PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED FEBRUARY 4, 2010

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	No**. 03-O-04580**
	)	
MAXIMILIAN J. B. HOPKINS,	)	**OPINION ON REVIEW**
	)	
A Member of the State Bar.	)	
	)	

Respondent Maximilian J. B. Hopkins was admitted to the practice of law in California in 1988 and has no prior record of discipline. However, in four matters, he has been found culpable of serious misconduct that spans the years 2002 to 2006. In the most serious matter, Hopkins misappropriated at least $69,000 from his client. In three other matters, the hearing judge found Hopkins culpable of failing to communicate, failing to perform, failing to obey court orders, committing acts of moral turpitude and two trust account violations. After balancing the aggravating and mitigating factors, the hearing judge recommended disbarment.

Hopkins sought review. While he does not challenge the hearing judge's culpability findings, he argues that disbarment is "overly severe and unwarranted." The State Bar contends that disbarment is appropriate and urges us to adopt the hearing judge's recommendation.

Upon independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we adopt most of the hearing judge's findings of fact and conclusions of law, as summarized below. We also find an additional factor in aggravation based on the harm Hopkins caused one client, and we find fewer factors in mitigation. Ultimately, we agree with the hearing judge's conclusion and recommend that Hopkins be disbarred.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. THE JAKUBICEK MATTER (Case Number 03-O-04580)

Neither party disputes that Hopkins is culpable of counts 1 (A), (B) and (C) as charged in the Jakubicek matter. Further, the record supports the hearing judge's factual findings and culpability conclusions, and as summarized below, we adopt them.

On February 14, 2002, Trieste L. Reis (who now uses her maiden name Jakubicek) retained Hopkins for her divorce from Kenneth C. Reis. At the time he was retained, the superior court had already awarded Jakubicek $74,251.93 from the sale of the community property residence. Therefore, on March 14, 2002, Jakubicek's former attorney sent Hopkins a $74,251.93 check made payable to Hopkins "in trust for Trieste L. and Kenneth C. Reis." Hopkins deposited the check into his client trust account (CTA), knowing that the funds could not be released to Jakubicek until the superior court signed and filed the judgment. The superior court did not do so until February 6, 2003.

Shortly after depositing the check, Hopkins began to misappropriate the funds from his CTA. To conceal his misconduct, Hopkins provided Jakubicek with monthly billing statements, misrepresenting that he either had the entire amount in his CTA or an appropriate amount minus authorized withdrawals. According to his false billing statements, Hopkins claimed he made only the following six withdrawals over the course of his representation and maintained the CTA balance as indicated:

- $3,669.02 for his attorney fees on January 15, 2003, CTA balance $70,582.91
- $38,175.07 to Jakubicek's boyfriend on March 15, 2003,[1] CTA balance $32,407.84

[1]On the date Hopkins claimed he made this transfer, the CTA held less than $4,000. It was not until April 28, 2003, that Hopkins obtained a cashier's check for $38,175.07 with his own money from a different account and deposited the check into Jakubicek's boyfriend's account.

- $18,091.66 for his attorney fees on July 30, 2003, CTA balance $14,316.18
- $5,000 to Jakubicek on August 15, 2003, CTA balance $9,316.18
- $4,407 for his attorney fees and $4,909.18 to Jakubicek as the remainder of funds, leaving the CTA balance at zero on September 9, 2003.

In fact, Hopkins wrote numerous CTA checks unrelated to Jakubicek's case over the course of his representation, causing the balance to repeatedly fall below the amounts he was required to hold in trust. For example, on November 29, 2002, when the entire $74,251.93 should have been in the CTA, the balance was $5,221.82. On April 30, 2003, when at least $32,407 should have been maintained, the balance dropped as low as $108.78.

Jakubicek terminated Hopkins in September 2003. On the day Jakubicek went to pick up her file and the remaining funds Hopkins held in trust, he gave her a final billing statement and a check for $4,909. Hopkins claimed he withdrew the remaining $4,407 for fees. Because Jakubicek believed that she had been double- and triple-billed, and she claimed she never authorized the transfer of funds to her boyfriend, she and Hopkins agreed to fee arbitration. The arbitrator awarded Jakubicek $5,630, finding that Hopkins did overcharge her, but declined to decide whether Jakubicek had instructed Hopkins to transfer $38,175.07 to her boyfriend. The arbitrator determined that the issue was not a fee dispute, but an issue of whether the trust account funds had been handled properly, which was a matter for the State Bar to decide.[2]

During the State Bar's investigation into this matter, Hopkins provided copies of 10 checks totaling $41,159 drawn on his CTA and claimed they were issued in connection with Jakubicek's case. However, only two checks totaling $9,909 pertained to the Jakubicek matter and the remaining eight checks were unrelated.

[2]The State Bar did not charge any misconduct based on the transfer of funds to Jakubicek's boyfriend. Although Jakubicek testified that she did not authorize the transfer, the hearing department found the transfer was authorized and we find no reason to overturn this finding.

At the hearing, Hopkins testified that his wife was his bookkeeper until the summer of 2005, and that she took approximately $70,000 from the CTA by signing checks without his authorization. He admitted that he was negligent for failing to closely monitor her bookkeeping duties.

Count 1(A) – Failure to Maintain Funds in CTA (Rules Prof. Conduct, rule 4-100(A)[3])
Count 1(B) – Moral Turpitude (Bus. & Prof. Code, § 6106[4])
Count 1(C) – Moral Turpitude (§ 6106)

Hopkins failed to maintain the entire $74,251.93 in his CTA for Jakubicek and Reis from March 14, 2002 until the notice of entry of the superior court's judgment was filed on February 11, 2003. Thus, Hopkins willfully violated rule 4-100(A), which provides that all funds held for the benefit of a client must be maintained in a CTA.

Hopkins admitted that he personally wrote and signed numerous checks from March 2002 through November 29, 2002, when the CTA fell to $5,221.82. He also admitted that he did not review his bank statements during this time period. This evidence, and the hearing judge's finding that Hopkins' claim that his wife stole the money lacked credibility, support a finding that Hopkins' misappropriation was a willful violation of section 6106, which prohibits any act involving moral turpitude, dishonesty or corruption. (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829-830 [attorney's willful misappropriation of trust funds usually compels conclusion of moral turpitude].)

Finally, Hopkins falsely represented to the State Bar that the copies of CTA checks he submitted were issued in connection with the Jakubicek matter. These representations were dishonest and meant to mislead the State Bar. Thus, Hopkins violated section 6106.

[3]Unless otherwise noted, all further references to "rule(s)" are to the Rules of Professional Conduct.

[4]Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

B. THE LOPEZ MATTER (Case Number 06-O-13452)

On October 25, 2005, Chris Lopez, individually and as the principal of Phoenix DVD and Games, Inc., retained Hopkins and paid him $1,250 in advanced fees to purchase a Bradley Video store. Hopkins negotiated the purchase with Robert Kaplan, who ultimately rejected Lopez's offer and instead sold Bradley Video's assets to Phoenix Restructuring Group. Since Lopez was unable to buy the store, he agreed to work for Mark Jasperson and Phoenix Restructuring Group. Lopez paid Hopkins an additional $5,000 in advanced legal fees to negotiate an employment contract between Lopez and Jasperson. On December 13, 2005, Hopkins sent Jasperson a letter discussing employment terms.

On December 20, 2005, Hopkins sent Lopez several documents to sign, including a fee agreement for the attempted purchase of the Bradley Video store. In the accompanying letter, Hopkins stated that at the beginning of the month, there was "a retainer balance in [Lopez's] favor" in the amount of $3,500. Lopez signed and returned the documents to Hopkins, who thereafter failed to perform any additional legal services for Lopez. Eight times during December 2005 through March 2006, Lopez tried to speak with Hopkins about the employment contract negotiations with Jasperson. He left messages at Hopkins' office and on his cell phone. Hopkins never responded to any of Lopez's calls or inquiries.

Finally, on April 6, 2006, Lopez wrote Hopkins a letter terminating his services and requesting the return of the $3,500 balance. On June 16, 2006, Hopkins sent Lopez a billing statement for legal services related to the attempted purchase of the video store, but none related to the employment contract matter. The statement provided that Hopkins performed $2,125 in services, and that Lopez was entitled to a refund of $1,375 in unearned fees on the Bradley Video store matter. Hopkins provided Lopez with a check for $1,375, which Lopez refused

because he felt he was entitled to a refund of at least $3,500. In fact, since Lopez had paid $6,250 in fees, $4,125 was unaccounted for at this point.

In response to the State Bar's investigation, Hopkins submitted two separate billing statements dated November 9, 2006: one statement pertained to the Bradley Video store matter and the other was for legal services in the employment contract matter. Hopkins testified that the second Bradley Video billing statement corrected certain errors in the June 16, 2006 statement, but still reflected $2,125 in services provided. The employment contract matter billing statement indicated that Hopkins performed $4,575 in services from December 13-23, 2005, and that Lopez owed $450 in fees. Hopkins had never provided this statement to Lopez.

Count 2(A) – Failure to Perform (Rule 3-110(A))
Count 2(B) – Failure to Communicate (§ 6068, subd. (m))
Count 2(D) – Moral Turpitude (§ 6106)

Hopkins does not challenge any of the culpability determinations in these counts, and upon review of the record, we adopt them. First, he violated rule 3-110(A) by repeatedly failing to perform work for Lopez on the employment contract matter from December 2005 through April 4, 2006. Second, Hopkins violated section 6068, subdivision (m), by failing to respond to Lopez's eight inquiries about the employment contract. And third, Hopkins violated section 6106 by creating a false billing statement in the employment contract matter to justify the retention of at least $3,500 in advanced fees. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 103 [fraudulent invoices and memoranda created after the fact to justify respondent's fees constitutes moral turpitude].)

Count 2(C) – Failure to Return Unearned Fees (Rule 3-700(D)(2))

We conclude that Hopkins is culpable of violating rule 3-700(D)(2), and accordingly, reverse the hearing judge's culpability finding on this count. Pursuant to the rule, an attorney who is terminated must promptly refund any unearned portion of an advance fee. At the time he

was terminated, Hopkins provided a billing statement that showed only $2,125 in services, leaving a balance of $4,125 in unearned fees. After Lopez rejected the $1,375 refund check from Hopkins, a fee dispute arose. Hopkins made no further effort to resolve the dispute or to justify his retention of the $4,125. He provided the purported November 9, 2006, billing statement for the employment contract matter only after the State Bar investigation began and seven months after his services were terminated. Hopkins' failure to make any effort to resolve the dispute or return the unearned fee is a violation of rule 3-700(D)(2).[5] (See, e.g., *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 805, 807 [when attorney fee dispute arises with former client, attorney should take prompt action to resolve dispute].)

C. THE BROSNAN MATTER (Case Number 06-O-13306)

1. The Kim Lawsuit

On December 2, 2002, Hopkins filed a personal injury lawsuit in Contra Costa County Superior Court on behalf of John Brosnan against Julia and Alfred Kim (Kim lawsuit). Hopkins received notice from the court clerk that a case management conference (CMC) was set for April 16, 2003.

Hopkins failed to appear at the CMC. He also failed to appear at a properly-noticed hearing on an order to show cause (OSC) as to why the case should not be dismissed and/or why plaintiff should not be sanctioned. Hopkins was sanctioned $250 for failure to appear.

On May 29, 2003, Hopkins signed a substitution of attorney form in which he "substituted out" and Brosnan "substituted in" to represent himself. Hopkins did not file the substitution form until June 6, 2003.

[5]However, like the hearing judge, we find that the record is unclear as to how much, if any, of the $4,125 Hopkins earned on the employment contract matter. Accordingly, Lopez will have to resolve his fee dispute in a more appropriate forum (i.e., civil action or fee arbitration).

Hopkins failed to appear at a second OSC hearing on June 6, 2003. As a result, the superior court dismissed the Kim lawsuit without prejudice.

2. The Pascoe Lawsuit

On February 19, 2003, a case was filed in the Alameda County Superior Court in which John Brosnan was the plaintiff and Dane Pascoe was the defendant (Pascoe lawsuit). On the complaint, Hopkins was listed as Brosnan's attorney of record. He claims that someone else signed his name to the complaint and that he was unaware that the lawsuit had been filed.

However, once Hopkins became aware of the lawsuit, he did nothing to remove his name as Brosnan's attorney. Despite receiving notice, he failed to attend the court-ordered CMCs in June, September, October and November 2003. As to the CMCs in October and November, the court ordered Hopkins to show cause why he should not be sanctioned for failing to appear.

On October 15, 2003, Hopkins signed a substitution of attorney form in the Pascoe lawsuit in which he substituted out and Brosnan indicated he would represent himself. The substitution of attorney form was filed with the superior court on October 21, 2003.

During the November 2003 CMC and OSC hearing, the superior court sanctioned Hopkins $1,000 and continued the CMC to January 30, 2004. After Hopkins received notice of the sanctions, he delivered a letter and check for $1,000 to the superior court on January 6, 2004.

Count 1(A) – Failure to Obey Court Orders (§ 6103)

When Hopkins failed to attend the CMCs and OSC hearings in the Kim and Pascoe lawsuits, he disobeyed court orders. Such disobedience violated section 6103. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 72-73 [failure to attend court-ordered hearings is violation of section 6103].)[6]

[6]The hearing judge dismissed count 1(B) (failure to maintain respect due court, § 6068, subd. (b)) as duplicative of count 1(A). On review, this dismissal is not in dispute and we adopt it.

D. CLIENT TRUST ACCOUNT MATTER (Case Number 06-O-14081)

On October 27, 2005, the balance in Hopkins' CTA was $7,332.69. On that date, he wrote CTA check number 1673 for $8,474.49 made payable to cash. The money was then used to purchase an official bank check in the same amount payable to another client. When the bank paid check number 1673 on October 28, 2005, Hopkins' CTA was overdrawn by $1,141.80.

Counts 2(A) and (C) – Trust Account Violations (Rule 4-100(A))

As alleged in count 2(A), Hopkins violated rule 4-100(A) by allowing his CTA to be overdrawn by $1,141.80 on October 28, 2005. (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 504.) However, we do not find that on October 27, 2005, Hopkins commingled his own funds with those in his CTA, as alleged in count 2(C). Although the account was $1141.80 short, no evidence was provided to identify the source of the subsequent $1,200 deposit to cover the difference. Since it could have come from the client, there is no clear and convincing evidence that commingling occurred. Thus, we reverse the hearing judge's conclusion that Hopkins violated rule 4-100(A) based on commingling.

Count 2(B) – Moral Turpitude (§ 6106)

The State Bar alleged that Hopkins committed an act involving moral turpitude when he wrote check number 1673 with insufficient funds in his account, causing his CTA to be overdrawn by $1,141.80. An attorney who writes numerous checks with insufficient funds in his CTA "manifests an abiding disregard of ' "the fundamental rule of ethics - that of common honesty - without which the profession is worse than valueless in the place it holds in the administration of justice." ' [Citation.]" (*Tomlinson v. State Bar* (1975) 13 Cal.3d 567, 577.) Hopkins wrote only one check with insufficient funds in his CTA. Since there is no evidence that he repeatedly wrote checks with insufficient funds in his CTA during the same time period, and no other evidence of gross negligence, deception or dishonesty, we do not find that Hopkins violated section 6106.

II. DISCIPLINE

We determine the appropriate discipline in light of all relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Hopkins must establish mitigation by clear and convincing evidence, while the State Bar has the same burden of proof for aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(e) & 1.2(b).)[7]

A. AGGRAVATION

We find four factors in aggravation. First, Hopkins committed multiple acts of misconduct. (Std. 1.2(b)(ii).) Second, he committed uncharged misconduct of dishonesty and concealment in the Jakubicek matter. (Std. 1.2(b)(iii); *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) In order to conceal his misappropriation, Hopkins' billing statements to Jakubicek repeatedly misrepresented that the CTA held the appropriate amount of funds on her behalf. Third, Hopkins failed to accept responsibility for his actions. (Std. 1.2(b)(v).) He blamed his wife for the misappropriation of approximately $70,000 from his CTA, and he blamed the bank for his account being overdrawn by $1,141, alleging that it incorrectly credited a client's check as $3,000 instead of $5,000. His inability to accept responsibility for his actions shows a lack of insight into his shortcomings that underlie his misconduct. And fourth, Hopkins significantly harmed Lopez by failing to complete the employment contract with Lopez's new employer. (Std. 1.2(b)(iv).) Lopez was forced to hire another attorney to complete the employment negotiations and contract that he had hired Hopkins to handle. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, 79 [counsel's abandonment harmed clients because they had to hire new counsel to finish outstanding matters and counsel failed to cooperate with new counsel].)

[7] Unless otherwise noted, all further references to "standard(s)" are to this source.

B. MITIGATION

We find that Hopkins is entitled to full mitigation credit for two factors and minimal credit for two other factors. First, we assign considerable weight to his more than 14 years of discipline-free practice before the current misconduct. (Std. 1.2(e)(i); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [more than 17 years of practice with no prior record of discipline is "significant mitigating factor"].) Further, Hopkins is entitled to substantial mitigation credit for his service to the community. He and his witnesses testified to the extent of his volunteer work, including serving as president of the Novato Pop Warner, Little Scholars football program, serving 20 years on the board of and providing free legal services to the Andrews Reiter Epilepsy Research Program, and being a founding board member and current adviser to the Knowledge Context, a nonprofit organization that trains young people to understand and evaluate technology. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 592 [significant community service entitled to considerable weight].)

We give minimal mitigation credit for Hopkins' demonstration of good character. (Std. 1.2(e)(vi).) Although six witnesses testified about his honesty and integrity, none of them were "aware of the full extent of [his] misconduct," as required by the standard. His witnesses believed that he failed to supervise his wife when she was his bookkeeper or that a misunderstanding occurred regarding Jakubicek's instructions to transfer funds to her boyfriend's account. Hopkins failed to inform his witnesses that the money was missing from the CTA before the transfer of funds. Thus, his witnesses' testimony about his honesty and integrity is significantly diminished.

Finally, we give very little weight to Hopkins' testimony that his alcohol abuse and marital problems caused his misconduct. (Std. 1.2(e)(iv).) Alcoholism and marital problems may be considered mitigating where it is established by expert testimony that they were

responsible for the attorney's misconduct. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Hopkins provided no expert testimony on this issue nor was his own testimony sufficient to establish that he was an alcoholic. Further, Hopkins failed to demonstrate a causal connection between his misconduct and his personal problems. While Hopkins' alcohol and marital problems may have played some role in his failure to oversee the management of his office, they do not negate the fact that he wrote and signed virtually all of the checks that misappropriated Jakubicek's funds. His efforts to achieve sobriety and repair his marriage, though commendable, are insufficient to overcome his active involvement in the misappropriation of at least $69,000. Thus, we give him minimal mitigation credit for his alleged alcohol abuse and marital problems.

We do not find that Hopkins is entitled to any mitigation for lack of harm to Jakubicek. (Std. 1.2(e)(iii).) Jakubicek had to seek fee arbitration to obtain the return of the money entrusted to Hopkins, which was an inconvenience. Although such inconvenience does not rise to the level of harm necessary to be an aggravating factor (std. 1.2(b)(iv), it is enough to prevent us from giving any mitigation credit pursuant to standard 1.2(e)(iii).

C. LEVEL OF DISCIPLINE

We start with the standards in determining the appropriate discipline to recommend. Guided by standard 1.6(a), we consider the most severe discipline provided by the various standards applicable to the misconduct. Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) calls for disbarment for willful misappropriation unless the amount of money is insignificant or the most compelling mitigating circumstances predominate. Due to Hopkins' dishonesty and misrepresentations surrounding his misappropriation, we conclude that disbarment is necessary to maintain public confidence in the legal profession.

Neither of the exceptions in standard 2.2(a) applies in this case. Hopkins misappropriated at least $69,000, a significant amount. And his multiple circumstances in aggravation, particularly those involving his deception to conceal his misappropriation and his failure to accept responsibility for his misconduct, outweigh any alleviating effect his mitigating factors may have. Although Hopkins' misconduct may appear aberrational in light of his 14 years of discipline-free practice, the serious surrounding circumstances are of great concern.

While we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994), we find no compelling reason to depart from the application of standard 2.2(a) in this matter.

Finally, our disbarment recommendation is supported by comparable case law as the proper sanction to ensure discipline proportionate to the misconduct. (*In the Matter of Conner, supra,* 5 Cal. State Bar Ct. Rptr. 93 [attorney disbarred for willfully misappropriating over $26,000 from CTA and trying to deceive State Bar during its investigation]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [attorney disbarred for misappropriating $29,000 in checks payable to his law firm and from client and lying to managing partner and State Bar that he spent the money on relatives' medical expenses]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [attorney disbarred for making misrepresentations to State Bar surrounding circumstances of his misappropriation of approximately $7,800 and whose actions involved a course of conduct designed to conceal his misappropriation].)

III. RECOMMENDATION

For the foregoing reasons, we recommend that Maximilian J. B. Hopkins be disbarred and that his name be stricken from the roll of attorneys.

We further recommend that he be required to comply with rule 9.20 of the California Rules of Court 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 herein.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

The order that Maximilian J. B. Hopkins be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), will continue pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.