

⁶ In December 2011, Ramos was evicted from his home after it was sold at auction.

levy on its bank account. American Home's bank account was levied in the amount of \$254,190 on November 28, 2012.

Respondent received a \$254,178 check dated February 14, 2013, made payable to Southland Law Center on behalf of Ramos. The check was from the County of Orange Sheriff's Department as the trustee of the funds. The funds were received by Respondent pursuant to the judgment obtained in the American Home case. On February 19, 2013, Respondent deposited the levied funds into his Wells Fargo Client Trust Account ending in xxxx2379 (CTA).

On February 21, 2013, Respondent disbursed \$126,650.95 to Ramos. Respondent retained \$127,527.05 as his attorney's fees.

After learning about the levy, counsel for American Home, David Chafflin, Esq., forwarded a letter to Respondent on January 3, 2013, which requested that Respondent stipulate to setting aside the default and to returning the levied funds due to defective service on American Home. Respondent did not respond to Chafflin's letter.

On January 14, 2013, American Home filed and served a motion to set aside the entry of default, to set aside the default judgment and to a return of the levied funds. American Home argued that Respondent failed to properly serve American Home, a corporation, pursuant to California Code of Civil Procedure section 416.10 because Respondent did not serve American Home's agent for service of process.

On March 22, 2013, the superior court heard American Home's motion to set aside the default. Respondent appeared at the default hearing on behalf of Ramos. At no time before or during the March 22 hearing did Respondent inform the court that Respondent had disbursed \$126,650.95 of the \$254,178 levied funds to Ramos and that Respondent had kept \$127,527.05 of the funds in his CTA as Respondent's attorney's fees.

On March 22, 2013, the superior court granted American Home's motion to set aside the default. The minute order stated that "plaintiff [Ariel Ramos] is directed to return the \$254,190.00 from the defendant's bank account." Plaintiff was ordered to return the funds by April 11, 2013.⁷ The court further stated "[o]n this record, the Court is not persuaded that defendant [American Home] was ever properly served with the summons and complaint." At the time of the superior court order, the balance of Respondent's CTA was \$80,134.46, and Respondent began transferring funds out of his CTA into his business operating account and other accounts at Wells Fargo.

On April 3, 2013, American Home filed an ex parte application for a temporary restraining order seeking to enjoin Ramos and Respondent from disbursing any of the levied funds. American Home also sought an order to show cause regarding expenditure of the levied funds and an order modifying the March 22, 2013 order to "state that Ramos and his counsel are jointly and severally liable for the full amount of the levied funds." On April 4, 2013, the court issued an order enjoining Ramos from dissipating any of the levied funds and corrected the date for return of the levied funds to April 1, 2013, not April 11, 2013. The April 4, 2013 order did not address the levied funds in Respondent's possession.

On April 10, 2013, Respondent electronically deposited \$4,000 into his CTA from his firm's business checking account.

The court issued a further order on May 9, 2013, which modified the March 22 order by stating "in addition to Plaintiff, Ariel Ramos ('Ramos') the [March 22, 2013] order also applies to Plaintiff's counsel, Rick Raynsford, Esq., ('Raynsford') and his law firm Southland Law

⁷ The March 22, 2013 order stated that Ramos was to return the total amount of the levied funds by April 11, 2013. There was a dispute as to whether, during the course of the hearing, the court ordered Ramos to return the levied funds by April 1, 2013 or April 11, 2013. The true date is irrelevant, however, none of the funds were returned to American Home by either date.

Center ('Southland').” The order stated that Raynsford and Southland are also ordered to return the levied funds in the amount of \$254,190.00 by April 1, 2013 and that Ramos, Respondent and Southland were “enjoined from dissipating any of the funds in the amount of \$254,190.00 wrongfully levied.” They were ordered to return the entire amount of the levied funds to American Home immediately.

While the American Home case was pending, pursuant to a Supreme Court order in case No. S200321, Respondent was suspended from the practice of law for two years, execution stayed, and he was placed on probation for two years subject to a 60-day actual suspension. The order was filed on April 22, 2013, and Respondent’s period of actual suspension from the practice of law was from May 22, 2013, through July 20, 2013. Respondent received the Supreme Court order. On the afternoon of the first day of his actual suspension, Respondent had various documents filed by fax in the American Home case: two pleadings; a notice of hearing on demurrer; and a notice of motion and special motion to strike American Home’s cross-complaint.

During his period of actual suspension, Respondent communicated with Ramos about various legal matters. On June 3, 2013, Respondent communicated with Ramos regarding declarations for Ramos and his sister to execute. In addition, on June 21, 2013, Respondent communicated with Ramos about a motion to quash a subpoena for Ramos’s bank records.

Shortly before Respondent was actually suspended, he associated-in Robert Krup, Esq. to represent Ramos in the American Home case. Initially, Respondent asked Krup to represent Ramos during Respondent’s two-month actual suspension; however, Krup only represented

Ramos until May 10, 2013. Krup informed Ramos that he would have to withdraw from Ramos's representation due to a conflict of interest.⁸

The parties continued to actively litigate the American Home case until March 11, 2015. Thereafter, Ramos reached a compromise with American Home, and Ramos returned an agreed-upon amount of the levied funds that Respondent disbursed to Ramos.

Between May 8, 2013, and January 10, 2014, Respondent issued checks or made electronic withdrawals from funds in his CTA for the payment of the various personal expenses, as set forth below.

Payee	Withdrawals/Checks	Withdrawal Amount	Date
Askr, Inc.	Online Transfer	\$ 31,662.74	02/20/13
Susan Raynsford	Check #2338	\$ 3,100.00	05/08/13
Susan Raynsford	Check # 2373	\$ 2,000.00	01/10/14

The online transfer to Askr, Inc. was a payment for advertising. The payments to Susan Raynsford were for spousal and child support.

Respondent's CTA balance was \$8,909.46 on May 9, 2013. On May 31, 2013, the balance of Respondent's CTA fell to \$1,659.46.

Respondent never returned any of American Home's funds.

Conclusions

Count One – Section 6106.3 [Violation of Civil Code § 2944.6(a)]

Respondent is charged with willfully violating section 6106.3. Section 6106.3, subdivision (a), provides: "It shall constitute cause for the imposition of discipline of an attorney

⁸ Krup's fees for Ramos's representation were paid by Respondent. By May 2013, Ramos began to make disparaging remarks about Respondent. Those remarks led Krup to believe that an unavoidable conflict of interest had arisen which required him to cease to represent Ramos.

within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 of the Civil Code.” Section 2944.6 provides:

- (a) Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the

borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

There is a lack of clear and convincing evidence establishing that Respondent is culpable of willfully violating section 6106.3. The fee agreement between Respondent and Ramos indicates that Respondent was hired to negotiate the postponement of the trustee’s sale of Ramos’s property. The legal service contracted for was to postpone the trustee’s sale, and Ramos and Respondent testified that Respondent was only hired for that purpose. After Respondent was hired on May 26, 2011, he filed a lawsuit on June 23, 2011, but at no time while the lawsuit was pending did Respondent attempt to modify Ramos’s loan; in fact, there is no evidence in the record indicating the Respondent ever sought to modify Ramos’s loan. Because there is a lack of clear and convincing evidence that Respondent’s legal services were performed to obtain a loan modification or other mortgage loan forbearance on Ramos’s behalf, Respondent was not required to provide the notice outlined in Civil Code section 2944.6. As such,

Respondent is not culpable of willfully violating section 6106.3.⁹ Count One is dismissed with prejudice.

Count Two –Section 6068, Subdivision (a)¹⁰ [Violation of Civil Code Section 2944.7(a)(1)]
Count Three –Rule 4-200(A) [Violation of Civil Code Section 2944.7(a)(1)-Illegal Advanced Fee]
Count Four-Former Section 6106.3 [Section 2944.7(a)(1)[Illegal Advanced Fee]

Count Two charges Respondent with willfully violating section 6068, subdivision (a), by collecting a fee of \$1,500 from Respondent in advance of fully performing each service he contracted to perform for Ramos, in violation of Civil Code section 2944.7(a)(1). Civil Code section 2944.7 (a)(1) provides:

- (a) Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
 - (1) Claim, demand, charge, collect or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

As set forth above, Respondent did not negotiate or attempt to negotiate a loan modification or other form of mortgage loan forbearance on Ramos's behalf. Respondent and Ramos contracted for Respondent to negotiate the postponement of the trustee's sale of Ramos's home. Both Ramos and Respondent testified that the purpose of Respondent's representation was to postpone the sale of Ramos's home, and at no time during Respondent's representation did Respondent seek to modify Ramos's mortgage loan. Thus, there is a lack of clear and convincing evidence that Respondent failed to support the laws of California, in willful violation

⁹ Since it has not been established by clear and convincing evidence that Respondent violated Civil Code section 2944.7, the court need not delve into the ensuing issue of whether or not Respondents may be found culpable of violating a repealed statute.

¹⁰ Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state."

of section 6068, subdivision (a), because Respondent did not violate Civil Code section 2944.7(a)(1). Count Two is dismissed with prejudice.

In Count Three, OCTC charged Respondent with willfully violating rule 4-200(A), which prohibits an attorney from charging, collecting, or entering into an agreement for an illegal or unconscionable fee. OCTC alleged that the \$1,500 flat fee was illegal because it violated Civil Code section 2944.7(a)(1). In Count Four, OCTC charged Respondent with willfully violating former section 6106.3, which provides, "It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil Code." As set forth above, because there is no clear and convincing evidence that Respondent willfully violated Civil Code sections 2944.6 or 2944.7, Respondent is not culpable of violating rule 4-200(A) or former section 6106.3. Counts Three and Four are dismissed with prejudice.

Count Five - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

Count Five charges Respondent with willfully violating rule 1-300(A) by aiding Mike Hatcher, a non-attorney, in UPL when he permitted Hatcher to give legal advice to Ramos. Rule 1-300(A) provides that an attorney must not aid any person or entity in UPL. Respondent willfully violated rule 1-300(A) by failing to supervise Hatcher, which allowed Hatcher to give Ramos legal advice regarding the filing of an emergency Chapter 7 bankruptcy petition.

Count Six - (Rule 1-300(A) [Aiding In the Unauthorized Practice of Law])

Count Six charges Respondent with willfully violating rule 1-300(A) by aiding Scott Samuel, a non-attorney employed in Respondent's office, in UPL, when Respondent permitted Samuel to give legal advice to Ramos. Respondent willfully violated rule 1-300(A) by allowing Samuel to give Ramos legal advice regarding the filing of an emergency bankruptcy petition. In

addition, Respondent knowingly aided in UPL when Samuel told Respondent about the legal advice he had given Ramos, and Respondent confirmed the propriety of that legal advice.

Count Seven - (§6068, subd. (a) [Breach of Fiduciary Duty]

In Count Seven, OCTC alleged that Respondent willfully violated section 6068, subdivision (a), by failing to maintain in trust, safeguard or return to the client or American Home, the levied funds in Respondent's possession after Respondent's client, Ramos, was enjoined from dissipating the levied funds.

After Respondent obtained levied funds from American Home's bank account, on March 22, 2013, the superior court's minute order directed Ramos to return the entire \$254,190 in levied funds to American Home by April 11, 2013. Initially, Respondent retained \$127,527.05 as his attorney's fees, and by the time the superior court issued the order, Respondent maintained no more than \$80,134.56 of the levied funds. The superior court amended its order on May 9, 2013, enjoining Respondent and Ramos from dissipating any of the funds "wrongfully levied" and ordering Respondent and Ramos to return the levied funds to American Home. On May 9, 2013, Respondent's CTA balance was \$8,909.46. At its lowest, Respondent's CTA balance fell to \$1,659.46 on May 31, 2013. Respondent has never returned any of American Home's funds.

Once the superior court ordered Ramos to return the entire \$254,190, the funds Respondent retained as attorney's fees no longer belonged to Respondent, they belonged to American Home. Respondent had a fiduciary duty to American Home to maintain the funds that remained in his CTA. Instead of maintaining the funds and returning them as ordered, Respondent disbursed American Home's funds to himself or to other third parties for his benefit. This was a violation of the fiduciary duty Respondent had to American Home. "An attorney's violation of the duty arising in a fiduciary or confidential relationship warrants discipline even in the absence of an attorney-client relationship." (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.)

Thus, Respondent is culpable as charged in Count Seven of breaching his fiduciary duty to American Home, thereby willfully violating section 6068, subdivision (a).¹¹

Count Eight – (§ 6106 [Moral Turpitude-Misrepresentation by Omission])

In Count Eight, OCTC charged Respondent with intentional dishonesty, in willful violation of section 6106. OCTC alleged that Respondent appeared at a hearing during which his client was ordered to return all of the \$254,178 in levied funds, yet Respondent failed to inform the court of the material fact that Respondent had disbursed to himself \$127,527.05 of the levied funds as attorney's fees.

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In his response to the NDC, Respondent admitted that he had disbursed \$127,527.05 of the levied funds to himself on or about February 21, 2013. Respondent did not, before or during the March 22, 2013 hearing, inform the court that \$127,527.05 of the levied funds were in Respondent's possession. By omitting disclosure of that material fact, Respondent is culpable of intentionally and willfully violating section 6106.

Count Nine - (§ 6103 [Failure to Obey A Court Order])

OCTC charged Respondent with willfully violating section 6103 by failing to comply with the superior court's April 4, 2013 order which allegedly required Respondent to return \$127,527.05 to American Home on behalf of Ramos and enjoined Respondent from dissipating any levied funds. 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

¹¹ The NDC alleged that Respondent breached his fiduciary duty to the client. Nonetheless, Respondent received adequate notice of the allegations that he failed to maintain in trust or return to the client or "the defendant [American Home]" any portion of the levied funds in his possession. (Rules Proc. of State Bar, rule 5.41(B)(2) [NDC must contain facts describing the violations in sufficient detail to permit preparation of defense].)

course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent is not culpable of violating a court order as alleged in Count Nine.

The superior court's April 4, 2013 order enjoined Ramos from dissipating any of the levied funds and corrected the initial return date of the funds as April 1, 2013, not April 11, 2013. To establish a violation of section 6103, OCTC must prove by clear and convincing evidence that the attorney wilfully disobeyed a court order, and that the order required the attorney to do or forbear an act in the course of his profession "which he ought in good faith to have done or not done." (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) Here, the order did not enjoin respondent from dissipating levied funds and did not direct Respondent to return \$127,527.05 to American Home on behalf of Ramos. Thus, the court does not find Respondent culpable of violating a court order in willful violation of section 6103. Count Nine is dismissed with prejudice.

Count Ten – (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

OCTC charged Respondent with willfully violating rule 4-100(A) by failing to maintain a balance of \$127,527.05 in his CTA on behalf of Ramos. 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 court does not find Respondent culpable of willfully violating rule 4-100(A).

On March 22, 2013, the superior court determined that American Home was not properly served with the summons and complaint and ordered Ramos to return \$254,190 to American Home. Unbeknownst to the superior court, Respondent retained one-half of the funds as attorney's fees. At the time the court ordered the return of the funds, Respondent maintained no

more than \$80,134.56 of the levied funds. Thereafter, respondent failed to maintain American Home's funds in his CTA as the superior court ordered. However, the requirements of rule 4-100(A) are "limited to client funds." (Tuft & Peck, Cal. Practice Guide: Professional Responsibility (The Rutter Group 2017) ¶ 9:307, pp. 9-58-9-59.) Respondent did not fail to maintain client funds; he failed to maintain American Home's funds. Thus, Respondent is not culpable of failing to maintain client funds in trust. Count Ten is dismissed with prejudice.

Count Eleven – (Section 6106 [Moral Turpitude-Misappropriation])

OCTC charges Respondent with a willful and intentional violation of section 6106 by misappropriating \$127,527.05.¹² Respondent is culpable of intentionally misappropriating \$127,527.05. Respondent retained \$127,527.05 of the \$254,190 in funds levied from American Home's bank account. On March 22, 2013, Respondent knew that Ramos was ordered to return the entire \$254,190 in levied funds to American Home. Even though Respondent had notice that the levied funds had to be returned to American Home, Respondent began transferring American Home's funds out of his CTA into his business checking account or another account at Wells Fargo Bank. By May 31, 2013, Respondent's CTA balance was \$1,659.46, and Respondent never repaid American Home any of the levied funds. Respondent willfully violated section 6106 by intentionally misappropriating \$127,527.05 from American Home.

Count Twelve - (Section 6103 [Failure to Obey A Court Order])

In Count Twelve, OCTC charged Respondent with failing to comply with the May 9, 2013 order which required Respondent to return \$127,527.05 to American Home on behalf of

¹² The NDC alleged that Respondent misappropriated funds from Respondent's client. However, Respondent received adequate notice of the allegations that Respondent misappropriated \$127,527.05 after he deposited \$257,148 into his CTA. (Rules Proc. of State Bar, rule 5.41(B)(2) [NDC must contain facts describing the violations in sufficient detail to permit preparation of defense].)

Ramos, in willful violation of section 6103. Respondent is culpable of willfully violating section 6103.

Respondent attempted to justify his actions regarding the defective service on American Home by testifying that the Judgment was valid because American Home was doing business in California and Ramos was not suing American Home in federal court. On the other hand, Respondent also testified that he checked the California Secretary of State website for an authorized agent for service of process for American Home but Respondent did not see that information listed so he served American Home's Irvine, California location. This court does not find Respondent's testimony on any of these conflicting statements to be credible.

The evidence is undisputed that Respondent did not obey the court's May 9, 2013 order because Respondent did not return any of the levied funds that he disbursed to himself. Moreover, to the extent Respondent held the view that the order was unenforceable, he did not challenge it. As such, Respondent failed to obey the court's May 9, 2013 order, in willful violation of section 6103.

Count Thirteen – Rule 4-100(A) [Commingling-Personal Expenses Paid From CTA]

OCTC charged Respondent with willfully violating rule 4-100(A) by paying personal expenses from his CTA. Respondent issued checks for \$3,100 and \$2,100 from his CTA to Susan Raynsford for spousal and child support. He transferred \$31,662.74 from his CTA to Askr., Inc. for an advertising payment. The evidence clearly and convincingly establishes that Respondent willfully violated rule 4-100(A) by paying personal expenses from his CTA.

Count Fourteen- Rule 4-100(A)[Commingling Personal Funds in CTA]

Count Fourteen of the NDC alleges that Respondent willfully violated rule 4-100(A) by electronically depositing \$4,000 into his CTA from his firm's business checking account on April 10, 2013. OCTC established by clear and convincing evidence that Respondent transferred

these funds into Respondent's CTA from his operations account. Respondent's explanation that the funds were deposited to the wrong account lacks credibility. As such, Respondent is culpable of commingling his personal funds in his CTA, in willful violation of rule 4-100(A).

Count Fifteen- Section 6068, Subdivision (a) [Unauthorized Practice of Law]
Count Sixteen- Section 6106 [Moral Turpitude- Unauthorized Practice of Law]¹³
Count Seventeen- Section 6068(k)[Failure to Comply With Conditions of Probation]¹⁴

Pursuant to a Supreme Court order filed April 22, 2013, Respondent was suspended from the practice of law for two years, execution of that period of suspension was stayed, and he was placed on probation for two years subject to a 60-day actual suspension. (Supreme Court case No. S200321.) Respondent received the Supreme Court order. From May 22, 2013 through July 20, 2013, Respondent was actually suspended from the practice of law.

Counts Fifteen, Sixteen, and Seventeen involve the same misconduct: Respondent engaged in the practice of law while he knew he was actually suspended from the practice of law. Respondent filed two pleadings on May 22, 2013, the first day of his actual suspension; he emailed Ramos legal advice regarding witness declarations on June 3, 2013, and June 4, 2013; and he discussed with Ramos discovery issues and motions about the production of Ramos's bank records (as reflected in his June 21, 2013 emails). Respondent willfully engaged in UPL and violated his probation condition to comply with the State Bar Act and the Rules of Professional Conduct. Respondent is culpable of all three charges. However, in determining discipline, no additional weight is assigned to Counts 15 and 17 because the misconduct underlying the moral turpitude charge in Count Sixteen supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

¹³ Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

¹⁴ Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation.

Aggravation¹⁵

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

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

Respondent has one prior discipline record. Pursuant to a Supreme Court order filed April 22, 2013, Respondent was suspended from the practice of law for two years, execution of that period of suspension was stayed, and he was placed on probation for two years subject to a 60-day actual suspension. Respondent was found culpable of three ethical violations in three client matters. In the first client matter, Respondent willfully violated rule 3-700(D)(2) by failing to refund unearned fees to his clients after they terminated his employment. In the second and third matters, Respondent closed his law practice that offered loan modification services but failed to inform his clients. Respondent failed to notify his clients that he was withdrawing from employment. Respondent was culpable of improperly withdrawing from employment, in willful violation of rule 3-700(A)(2). Respondent's misconduct was mitigated by over 26 years of discipline-free practice, cooperation with OCTC and recognition of wrongdoing. There were no aggravating factors. Respondent's prior record of discipline is a significant aggravating factor.

Multiple Acts (Std. 1.5(b).)

Respondent engaged in multiple acts of wrongdoing. Respondent is culpable of 11 ethical violations, which include aiding in UPL, intentional misappropriation, intentional concealment of material facts, failing to obey a court order, UPL, and trust account violations. Respondent's multiple acts of misconduct are a significant aggravating factor.

¹⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Intentional Misconduct, Bad Faith and Dishonesty (Std. 1.5(d).)

Bad faith and dishonesty were exposed by Respondent's persistence in the manner in which he knowingly defectively served the American Home complaint. Respondent proceeded with obtaining a default judgment and writ of execution based on that defective service. Further, dishonesty and bad faith on the part of Respondent was revealed when American Home's counsel informed Respondent that the service was defective and sought for him to stipulate to set aside the default. Not only did Respondent inappropriately fail to do so, he proceeded to disburse the levied funds to which neither he nor his client were entitled. Subsequently, his client returned most of the funds, but Respondent did not return any of the levied funds. Respondent's bad faith and dishonesty are a significant aggravating factor.

Harm to Client and Administration of Justice (Std. 1.5(j).)

Respondent's misconduct caused significant harm to Ramos and the administration of justice. Ramos was sued by American Home as a result of Respondent's actions, and he significantly harmed the administration of justice by defectively serving American Home. Respondent's actions necessitated multiple hearings to obtain the return of levied funds that Respondent kept and characterized as "fees" even though those funds were improperly obtained. His failure to obey court orders that Respondent contended were unenforceable but which Respondent did not challenge, resulted in multiple briefings and hearings, wasting valuable judicial time and resources. This is a significant aggravating factor.

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

Respondent demonstrated indifference and no rectification or atonement for his misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent

testified that he still believes that the default judgment was valid, and in the future, Respondent would handle the service of a summons and complaint in the same manner. Respondent's statements demonstrate that he fails to understand that the service was improper and that improper service led to the wrongful levy of funds that he failed to return. This does not give the court confidence that Respondent would not engage in such misconduct in the future. (*In the Matter of Layton* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].) Respondent's lack of insight is a significant aggravating factor.

Failure to Make Restitution (Std. 1.5(m).)

Respondent failed to return \$127,527.05 in levied funds that he disbursed to himself as fees. This is a significant aggravating circumstance.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds Respondent did not establish clear and convincing evidence of any mitigating factors; therefore, Respondent is afforded no mitigation credit.¹⁶

Level of Discipline

OCTC argues that the appropriate level of discipline for Respondent's misconduct is disbarment. Respondent maintains that this matter should be dismissed because American Home ultimately dismissed the litigation against Ramos, his actions were privileged, and he did not

¹⁶ Respondent is not entitled to any mitigation for candor and cooperation because although the parties entered into a stipulation regarding the admissibility of documents, Respondent failed to stipulate to any facts or to his culpability. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into a stipulation as to facts and culpability]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

engage in nor aid in UPL. As discussed below, this court disagrees with Respondent and finds that Respondent's misconduct warrants disbarment.

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) 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).)

Standard 2.1(a) is the most severe of the applicable standards.¹⁷ Standard 2.1(a) provides that disbarment is the presumed sanction for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate." Respondent's case does not fall within the exceptions outlined in standard 2.1(a). He intentionally misappropriated over \$120,000 from American Home – a significant sum. Moreover, Respondent has not offered any proof of mitigating circumstances.¹⁸

¹⁷ Standards 2.10 (disbarment or actual suspension) and 2.11 (disbarment or actual suspension) also apply to this case, but standard 2.1(a) is most applicable because it warrants the most severe sanction.

¹⁸ The court must also consider standard 1.8(a) which states that when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions that are not applicable here.

Although standard 2.1(a) is not an inflexible rule (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022 [noting that former standard 2.2(a) “should be viewed as a guideline”]), the court is mindful that “[i]n all but the most exceptional of cases, [willful misappropriation] requires the imposition of the harshest discipline.” (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29 [disbarment warranted for willful misappropriation where compelling mitigating circumstances did not clearly predominate and restitution made three years later only at demand of client’s attorney].) “Even a single ‘first-time’ act of misappropriation has warranted such stern treatment.” (*Ibid* at p. 657.)

In addition to the standards, case law is considered to determine the appropriate level of discipline. Here, the court is guided by *Kelly v. State Bar, supra*, 45 Cal.3d 649, where an attorney was disbarred after intentionally misappropriating nearly \$20,000 from his client. In *Kelly*, the respondent’s misconduct included dishonesty and improper communication with an adverse party. The attorney did not have a prior discipline record, and there were no aggravating circumstances.

The court is also guided by *Gordon v. State Bar* (1982) 31 Cal.3d 748, where an attorney was disbarred after he intentionally misappropriated over \$27,000 from numerous clients. Respondent’s misconduct was mitigated by 13 years of discipline-free practice, financial difficulties and emotional difficulties due to his divorce, and remorse.

Respondent’s misconduct is more serious than the misconduct in *Kelly* and *Gordon*. Respondent misappropriated a much greater sum, concealed facts from the superior court, and disobeyed a court order to return the misappropriated funds. Respondent’s concealment is particularly troubling because an attorney’s dishonesty violates “the fundamental rules of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.” (*Alkow v. State Bar* (1952) 38 Cal.2d 257, 264, quoting

Tatlow v. State Bar (1936) 5 Cal.2d 520, 524.) In addition, Respondent had significant aggravating circumstances that included a prior record and indifference, while no aggravating circumstances were discussed in *Kelly* and *Gordon*. And even though no client funds were misappropriated as in *Kelly* and *Gordon*, “[a]n attorney holding funds for a person who is not the attorney’s client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. [Citations.]” (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632.) Thus, misappropriation of entrusted funds from a third party also “breaches the high duty of loyalty . . . [and] violates basic notions of honesty, and endangers public confidence in the profession.” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) The case law supports the conclusion that a disbarment recommendation is warranted.

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

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Rick L. Raynsford, State Bar Number 105157, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

Restitution

Respondent must make restitution in the amount of \$127,527.05 plus 10 percent interest per year from March 22, 2013, to American Home Mortgage Servicing, Inc. or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5).

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.¹⁹

Costs

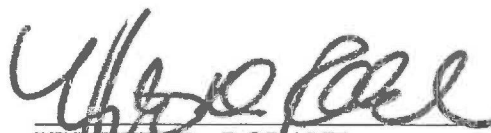
It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended 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.

¹⁹ 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), effective October 3, 2018, the date the original decision was filed in this matter. As such, Respondent's inactive enrollment remains effective three calendar days after the October 3, 2018 order was 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 4, 2018



YVETTE D. ROLAND
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 Los Angeles, on October 4, 2018, I deposited a true copy of the following document(s):

AMENDED DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

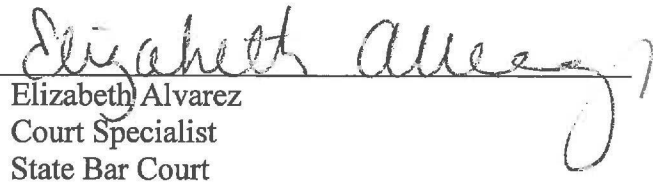
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICK L. RAYNSFORD
LAW OFFICES OF RICK L RAYNSFORD
PO BOX 38
AUBURN, CA 95604 - 0038

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

Jaymin M. Vaghashia, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 4, 2018.


Elizabeth Alvarez
Court Specialist
State Bar Court