

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No. 03-C-03104-PEM
)	
WADE VINCENT SHANG,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 128409,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

Respondent **Wade Vincent Shang** was convicted of two tax-evasion felony counts (26 U.S.C. § 7201). In 1996, he underreported taxable income by \$24,838. In 1998, he underreported taxable income by \$125,307. After serving a 21-month prison sentence in 2007, he represented himself in this felony conviction referral matter. Respondent continues to assert his innocence.

But, based on clear and convincing evidence, this court finds that the facts and circumstances surrounding respondent's conviction involved moral turpitude and recommends that he be disbarred from the practice of law.

II. Pertinent Procedural History

In October 2003, since respondent had been convicted of tax evasion, a felony for which there was probable cause to believe that it involved moral turpitude, the State Bar Court Review Department placed respondent on interim suspension pending final disposition of the criminal proceeding. Respondent's motion to stay the interim suspension order was denied.

On October 24, 2005, respondent's conviction having become final, the Review Department referred this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances

surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline. The Review Department also denied the request of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) to classify the offense as involving moral turpitude per se or to recommend respondent's summary disbarment.

On November 15, 2005, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent filed an answer. The matter was then abated as respondent was in prison and pursuing his appellate remedies.

After respondent's release from prison, a four-day trial was held on October 16, 17, 18 and 19, 2007. Deputy Trial Counsel Manuel Jimenez represented the State Bar. Respondent represented himself.

At the December 10, 2007 status conference, before the matter was submitted, the court advised the State Bar that none of the exhibits from the federal court trial transcript were attached and that as a result, the court was unable to ascertain many of the dates of the checks or the events which were the basis of respondent's 1996 and 1998 convictions. The court gave the State Bar until January 3, 2008, to submit those exhibits.

Finally, following receipt of the closing briefs from the parties and the exhibits from the federal court trial, this court took the proceeding under submission on January 7, 2008.

III. Findings of Fact and Conclusions of Law

Despite respondent's unwaivering stand of his innocence, respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

Accordingly, the court makes the following findings of fact based on the evidence and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 17, 1987, and has been a member at all times since that date.

B. Findings of Fact

1. Respondent's Tax Evasion Conviction

On August 14, 2002, respondent was indicted on five counts of income tax evasion in violation of title 26 United States Code section 7201 for the years 1995, 1996, 1997, 1998 and 1999 in *United States of America v. Wade Vincent Shang*, United States District Court for the Northern District of California, case No. CR 02-0239 WHA (*U.S. v. Shang*). On July 18, 2003, after an eight-day jury trial, respondent was convicted of tax evasion for the years 1996, 1998 and 1999.

Respondent appealed to the United States Court of Appeals for the Ninth Circuit. On November 22, 2004, the Ninth Circuit affirmed the conviction on the 1996 and 1998 counts but reversed the conviction on the 1999 count. Respondent was then sentenced to two concurrent 21-month terms as to the two counts effective July 1, 2005.

2. Facts and Circumstances Surrounding Respondent's Conviction

Respondent, an attorney and certified public accountant, with offices in California and Texas, handled mostly personal injury matters on a contingency basis. He and his clients had agreed that the client would receive from 20 to 33-1/3 percent of the settlement amount, with the remaining funds used to pay respondent's fees and the client's medical expenses.

At the underlying criminal trial, the jury found that respondent underreported his taxable income and federal taxes by inflating reported disbursements to clients and claiming those false disbursements on his federal income tax returns. Relying upon the net-worth method of proof, the government established that respondent had underreported his taxable income for the years 1996 and 1998.

Under this method of proof, the government establishes the net worth (assets less liabilities) of the taxpayer at the beginning and end of each tax period. If the closing net worth figures is greater, the difference is the increase in his net worth during the tax period. His non-deductible expenditures are estimated and added to this figure and all known nontaxable income is subtracted. The resulting figures is compared to the reported taxable income on the taxpayer's return. If the figures is greater than that reported by the taxpayer, the government claims the difference is unreported income.

At the criminal trial, Charles Tonna, the Internal Revenue Service (IRS) summary witness, testified that the government treated respondent's client trust accounts as personal assets belonging to respondent because respondent listed the accounts as assets on his loan applications and because of his practice of disbursing funds to a client on the day a settlement check was endorsed or before the check was deposited into respondent's client trust accounts, thus, suggesting that there was no accumulation of client funds in the trust accounts.

The government then produced evidence to demonstrate that, despite the agreed 20 to 33-1/3 percent of the settlement amount to be paid to the clients, respondent issued checks from his client trust accounts in amounts exceeding more than half of the settlement sum. Moreover, the government produced the following nine witnesses to corroborate its analysis of respondent's repeated fraudulent practice for the years 1996 and 1998. In this proceeding, respondent contends the relevancy of their testimony. On the contrary, the court finds their testimony most relevant in determining whether respondent's conviction for tax evasion and the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline, particularly those witnesses who were his clients.

a. Acasio Babasa

In 1995, Acasio Babasa was involved in an automobile accident in Daly City, California, and hired respondent to represent him. The case settled in 1996. A check for \$8,130 was made from respondent's trust account to Babasa in May 1996. Babasa had no memory of signing the check and the check was not signed in his penmanship. Babasa testified that he received all his settlement money in cash from respondent and that it was less than \$2,000.

b. Gerald Madarang

In 1998, Gerald Madarang hired respondent to represent him in a car accident matter. When the case settled in 1998, respondent arranged to drive Madarang to a Bank of America in San Jose and gave Madarang approximately \$800. On September 30, 1998, Madarang signed a check made payable to him from respondent's trust account in the amount of \$8,000. Madarang never received the \$8,000 from respondent nor did he have any memory of seeing or endorsing the check, even though it was his signature on the check.

c. Danny Rubio

In 1996, Danny Rubio was involved in an automobile accident and hired respondent to represent him. Respondent agreed to pay Rubio one-third of the settlement funds when the case settled. In 1998, respondent called Rubio to inform him of the settlement and arranged to meet Rubio at a Bank of America in San Jose so that he could pay Rubio his share of the settlement proceeds. At the bank, Rubio signed two checks – one from the insurance company for \$3,000 and another from respondent's trust account for \$6,000. But Rubio never received any of the \$6,000 from the check written on respondent's trust account. Instead, Rubio received \$500 in cash from respondent.

d. Ester Sagun

In 1995, Ester Sagun was involved in an automobile accident and hired respondent to represent her. A check drawn on respondent's client trust account for \$9,000 was issued to Sagun. Sagun testified that she never cashed a check from respondent for \$9,000 and that the most she ever received from respondent was \$5,000 in cash.

e. Ronilo Teodosio

In 1996, Ronilo Teodosio was hit by a car in a parking lot in South San Francisco and he hired respondent to be his attorney. Respondent agreed to pay Teodosio 25% of the recovery. Respondent told him that the matter had settled for \$4,000, but that if he wanted to wait two more years, respondent could possibly obtain \$10,000 more in settlement. Teodosio declined to wait and accepted the \$4,000 settlement. When Teodosio went to respondent's office, he was told to follow respondent to the bank to cash the insurance settlement check of \$4,000. Respondent then gave Teodosio \$1,000 in cash. While at the bank, Teodosio, at the direction of respondent, signed the back of a blank check. At trial, the government produced a check from respondent's client trust account made payable to Teodosio in the amount of \$8,000, dated November 17, 1998. Teodosio testified that he never received or cashed the check.

f. Redempcion and William Trapsi

Redempcion and William Trapsi (the Trapsis) hired respondent to represent them in an automobile accident matter. In 1996, respondent received two insurance settlement checks in the

amounts of \$11,000 and \$12,500 for the Trapsis. The Trapsis each received \$3,000 in cash from respondent as their portion of the settlement funds. At trial, the government produced two checks from respondent's client trust account made payable to the Trapsis. One check was dated August 26, 1996, for \$7,100 and the other check was for \$8,827. Following the commencement of the IRS investigation, respondent obtained two client signatures on a letter addressed to the IRS Agent Arlette Lee, falsely stating that the Trapsis had received two checks in the amounts of \$7,100 and \$8,827 from respondent. Some time after William Trapsi signed the letter that respondent presented to the Trapsis, respondent paid William Trapsi an additional \$800 and Redempcion Trapsi an additional \$200. At trial the Trapsis steadfastly testified that the most they received from respondent was \$3,000 each in cash.

g. Elizabeth Arceo

Elizabeth Arceo was respondent's former legal secretary for about eight months in 1995 and 1996. She recalled that respondent paid one client in cash. When she asked him about the cash payment, respondent told her that he did so to avoid income tax.

Consequently, by failing to report all of those attorney fees as taxable income, respondent claimed zero income tax for the years 1996 and 1998.

The government calculated respondent's unreported income both considering and ignoring the changes in his client trust accounts balances. Including the changes in the balances, respondent underreported his income by \$30,357 for 1996 and \$99,150 for 1998; and he underreported his tax, including self-employment tax, by \$2,445 for 1996 and by \$29,936 for 1998. Excluding the amounts in his client trust accounts, respondent underreported his income by \$24,838 for 1996 and by \$125,307 for 1998. And, he underreported his taxes by \$5,910 and \$38,749 for those two years, respectively.¹

¹In respondent's 1996 federal income tax return, he reported gross receipts from his law practice of \$270,650, returns and allowances of \$70,643 and total gross income of \$205,544. He then claimed business expenses of \$197,935, and total profit of \$7,609. Respondent reported self-employment tax of \$1,679 but owing no income tax.

In his 1998 federal income tax return, he reported gross receipts from his law practice of \$1,148,939, returns and allowances of \$872,091, and adjusted gross income of \$32,659. He

C. Conclusions of Law

At this hearing, respondent continued to declare his innocence, stating that he was unjustly convicted. He reiterated the same arguments as those made during his multiple appeals before the federal court. He asserted that the government's failure to conduct a thorough and particular investigation as required by *United States v. Hall* (9th Cir. 1981) 650 F.2d 994, 999 resulted in a net worth computation that was riddled with errors, inherently defective and unreliable, and inadequate to support a conviction. Respondent pointed to the fact that the government admittedly failed to locate at least two of his bank accounts, one of which in January 1995 had a balance of \$56,268,17. Respondent argued that the omission from the government's calculations of medical and medical-related liabilities respondent incurred on behalf of clients, loans and advances respondent made to clients and various credit card accounts rendered the government's calculations unreliable. Furthermore, respondent contended that the government included in its calculations trust accounts that did not belong to him, and consequently, the resulting calculations were wrong.

The federal court rejected respondent's arguments and found that the government had proved a reasonably certain opening net worth and conducted a sufficiently thorough investigation for tax years 1996 and 1998. Thus, despite respondent's multiple appeals (such as motions for acquittal and for a new trial, on appeal from the judgment of the U.S. District Court for the Northern District of California, and motion to vacate, correct or set aside the sentence), the Ninth Circuit affirmed his conviction for tax evasion.

The State Bar argued that respondent's conviction was one of moral turpitude, and the facts and circumstances surrounding the conviction constituted moral turpitude.

Although the term "moral turpitude" defies precise definition, it has been described as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (See *In re Craig* (1938) 12 Cal.2d 93, 97.) It has also been described as any crime or

claimed business expenses of \$219,821. Respondent reported self-employment tax of \$8,207 but no income tax liability.

misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813) involve moral turpitude.

As previously indicated, respondent is conclusively presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan, supra*, 17 Cal.3d at p. 423.) During those years, respondent underreported his taxable income and federal taxes owed by inflating disbursements to clients and claiming those inflated disbursements on his federal tax returns. He created false checks in inflated amounts to defraud the IRS. His criminal acts involved intentional dishonesty for the purpose of personal gain. The misconduct evinced deceit and it was directly related to the practice of law. Thus, respondent's tax evasion conviction for 1996 and 1998 established moral turpitude and the facts and circumstances surrounding the conviction also involved moral turpitude. (See *In re Hallinan, supra*, 43 Cal.2d 243, 247 [conviction for filing false and fraudulent income tax returns involved moral turpitude because the criminal acts involved intentional dishonesty for the purpose of personal gains].)

IV. Level of Discipline

A. Mitigation

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)²

Respondent had no prior record of discipline in his nine years of practice when he committed his misconduct in 1996. (Std. 1.2(e)(i).) But because respondent's misconduct is deemed serious, the court does not give any weight in mitigation to his lack of disciplinary record.

Respondent presented no other evidence in mitigation.

B. Aggravation

The record establishes several aggravating circumstances by clear and convincing evidence.

²All further references to standards are to this source.

(Std. 1.2(b).)

Respondent's regular fraudulent practice of paying his clients a portion of their settlement proceeds in cash and at the same time, issuing phony checks made payable to the same clients in amounts much higher than the actual cash payments establish a pattern of misconduct. (Std. 1.2(b)(ii).)

Because respondent's misconduct has already been found to involve moral turpitude, it cannot be considered as an additional aggravating factor. (Std. 1.2(b)(iii).)

Respondent's misconduct harmed significantly the Trapsis. Because of his inflated checks made payable to them in the amounts of \$7,100 and \$8,827, which they never received, the IRS penalized them for those unreported funds and they had to pay additional taxes. In fact, they each received only \$3,000. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He lacked an appreciation or understanding of his misconduct. "Respondent's use of specious and unsupported arguments in an attempt to evade culpability in this matter reveals a lack of appreciation both for his misconduct and for his obligations as an attorney." (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.) "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.) Here, respondent failed to come to grips with his culpability in asserting that he was innocent of tax evasion. But, other than arguing that the clients' testimony were irrelevant, respondent did not rebut the truth of their testimony. And it is his deceitful acts in the practice of law that this court is most concerned about. Instead of contrition, respondent went to great lengths during his testimony to contend the same arguments that were repeatedly rejected by the various federal courts.

V. Discussion

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

State Bar (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 3.2 provides that final conviction of an attorney of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime’s commission must result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, will disbarment not be imposed.

Here, respondent presented no mitigation nor did the court find any.

Respondent denies any wrongdoing. Refusing to recognize the malfeasance of inflating disbursements to his clients and claiming those false disbursements on his federal income tax returns, he blames the IRS for miscalculations under the net worth method and insists that the clients’ testimony are inadmissible in this proceeding. The court rejects respondent’s contentions.

The State Bar urges disbarment, citing *In re Crooks, supra*, 51 Cal.3d 1090; *In re Distefano* (1975) 13 Cal.3d 476; and *In the Matter of Kritenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469 in support of its recommendation.

In *Distefano*, the Supreme Court disbarred an attorney who filed 13 false income tax returns under the names of third parties over a two-year period in order to gain refunds therefrom, and forged returns, W-2 forms and refund checks. As the court stated, “the trial court [in the criminal action] was dealing with him as a citizen, whereas we are dealing with him as a lawyer. As we have previously observed, the responsibilities of a lawyer differ from those of a layman; ‘Correspondingly, our duty to the public and to lawyers of the state in this respect differs from that of the trial judge in

administering criminal law.’ [Citation.]” (*In re Distefano, supra*, 13 Cal.3d 476, 481.) The Supreme Court further pointed out that the attorney’s misconduct could well have subjected innocent third parties to investigation by the IRS. Here, in fact, respondent’s misconduct did subject his clients, the Trapsis, to investigation by the IRS and imposition of additional tax penalties.

The Supreme Court noted in *In re Hallinan* (1957) 48 Cal.2d 52, 56, that “an attorney, whose standard of conduct should be one of complete honesty [citation], who is convicted of either offense [defrauding an individual or the government] is not worthy of the trust and confidence of his clients, the courts, or the public ... since his conviction of such a crime would necessarily involve moral turpitude.”

“The record discloses a callous and brazen indifference to the obligations of an attorney, with the object of personal gain. Under these circumstances [the attorney] should be removed from the practice of law for a substantial period of time in order that he may realize the error of his ways and rehabilitate himself before again resuming a place in the ranks of the legal profession.” (*In re Hallinan, supra*, 48 Cal.2d 52, 56.)

Similarly, respondent pursued a course of conduct whereby he refused to report the total amount of his income from the practice of law to the federal government and misled his clients into signing the phony checks or permitting their signatures to be forged. Such actions were a clear betrayal of his clients’ best interest in favor of respondent’s own selfish desires and exposed his clients to tax audits and their unwitting involvement in his conspiracy to defraud the IRS. “[T]he relationship between an attorney and client is of the highest order of fiduciary relation.” (*In the Matter of Kreitenberg, supra*, 4 Cal. State Bar Ct. Rptr. 469, 475.)

“It is precisely because the attorney-client relationship is one of utmost confidence that the commission of a felony in betrayal of that confidence receives the harshest sanction the disciplinary system imposes.” (*In the Matter of Lilly* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 473, 479.) Yet, respondent denies that he committed any criminal or unethical acts.

Thus, respondent is not a candidate for suspension and/or probation. He refuses to accept or acknowledge responsibility for his tax evasion conviction and his fraudulent practice of issuing false settlement checks to clients and believes he was justified in claiming owing no income tax for the

years 1996 and 1998. Such trivialization of his failure to comply with his professional obligations and refusal to recognize his wrongdoing are indeed troubling and reflect his inability to learn from his criminal acts and imprisonment of 21 months. The risk of respondent repeating this misconduct would be considerable if he were permitted to continue in practice.

Lesser discipline than disbarment is inadequate because there are no extenuating circumstances that clearly predominate in this case. The serious, similar and prolonged nature of the misconduct suggests that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that his prison sentence did not serve to rehabilitate respondent. He has not learned from the past. Having considered the evidence, the standards and other relevant case law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, respondent's disbarment is amply warranted.

VI. Recommendations

The court recommends that respondent **Wade Vincent Shang** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

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

Finally, the court recommends 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.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: April ____, 2008

PAT McELROY
Judge of the State Bar Court