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STATE BAR COURT
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PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of
PHYLLIS E. BROWN-SCARLETT,
Member No. 117202,
A Member of the State Bar.

Case No. 02-O-12449-RAP

**DECISION AND
ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT**

I. Introduction

In this default matter, Respondent **PHYLLIS E. BROWN-SCARLETT** is charged with professional misconduct in one client matter. The court finds, by clear and convincing evidence, that Respondent is culpable of three of the four charged acts of misconduct: (1) misappropriation of \$9,200 in client funds, (2) commingling, and (3) failure to competently perform legal services.

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

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) on August 20, 2004, at her official membership records address. (Rules Proc. of State Bar, rule 60.) On September 20, 2004, Respondent filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

However, due to Respondent's failure to obey the December 20, 2004, court order to respond to the State Bar's special interrogatories, the inspection demands and the production of documents by January 3, 2005, the court ordered her response stricken and entered her default on January 27, 2005. Respondent was enrolled as an inactive member under Business and Professions Code section

1 6007(e)¹ on January 30, 2005.

2 This matter was submitted for decision on February 1, 2005, following the filing of State
3 Bar's brief on culpability and discipline. Respondent did not participate in the disciplinary
4 proceedings.

5 **III. Findings of Fact and Conclusions of Law**

6 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
7 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
8 200(d)(1)(A).)

9 **A. Jurisdiction**

10 Respondent was admitted to the practice of law in California on December 3, 1984, and has
11 since been a member of the State Bar of California.

12 **B. The Taylor Matter**

13 On April 3, 1998, Ronnie C. Taylor lost his foot in a construction accident and hired attorney
14 Angela F. Wallace to represent him. On April 1, 1999, attorney Wallace filed a civil action on behalf
15 of Taylor entitled *Taylor v. Moriah Senior Villa et al.*, Los Angeles Superior Court case No.
16 BC208089 (Taylor matter).

17 In November 1999, following attorney Wallace's actual suspension from the practice of law,²
18 Taylor employed Respondent to represent him in his personal injury matter.

19 At all times relevant herein, Respondent maintained a client trust account at Bank of
20 America, account No. 16643-7219 (CTA).

21 On May 14, 2001, Respondent received a settlement draft on behalf of Taylor for \$50,000
22 from Reliance Insurance Company. On May 16, 2001, Respondent deposited the settlement draft
23 into the CTA.

24 On May 23, 2001, Respondent issued CTA check no. 179 to Taylor for \$16,666.66. On the

25 _____
26 ¹All references to section (§) are to the Business and Professions Code, unless otherwise
indicated.

27 ²Contrary to the facts alleged in the NDC, attorney Wallace tendered her resignation in
28 March 2001, and not in 1999. (Evid. Code, § 452, subd. (d).)

1 same day, Respondent's office administrator, Warren Williams, advised Taylor that Respondent's
2 office would attempt to negotiate down his medical bills and that any remaining unused funds would
3 be paid to Taylor.

4 In the following two weeks, Respondent paid herself \$20,000 as attorney fees from the
5 settlement funds, as follows:

<i>Date</i>	<i>Check No.</i>	<i>Amount</i>
6 May 25, 2001	192	\$5,000
7 May 31, 2001	195	\$ 500
8 May 31, 2001	196	\$5,000
9 June 5, 2001	197	\$4,000
10 June 8, 2001	199	<u>\$5,500</u>
11		
12	<i>Total Attorney Fees</i>	<i>\$20,000</i>

13 Respondent also made payments for litigation costs and medical expenses, as follows:

<i>Date</i>	<i>Check No.</i>	<i>Payee</i>	<i>Amount</i>	<i>Purpose</i>
14 June 5, 2001	198	Werrell & Wilson	\$ 60.70	Transcript costs
15 July 30, 2001	222	Dr. Joseph Pierson	<u>\$4,000.00</u>	Medical expenses
16				
17		<i>Total Medical and Litigation Costs</i>	<i>\$4,060.70</i>	

18 According to Respondent, on June 12, 2001, she provided a settlement disbursement sheet
19 to Taylor, which included the following medical expenses and liens owed by Taylor. However,
20 some of these figures in the settlement disbursement summary were in error.

	<i>Creditors</i>	<i>Amount</i>	<i>Corrected Amount</i>
21			
22	1. California Hospital Medical Center	\$1,673.00	-0-
23	Emergency Room (California Hospital)		
24	2. Medical providers	\$5,876.53	
25	3. Blue Cross of California, CIGNA,	\$27,807.33	
26	TransAmerica Occidental Life and		
27	Mutual of Omaha (medical liens)		
28	4. Los Angeles Fire Department (LAFD)	\$205.23	\$252.75

1 Contrary to Respondent's settlement disbursement sheet, Taylor did not owe \$1,673 to
2 California Hospital. According to Catholic Healthcare West, the billing service for California
3 Hospital, Taylor only owed California Hospital a total of \$535.25, and in 1998, Medicare and Medi-
4 cal had paid California Hospital the \$535.25.

5 Also, according to Ruth Rodrigues, a representative for the LAFD Emergency Medical
6 Services System, Taylor owed \$252.75 to the LAFD, and not \$205.23, as indicated in Respondent's
7 settlement disbursement sheet.

8 As of August 2001, Respondent was required to maintain at least \$9,272 in her CTA on
9 behalf of Taylor, calculated as follows:

10 *Settlement and Disbursement Summary*

11	Settlement funds	\$50,000.00	
12	Client's share		(\$16,666.66)
13	Attorney fees		(\$20,000.00)
13	Litigation and medical costs		<u>(\$ 4,060.70)</u>
14	Total Disbursements	<u>(\$40,727.36)</u>	
15	<i>Balance Required in CTA</i>	<i>\$ 9,272.64</i>	

16 However, on September 27, 2001, the balance in Respondent's CTA fell to \$66.67. Therefore,
17 \$9,205.97 (\$9,272.64 - \$66.67) was missing from the CTA.

18 Between December 2001 and May 2002, Respondent deposited and maintained personal
19 funds in her CTA. For example, in December 2001, Respondent received and deposited a vehicle
20 license refund check for \$73 from the State of California in her CTA. On April 8, 2002, Respondent
21 issued check No. 323 for \$1,500 from her CTA to Williams, her office administrator. And on May
22 6, 2002, Respondent deposited a check for \$50 into her CTA, made payable to Respondent and
23 contained the notation "Birthday Present." During the same period, Respondent also held funds
24 received on behalf of clients in the CTA.

25 On May 9, 2002, Respondent provided a written response to the State Bar of California
26 regarding the Taylor matter, stating that the remaining settlement funds would be directed to pay
27 medical bills and medical liens.

28 A few months later, on August 2, 2002, Respondent again wrote to the State Bar, admitting

1 that she had failed to maintain the Taylor settlement funds in her CTA. At the same time,
2 Respondent represented that she was in the process of negotiating with Blue Cross of California,
3 CIGNA, TransAmerica Occidental Life and Mutual of Omaha to resolve the medical liens, and that
4 the amounts owed to all the insurers would be paid from the remaining Taylor settlement funds.

5 On March 11, 2003, Taylor died.

6 On March 25, 2004, in a matter unrelated to the Taylor matter, Respondent issued check No.
7 5784 for \$1,500 from her CTA but the check was returned due to insufficient funds.

8 As of August 2004, Respondent has not paid the amount owed to LAFD. Furthermore, she
9 has failed to negotiate and resolve the medical liens held by the insurers – Blue Cross of California,
10 CIGNA, TransAmerica Occidental Life and Mutual of Omaha.

11 ***Count 1: Misappropriation (Bus. & Prof. Code, § 6106)***

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

14 As of August 2001, Respondent was required to maintain at least \$9,272 in her CTA on
15 behalf of Taylor. However, by September 27, 2001, the balance in Respondent's CTA fell to \$66.67.
16 In fact, in August 2002, Respondent admitted in her letter to the State Bar that she failed to maintain
17 the Taylor settlement funds in her CTA.

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

23 Other than the disbursement of \$40,727.36, Respondent failed to hold in trust the remaining
24 balance of \$9,272 in the CTA. Therefore, Respondent wilfully misappropriated the entrusted funds
25 of \$9,205.97 when the CTA balance fell to \$66.67, an act involving moral turpitude in wilful
26 violation of section 6106.

27 ***Count 2: Misrepresentation (Bus. & Prof. Code, § 6106)***

28 The State Bar alleges that Respondent violated section 6106 by misrepresenting to Taylor

1 in the June 12, 2001, disbursement sheet that he owed \$1,673 to California Hospital when the
2 hospital bill had been paid in 1998.

3 An attorney's failure to keep proper records is itself a "suspicious circumstance." (*Clark v.*
4 *State Bar* (1952) 39 Cal.2d 161, 174.) Respondent must keep complete records of all funds and
5 property held for her client's benefit and render appropriate accounts to the client (Rules Prof.
6 Conduct, rule 4-100(B)(3)).

7 However, in order for the court to conclude that the \$1,673 entry was made to deceive the
8 client beyond the level of suspicion, there must be clear and convincing evidence of Respondent's
9 deliberate dishonesty or corruption. Here, the alleged facts demonstrate only that Respondent made
10 a bookkeeping error that \$1,673 was still outstanding when the bill had already been paid. There is
11 no evidence of deception in the accounting. Thus, Respondent's failure to render an accurate
12 accounting in this instance is not clear and convincing evidence of dishonesty with an intent to
13 mislead the client; such a clerical error does not rise to the level of moral turpitude and
14 misrepresentation in violation of section 6106.

15 ***Count 3: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A) of the Rules of***
16 ***Professional Conduct)***³

17 Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited
18 in a client trust account and that no funds belonging to the attorney will be deposited therein or
19 otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal
20 purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

21 Using her CTA for her personal use and business expenses constituted commingling within
22 the meaning of rule 4-100(A) even where there were no client funds in the trust account. (*Arm v.*
23 *State Bar* (1990) 50 Cal.3d 763, 776-777.) Therefore, by issuing a CTA check to her office
24 administrator and by depositing personal funds into her CTA, Respondent is culpable of
25 commingling funds in her CTA in wilful violation of rule 4-100(A).

26
27 _____
28 ³References to rule are to the current Rules of Professional Conduct, unless otherwise
noted.

1 **Count 4: Failure to Perform (Rule 3-110(A))**

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

4 Although Respondent's office told Taylor that they would attempt to negotiate his medical
5 bills and Respondent advised the State Bar the same, Respondent did not do so. By failing to contact
6 the LAFD regarding the unpaid bill, by failing to pay the \$252.75 owed to the LAFD and by failing
7 to negotiate and resolve the medical liens of \$27,807 held by the insurers, Respondent recklessly and
8 repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A).

9 **IV. Mitigating and Aggravating Circumstances**

10 **A. Mitigation**

11 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
12 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴ However, Respondent has no prior
13 disciplinary record in 17 years of practice at the time of her misconduct in 2001, which is a
14 significant mitigating factor. "Absence of a prior disciplinary record is an important mitigating
15 circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989)
16 49 Cal.3d 257, 269.)

17 **B. Aggravation**

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

19 Respondent committed multiple acts of wrongdoing, including failing to maintain client
20 funds, misappropriating \$9,200 from a client, and failing to competently perform legal services.
21 (Std. 1.2(b)(ii).)

22 Respondent's refusal or inability to account properly for the entrusted funds is an aggravating
23 factor. (Std. 1.2(b)(iii).)

24 Respondent's misappropriation of \$9,200 and failure to pay the medical expenses and liens
25 caused substantial harm to the client and to the insurers. (Std. 1.2(b)(iv).)

26 Respondent demonstrated indifference toward rectification of or atonement for the
27

28

⁴All further references to standards are to this source.

1 consequences of her misconduct. (Std. 1.2(b)(v).) She has yet to pay the remaining settlement funds
2 to either Taylor's estate or the insurers.

3 Respondent's failure to participate in this disciplinary matter prior to the entry of her default
4 is also a serious aggravating factor. (Std. 1.2(b)(vi).) Her failure to respond to discovery and failure
5 to comply with the court's order resulted in the entry of her default.

6 V. Discussion

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

11 Respondent's misconduct involved one client matter and trust account violations. The
12 standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon
13 the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.2, 2.3, and 2.4.) Standard 2.2(a)
14 provides that wilful misappropriation of entrusted funds must result in disbarment absent compelling
15 mitigation. Respondent's misappropriation of more than \$9,200 in the Taylor matter is significant
16 and there is no compelling mitigation.

17 Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward
18 a court or a client must result in actual suspension or disbarment. As discussed above, Respondent's
19 misappropriation was an act of moral turpitude.

20 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
21 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach
22 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at
23 p. 251.)

24 The State Bar urges disbarment, arguing that Respondent's misappropriation endangers
25 public confidence in the legal profession and is a gross violation of general morality and professional
26 ethics. (*Resner v. State Bar* (1960) 53 Cal.2d 605, 612.)

27 In a similar case involving misappropriation, *Grim v. State Bar* (1991) 53 Cal.3d 21, the
28 Supreme Court disbarred an attorney for misappropriating \$5,546 from a client. The attorney did

1 not make restitution until after the State Bar had commenced disciplinary proceedings. In
2 aggravation, he was previously disciplined for commingling funds, took advantage of the client
3 residing in another state and mismanaged his trust account. In mitigation, character witnesses
4 testified to his good moral character and the attorney cooperated with the State Bar.

5 Here, Respondent misappropriated \$9,200, commingled funds in her CTA, and basically
6 mismanaged her CTA (i.e., issuing an insufficiently funded check in March 2004). However, unlike
7 *Grim*, Respondent failed to participate in this disciplinary proceeding and has not made any
8 restitution. The court has no information about the underlying cause of Respondent's offense or of
9 any mitigating circumstances surrounding her misconduct.

10 It is settled that an attorney-client relationship is of the highest fiduciary character and always
11 requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43
12 Cal.3d 802, 813.) Here, Respondent had flagrantly breached her fiduciary duties to her client by
13 taking the client funds and failing to appropriately disburse them.

14 As discussed, the misappropriation of client funds is a grievous breach of an attorney's
15 ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal
16 profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline
17 – disbarment. (See *Grim v. State Bar, supra*, 53 Cal.3d 21.)

18 Respondent's misappropriation of \$9,200 and default in this matter weigh heavily in
19 assessing the appropriate level of discipline. Like the attorney in *Grim*, the "misappropriation in this
20 case ... was not the result of carelessness or mistake; [Respondent] acted deliberately and with full
21 knowledge that the funds belonged to [her] client. Moreover, the evidence supports an inference that
22 [Respondent] intended to permanently deprive [her] client of [his] funds." (*Grim v. State Bar, supra*,
23 53 Cal.3d at p. 30.) In fact, Respondent had not returned any portion of the remaining funds to
24 Taylor's estate or paid the medical expenses and liens on the estate's behalf.

25 In recommending discipline, the "paramount concern is protection of the public, the courts
26 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney's
27 failure to accept responsibility for actions which are wrong or to understand that wrongfulness is
28 considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Instead

1 of cooperating with the State Bar or rectifying her misconduct, Respondent defaulted in this
2 disciplinary proceeding.

3 Respondent "is not entitled to be recommended to the public as a person worthy of trust, and
4 accordingly not entitled to continue to practice law." (*Resner v. State Bar, supra*, 53 Cal.2d 605,
5 615.) Therefore, based on the severity of the offense, the serious aggravating circumstances and the
6 lack of compelling mitigating factors, the court recommends disbarment.

7 VI. RECOMMENDED DISCIPLINE

8 Accordingly, the court hereby recommends that Respondent **PHYLLIS E. BROWN-**
9 **SCARLETT** be disbarred from the practice of law in the State of California and that her name be
10 stricken from the roll of attorneys in this State.

11 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
12 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
13 effective date of its order imposing discipline in this matter.

14 VII. COSTS

15 The court recommends that costs be awarded to the State Bar pursuant to Business and
16 Professions Code section 6086.10 and payable in accordance with Business and Professions Code
17 section 6140.7.

18 VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

19 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
20 to Business and Professions Code section 6007(c)(4) and rule 220(c) of the Rules of Procedure of
21 the State Bar. The inactive enrollment will become effective three calendar days after service of this
22 order.

23
24
25 Dated: April 14, 2005


26 **RICHARD A. PLATEL**
27 Judge of the State Bar Court
28

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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 April 14, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed April 14, 2005**

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:

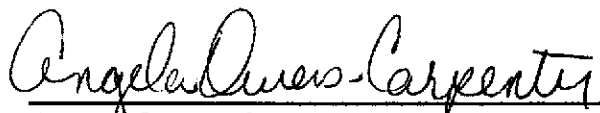
**PHYLLIS E BROWN-SCARLETT
LAW OFC P BROWN-SCARLETT
9937 W JEFFERSON BLVD#200
CULVER CITY CA 90232**

**PHYLLIS E BROWN-SCARLETT
LAW OFC P BROWN-SCARLETT
1933 CRENSHAW BLVD
LOS ANGELES CA 90016-1801**

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

KIMBERLY ANDERSON, A/L, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 14, 2005.



Angela Owens-Carpenter
Case Administrator
State Bar Court