

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case Nos. 05-O-02640, 06-O-14540,
)	06-O-15365, 08-O-10950, 08-O-12107
ADAM MITCHELL LONDON,)	
)	OPINION AND ORDER
A Member of the State Bar, No. 150639.)	
_____)	

This proceeding consists of five discipline cases filed against respondent Adam Mitchell London that involve his representation of clients from 2004 through 2008 while operating his own criminal defense practice. After a four-day trial, the State Bar Court hearing judge found London culpable of 13 counts of misconduct and recommended disbarment.

London accepts some of the hearing judge’s culpability findings, but he disputes that he failed to respond to a client’s reasonable status inquiries; failed to cooperate with the State Bar investigations in three cases; misappropriated \$40,000 from his client trust account (CTA); and failed to provide his client with an accounting. Additionally, London challenges the hearing judge’s aggravation findings and the disbarment recommendation. The State Bar asks that we affirm the hearing judge’s recommendation.

Based upon our independent review of the record (Cal. Rules of Court, rule 9.12), we agree with all of the hearing judge’s culpability determinations, but find an additional act of moral turpitude based on London’s unauthorized practice of law. In total, London committed 14 counts of misconduct in the five matters, ranging in degree of severity from his failure to respond to a client’s reasonable status inquiries to misappropriating \$40,000. Since London

misappropriated entrusted funds, we are guided by standard 2.2(a), which provides for disbarment unless the amount misappropriated is “insignificantly small” or “the most compelling mitigating circumstances clearly predominate.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 2.2(a).)¹ Neither exception to standard 2.2(a) applies here. In light of the extensive misconduct in the five cases and the modest mitigation, we find no justification to depart from the disciplinary standard that calls for London’s disbarment.

I. BACKGROUND

London was admitted to practice law in California in December 1990 and has no prior record of discipline. He worked as a criminal prosecutor with the Los Angeles District Attorney’s Office after he was admitted to the Bar until 1995. After leaving that office, London went into private practice where he focused primarily on criminal defense cases.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Unauthorized Practice of Law in the Adams Matter (Case No. 06-O-14540)

1. Findings of Fact

London was required to complete his mandatory continuing legal education (MCLE) by January 31, 2006. The State Bar mailed six separate notices to him between November 2, 2005 and August 14, 2006, reminding him of the MCLE requirement and the consequences of non-compliance. The July 14, 2006 and August 18, 2006 notices warned London that he would be enrolled as an inactive member of the State Bar (“not eligible to practice”) if he failed to comply by September 15, 2006. The State Bar also provided a courtesy email to London in July 2006, and a courtesy telephone call in August 2006, leaving a message with his assistant. When London failed to comply by the stated deadline, the State Bar enrolled him as inactive effective September 18, 2006, and so notified him by letter dated September 25, 2006.

¹ Unless otherwise noted, all further references to “standard(s)” are to this source.

While London was ineligible to practice law, he appeared in court on September 21, 2006, and he filed a motion to continue a trial date on behalf of his client, Denise Marie Adams, on September 27, 2006. When he attended a September 29, 2006 hearing on the motion, the deputy city attorney informed him that he was on inactive status. London did not appear on the record on behalf of Adams that day.

On October 17, 2006, London submitted his MCLE compliance materials and fees to the State Bar. The State Bar reinstated London to active status on that date.

2. Conclusions of Law

Count 1 – Unauthorized Practice of Law (Bus. & Prof. Code, § 6068, subd. (a))²

London does not challenge the hearing judge’s finding of culpability on this count. London appeared in court and filed a motion while he was not eligible to practice law. Thus, the hearing judge concluded that London engaged in the unauthorized practice of law (UPL) in violation of sections 6125 and 6126. In doing so, London failed to support the Constitution or laws of the United States or California in violation of section 6068, subdivision (a). We adopt the hearing judge’s conclusion.

Count 2 – Moral Turpitude for the UPL (§ 6106)

The hearing judge concluded that London did not violate section 6106 based on his UPL because he was unaware that he was ineligible to practice law until sometime *after* the State Bar sent its September 25, 2006 notification. On review, the State Bar contends that London is culpable because he knew or should have known about his inactive status since he received letters dated July 14 and August 18, 2006, which explicitly warned that he would be enrolled inactive if he did not submit compliance by September 15, 2006.

² Unless otherwise noted, all further references to “section(s)” are to this source.

Unlike the hearing judge, we do not find that London can avoid culpability by arguing that he did not receive the State Bar's September 25, 2006 letter notifying him of his ineligible status until sometime *after* he practiced law in the Adams matter. London received at least six notices regarding his MCLE obligations, including at least two warnings that he would be not eligible to practice law if he failed to provide compliance by September 15, 2006. London ignored these notices and continued to practice law. Not only did he fail to provide the State Bar with proof of compliance by the required date, he failed to complete any of his MCLE requirements until after October 6, 2006. Under these circumstances, we find that London intentionally or with gross negligence committed UPL in violation of section 6106.

B. The Qi Matter (Case No. 06-O-15365)

1. Findings of Fact

On June 14, 2006, Shu Ying Qi was arrested in Ventura County, California for pimping and pandering. Qi hired London to represent her and signed a "Retainer and Flat Fee Representation Agreement" promising to pay London a \$12,000 flat fee to ensure "the availability of [London] to assume representation of [Qi] in the matter and pre-trial preparation." At the time she signed the agreement, Qi did not have enough money to pay the \$12,000 fee so she paid London \$6,000 in cash and also provided him with a post-dated check for the \$6,000 balance. London agreed not to deposit the check at that time because Qi did not have the funds in her bank account to cover the check.

After Qi hired London, she had three court dates between June and September 2006 in Ventura County Superior Court. As of the date of each of the three hearings, no complaint had been filed against Qi by the district attorney's office. Since a complaint still had not been filed by the third hearing on September 12, 2006, the judge discharged Qi and ordered that "the

district attorney may file a complaint at a later date using [the same] case number, pursuant to [the] statute of limitations.”

Following that September 12 court appearance, London and Qi met to discuss her legal fees. London claims he told Qi he would keep the \$6,000 uncashed check until the district attorney filed formal charges against Qi, but he would not deposit it until that occurred. London never deposited the post-dated check. However, Qi felt she was entitled to a partial refund of the \$6,000 she had already paid in cash since charges were never filed and London performed only a minimal amount of work.

Less than a month after the court discharged Qi, attorney Ronald Whiteman sent London a letter dated October 3, 2006, explaining that Qi had retained him to obtain a refund of the \$6,000 she paid London. Whiteman claimed that London did “nothing to represent Ms. Qi’s interest[s]” and he did “nothing to advance her case to resolution.” Whiteman’s letter contained a chronology of London’s representation that was relayed by Qi and asserted that London was late to court twice and “on one occasion did not show up.”³ Whiteman demanded that he return the \$6,000 fee, but London did not respond.

Whiteman sent a second letter dated November 9, 2006, stating that London had neither replied to his previous letter, which Whiteman enclosed, nor returned any of his phone calls. Again, London failed to respond.

Since London did not refund any portion of Qi’s \$6,000 as requested, or otherwise respond to Whiteman’s requests, she filed a complaint against him with the State Bar. On February 17, 2007, a State Bar investigator sent London a letter at his official membership address, setting forth Qi’s allegations against him and requesting London’s response. London

³ There was conflicting evidence as to whether or not London appeared at each court event. However, our culpability determinations do not change even if we accept his testimony that he did appear timely at all events.

failed to respond by the deadline designated in the February 17 letter. Thus, the investigator wrote a second letter on March 16, 2007, again enclosing a copy of the previous letter and requesting a response. London again failed to reply.

2. Conclusions of Law⁴

Count 5 – Failure to Respond to Client’s Reasonable Status Inquiries (§ 6068, subd. (m))

The hearing judge concluded that London willfully violated section 6068, subdivision (m), because he failed to respond to Qi’s reasonable status inquiries about a fee refund. London challenges this conclusion, asserting that the letters from Qi’s subsequent attorney were not “reasonable” inquiries because they contained inaccuracies about the services he performed. Qi claimed that London had not earned the \$6,000 because the district attorney never filed charges against her and therefore she demanded a refund. Regardless of any discrepancy about the work performed or whether the money should be refunded (i.e., a fee dispute), the inquiries were reasonable and London had an obligation to respond. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 921-922 [client’s effort to communicate with attorney about refund was reasonable status inquiry because it implicated nature and conditions of attorney’s representation]; see also *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855 [clients’ status inquiries were reasonable in light of clients’ “continued perception that their attorney was acting against their wishes”].) We find London’s failure to respond to be a willful violation of section 6068, subdivision (m).

⁴ The State Bar charged London with willfully violating rule 4-200(A) (charging and collecting unconscionable fee – count 3) and rule 3-700(D)(2) (failing to return unearned fees – count 4) of the Rules of Professional Conduct. Unless otherwise noted, all further references to “rule(s)” are to this source. The hearing judge did not find culpability and dismissed both charges with prejudice because London’s \$6,000 fee was not unreasonable or unconscionable based on the work London performed for Qi. The State Bar does not challenge these culpability findings, and based on our independent review, we adopt the hearing judge’s conclusions.

Count 6 – Failure to Cooperate with State Bar Investigation (§ 6068, subd. (i))

London also challenges the hearing judge’s conclusion that he failed to cooperate with the State Bar investigation in violation of section 6068, subdivision (i), by failing to respond to the investigator’s letters about Qi’s complaint. London contends he never received the State Bar’s letters, and the State Bar failed to lay the proper foundation that they were properly mailed. But the evidence is to the contrary.

Two State Bar secretaries and the investigator involved in London’s case testified about the State Bar’s office procedures regarding preparing and sending letters. This evidence included that: (1) the letters were addressed to London’s official membership address and placed in envelopes; (2) the envelopes were put in the “outbox” where a mail clerk picked them up and took them to the mailroom; and (3) the envelopes were sealed and postage applied in the mailroom. This evidence was sufficient to establish that the investigative letters were properly sent to London. (Evid. Code, § 641 [“A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.”].) Although London denies receipt of the letters, the hearing judge determined that his testimony lacked credibility,⁵ and decided the issue in the State Bar’s favor. (See *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421.) We give great weight to that credibility finding. (Rules Proc. of State Bar, former rule 305(a).)⁶ Thus, we adopt the hearing judge’s findings that the State Bar’s investigative letters were properly mailed and that London received them, and agree with the hearing judge that London is culpable.

⁵ Despite overwhelming evidence to the contrary in the five cases, London denied receiving at least 15 letters and faxes, more than 20 telephone calls and messages, and numerous emails.

⁶ These rules were amended effective January 1, 2011. However, since this request for review was filed prior to the effective date, the former rules apply.

C. The Pang Matter (05-O-02640)

1. Findings of Fact

Fred Pang was convicted of 13 counts of tax-related offenses and sentenced to 24 months' imprisonment. After the Ninth Circuit Court of Appeals confirmed his conviction on March 30, 2004, Pang wanted to know if he had viable grounds for post-conviction relief. Pang hired London, who was not his trial or appellate attorney, to review certain documents and offer his legal opinion. On May 21, 2004, Pang paid London \$12,500 for this work.

On June 21, 2004, Pang signed a fee agreement to retain London for additional services. Pang hired London "to review the entire case file including investigation, trial, and post trial [sic] conduct of [Pang's] previous representation for possible error including ineffective assistance of counsel." The agreement specified the urgency of the matter because Pang was scheduled to begin his jail sentence on June 24, 2004. London drafted the agreement, which did not contain his usual method of flat fee payment. The agreement contained the following provisions:

- In consideration of legal services to be rendered by Attorney on behalf of Client in connection with said case, Client agrees to pay Attorney the following sums: \$60,000 (sixty thousand dollars) shall be paid to Attorney to insure [sic] his availability for four weeks beginning June 21, 2004. This fee shall be earned at the time the retainer agreement is executed and shall not be subject to accounting or based upon actual hours of work completed on this matter. Client acknowledges that Attorney's agreement to undertake the above work may preclude the Attorney from undertaking other cases.
- \$40,000 (forty thousand dollars) shall be deposited into Attorney's attorney client trust account to be drawn on by attorney at an hourly rate of \$250 dollars [sic] per hour.
- Attorney shall keep an accounting of hours performed and shall provide that to client upon client's reasonable request. Attorney shall advise client when and if funds have been exhausted so that client may deposit additional funds should additional work by attorney on behalf of client be desired.

Pang paid London \$100,000 when he signed the fee agreement. One day later, on June 22, 2004, London deposited the \$100,000 check into his CTA, which had a prior balance of \$369.93. On June 24, 2004, London transferred \$10,000 from his CTA into his business

account. Seven days after receiving the \$100,000 check, London transferred the remaining \$90,000 from his CTA into his personal bank account, once again leaving a balance of \$369.93 in his CTA. London had not performed \$40,000 worth of work when he transferred the money and never provided an accounting for any work he did perform.

On July 2, 2004, London met with Pang while he was incarcerated in Las Vegas. During the meeting, London and Pang signed a “Memorandum of Understanding Re: Representation.” In that document, London memorialized that Pang understood he had the right to pursue a writ of certiorari through the United States Supreme Court and the deadline to do so was August 11, 2004. The memorandum specifically stated that London had “not been retained to pursue that writ of certiorari,” and that Pang wished “to abandon any petition for writ of certiorari.” It reiterated the scope of London’s representation of Pang, which was to investigate and possibly challenge Pang’s conviction based on “error and ineffective assistance of counsel.”

London testified that sometime after Pang signed the memorandum of understanding, Pang decided he did want to pursue a petition for writ of certiorari, and the two orally modified the scope and terms of the initial fee agreement. According to London, he agreed to prepare a writ of certiorari on Pang’s behalf without charging any additional fees, and converted the \$40,000 of advanced attorney fees into a flat fee with no requirement of providing an accounting. This “oral agreement” was never reduced to writing. London filed a petition for writ of certiorari on August 11, 2004. The petition was denied.

A little over one month after London filed the petition, Pang sent him a letter protesting the amount of London’s fees and requested a \$90,000 refund. Pang believed that the fee agreement he signed was “unconscionable and excessive” and argued that he signed the document and advanced the \$100,000 fee under “extreme distress.” Pang asked London to forward his trial transcripts and legal file to him in prison. London did not respond to this letter.

Having received no response from London, Pang hired subsequent counsel to represent him regarding London's fees and failure to return Pang's file. Attorney Malcolm A. Wiseman sent London a letter dated December 24, 2004, addressing those matters and demanding the release of Pang's file. London also failed to respond to this letter. As a result, Pang sued him in July 2005 for possession of personal property and unjust enrichment. While the case was pending, London delivered Pang's file to his new attorney, and the case eventually settled for \$20,000, with no admission of liability by London.

2. Conclusions of Law

Count 1 – Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))⁷

London challenges the hearing judge's conclusion that he willfully violated section 4-100(A) by withdrawing \$40,000 from his CTA without earning those fees. London asserts that the fee agreement did not require him to maintain the \$40,000 in his CTA and only withdraw it when earned, and, if it did contain such a requirement, it was due to his negligent draftsmanship. We find that London was required to maintain the \$40,000 in his CTA until earned and his "negligent draftsmanship" did not excuse his failure to do so.

London contends that he interpreted the agreement to mean that he could withdraw the fee "whenever he wanted, subject to accounting for his hours later." We reject this contention as inconsistent with the plain, common-sense meaning of the agreement. The language is not ambiguous; the agreement specifically provides that "\$40,000 (forty thousand dollars) shall be deposited into Attorney's attorney client trust account to be drawn on by attorney at an hourly rate of \$250 dollars [sic] per hour." While the \$40,000 Pang paid London was an advanced fee, which generally does not require that such unearned fees be deposited into a CTA, this

⁷ Rule 4-100(A) requires that all funds received for the benefit of clients be deposited in a trust account.

agreement required London to do so. We find that the terms of the fee agreement are unambiguous⁸ and not subject to the proffered interpretation. Thus, until he earned the \$40,000, he had a fiduciary duty to maintain it in his CTA for Pang's benefit. (See *S.E.C. v. Interlink Data Network of Los Angeles, Inc.* (9th Cir. 1996) 77 F.3d 1201, 1206 fn. 5.) Further, any ambiguity must be construed against London. (*Bartlett v. Pacific Nat. Bank* (1952) 110 Cal.App.2d 683, 691.)

“[T]he purpose of the [trust] account is to protect and maintain the client's funds. [Citation.]” (*Hoosier v. Superior Court* (2000) 84 Cal.App.4th 997, 1008.) London violated his ethical obligation to Pang by withdrawing the entire \$40,000 seven days after receiving it and without earning it, in willful violation of rule 4-100(A).

Count 2 – Failure to Render Accounting of Client Funds (Rule 4-100(B)(3))

The hearing judge concluded that London's failure to provide Pang with an accounting was a willful violation of rule 4-100(B)(3). London asserts that he and Pang orally modified the terms of the retainer agreement, making it a flat fee agreement and eliminating the requirement that London keep an accounting for the work performed for the \$40,000. We reject London's argument and find the evidence supports the hearing judge's culpability determination.

London's testimony that he and Pang orally modified the retainer agreement is contradicted by the record. Pang's letter terminating London's services was sent one month after London filed the petition for writ of certiorari. The letter does not mention anything about a modification to the agreement. Further, upon receiving Pang's letter demanding a refund of \$90,000, London offered no response “reminding” Pang about the modified agreement entitling

⁸ Likewise, the term “draw” in its plain meaning is not complicated. The dictionary definition of “draw” reflects the common-sense meaning of the word: “to take (money) from a place of deposit.” (Webster's 9th New Collegiate Dict. (1983) p. 381; Black's Law Dict. (8th ed. 1999) p. 531, col. 2, [“draw” means “[t]o take out (money) from a bank, treasury, or depository”].)

him to keep the entire \$40,000 as a flat fee and not subject to an accounting. Likewise, in his response to the State Bar investigator's letter about the Pang matter, London never mentioned that he and Pang orally modified the retainer agreement. Finally, in Pang's lawsuit against London, London never answered the complaint or defended on the grounds that there was a subsequent *oral* modification of the written fee agreement.

Even if, *arguendo*, there were a modification, London was not relieved of his ethical obligation to maintain adequate records of his fees. The Rules of Professional Conduct establish ethical obligations for members of the Bar and "are also designed to protect the public. [Citations.]" (*Ames v. State Bar* (1973) 8 Cal.3d 910, 917.) Since Pang disputed the amount of fees London collected for the work he performed, London had a duty to account to Pang. He cannot shield himself from complying with rule 4-100(B)(3) by allegedly securing an oral waiver of the rule's compliance in a modified fee agreement.

Finally, London asserts that he did not violate rule 4-100(B)(3) because Pang never requested an accounting. This argument ignores Pang's September 17, 2004 letter, correspondence from Pang's subsequent counsel, and the fee agreement that required London to provide accountings. Moreover, "the obligation to 'render appropriate accounts to the client' found in rule 4-100(B)(3) does not require as a predicate that the client demand such an accounting.'" (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.) We therefore adopt the hearing judge's finding that London willfully violated rule 4-100(B)(3).

Count 3 – Failure to Release Client File (Rule 3-700(D))

London does not challenge the hearing judge's culpability finding as to count three. Based upon our independent review of the record, we adopt the hearing judge's culpability

finding, as the evidence establishes that London failed to return Pang's file in willful violation of rule 3-700(D).

Count 4 – Moral Turpitude (§ 6106)

The hearing judge concluded that London's misappropriation of \$40,000 from his CTA involved moral turpitude. London asserts that the finding is incorrect because either he was entitled to withdraw the fee whenever he wanted, so long as he accounted for his hours at a later date, or the misappropriation was due to his negligent drafting of the retainer agreement. As set forth above, neither argument is persuasive.

We also reject London's argument that he did not misappropriate the funds in "a deliberate or evil way," intending to deprive Pang of the money, because he earned it within 60 days by filing the petition for writ of certiorari pursuant to the oral modification. Even assuming that the parties orally agreed to modify the written agreement,⁹ this "subsequent development" would not justify his prior misappropriation. (*Aronin v. State Bar* (1990) 52 Cal. 3d 276, 290 [attorney misappropriated client funds by recording trust deed on client's property *before* he was entitled to do so and subsequent development entitling him to payment did not justify his prior recording].)

The fee agreement was unambiguous and required London to maintain the \$40,000 advance attorney fees in his CTA until earned. London withdrew the entire \$40,000 for his own purposes just seven days after he received it, without Pang's consent and without performing \$40,000 worth of work. Such willful misappropriation involves moral turpitude in violation of

⁹ The agreement itself stated that any additional work required "a separate written agreement between the Attorney and Client." No modification to the original agreement was ever reduced to writing. Accordingly, the validity and enforceability of any oral modification is seriously called into question. (*In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668, 676 [respondent had duty to execute modification as prescribed by agreement if he wished to earn extra sums and fees].)

section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1304 [withholding and withdrawing funds from CTA without client's authority involved moral turpitude].)

D. The Zhang Matter (No. 08-O-10950)

1. Findings of Fact

On January 9, 2008, Qi Zhang paid London a flat fee of \$7,500 to represent him on a battery charge stemming from an altercation with a woman over a parking space. The \$7,500 fee covered defense costs up to the first day of trial. Prior to hiring London, Zhang was represented by another attorney. As a result, London told Zhang he would have to prepare a substitution of attorney for his signature.

When Zhang had not received the substitution of attorney, he and his wife contacted London for status updates. They called him on his office and cell phones over 20 times, and sent emails and a fax. They also left messages on his voicemail, but London never contacted them. Zhang was eager to speak with London about his case because the pretrial conference was scheduled for February 13, 2008. As of February 6, 2008, Zhang had not heard from London and his office phone number had been disconnected.

Due to London's lack of communication, Zhang sent him a certified letter dated February 10, 2008, terminating his services and demanding a refund of the previously paid \$7,500.¹⁰ Zhang's letter stated that if he did not receive a refund within ten days, he would file a complaint with the State Bar. When London failed to respond, Zhang filed his complaint. Thereafter, Zhang retained a new attorney to represent him on the battery charge at a cost of \$5,000.

¹⁰ Although he never communicated with Zhang, London appeared at the February 13 pretrial conference on Zhang's behalf. London testified that he discussed the case with the prosecutor and obtained copies of evidence. Based on this undisputed testimony, the hearing judge dismissed with prejudice count 1, which alleged willful failure to perform in violation of rule 3-110(A). This dismissal is not challenged on review and we adopt it.

Following Zhang's complaint, the State Bar sent a letter dated April 7, 2008, to London at his official membership address. The letter outlined Zhang's allegations against London and requested that London provide relevant documents and a response by April 21, 2008. London failed to comply by the April 21 deadline so the State Bar sent him a second letter dated April 24, 2008, requesting a response. London did not respond to the State Bar.

2. Conclusions of Law

Count 2 - Failure to Respond to Reasonable Status Inquiries (§ 6068, subd. (m))
Count 3 – Failure to Refund Unearned Fees (Rule 3-700(D)(2))

There are no challenges to the hearing judge's culpability findings of counts two and three. Upon our independent review of the record, we adopt the hearing judge's culpability findings because: (1) London failed to respond to Zhang's reasonable status inquiries in violation of section 6068, subdivision (m); and (2) he failed to return a portion of the unearned fees once Zhang terminated him in violation of rule 3-700(D)(2).

Count 4 – Failure to Cooperate with State Bar Investigation (§ 6068, subd. (i))

London challenges the hearing judge's finding that he violated section 6068, subdivision (i), by failing to cooperate with the State Bar investigation. Once again, London asserts he never received the State Bar's investigative letters, but the hearing judge found that this testimony was not credible. We apply the same analysis here as we did in count six in the Qi Matter to conclude that clear and convincing evidence demonstrates that London received the State Bar's letters, making him culpable of violating section 6068, subdivision (i), when he failed to respond to the State Bar's letters.

E. The Wang Matter (No. 08-O-12107)

1. Findings of Fact

Chunyan Wang was arrested for prostitution in a massage parlor in Arizona. On December 14, 2005, she retained London to represent her on those charges and paid him a flat

fee of \$6,500. However, at the time Wang retained him, London was not admitted to practice law in Arizona.

On December 22, 2005, London faxed a letter on his firm's letterhead to the Scottsdale Municipal Court notifying it that Wang had retained him and that he would be appearing on her behalf at the initial hearing scheduled for December 23, 2005. The court responded by ordering Wang to appear in court on January 31, 2006, because London was not licensed to practice law in Arizona.

Previously, London sought and was granted pro hac vice status in Arizona for an unrelated case. He conducted only preliminary research on obtaining such status for the Wang matter and did not apply for it. Instead, London eventually associated local counsel, the Van Norman firm from Scottsdale, to assist with representing Wang. Wang understood only that London was going to find local counsel to "partner" with him in the case. London paid the Van Norman firm a flat fee of \$3,500. The Van Norman firm filed a "Notice of Association of Counsel" on March 8, 2006, and represented Wang on the charges in Arizona. Eventually Wang pled guilty on July 21, 2006.

Wang filed a complaint with the State Bar because London failed to tell her that he was not licensed to practice law in Arizona and had paid another firm to represent her. The State Bar sent London a letter dated September 22, 2008, to his official membership address outlining the allegations against him and requesting that he provide relevant documents and a response by October 6, 2008. London failed to file a response by the October 6 deadline so the State Bar sent London a second letter dated October 29, 2008, requesting a response. London did not respond to the State Bar.

2. Conclusions of Law

Count 5 – Charging and Collecting an Illegal Fee (Rule 4-200)

Count 6 – Unauthorized Practice of Law in Another Jurisdiction (Rule 1-300(B))

London does not challenge the hearing judge's culpability findings as to counts five and six, and we adopt them. The evidence establishes that London charged and collected fees from Wang when he was not entitled to practice law in Arizona, in willful violation of rule 4-200, and that he engaged in UPL in Arizona by sending a letter on his office letterhead to the Scottsdale Municipal Court purporting to represent Wang in willful violation of rule 1-300(B).¹¹

Count 8 – Failure to Cooperate with State Bar Investigation (§ 6068, subd. (i))

London challenges the hearing judge's finding that he violated section 6068, subdivision (i), by failing to respond to the State Bar investigator's letters about Wang's complaint. The hearing judge found that London's testimony that he never received the State Bar's investigative letters lacked credibility. We apply the same analysis as we did in count six in the Qi Matter to determine that clear and convincing evidence demonstrates that London received the State Bar's letters. London is culpable of violating section 6068, subdivision (i), for failing to respond to those letters.

III. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

London bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The record supports the two mitigating factors found by the hearing judge and we adopt them. London's practice of law for 14 years without any prior record of discipline is entitled to significant weight. (Std. 1.2(e)(i).) Also, his stipulation of facts and

¹¹ The State Bar does not challenge the hearing judge's dismissal with prejudice of count seven, which prohibits an attorney from dividing a fee with another attorney unless certain conditions are met, including client consent. Based on our independent review of the record, we adopt the hearing judge's conclusion.

agreement to allow certain State Bar witnesses to testify telephonically assisted the State Bar in the prosecution of this case, entitling London to moderate mitigation. (Std. 1.2(e)(v); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 156.)

London suggests he is entitled to mitigation because he eventually earned the \$40,000 he misappropriated from Pang by preparing and filing the petition for writ of certiorari. However, we are not inclined to enforce any oral modification to the original written agreement based on the facts presented in this case. In addition, the record does not establish how much London actually earned by preparing the certiorari petition *after* he misappropriated the \$40,000 for his own purposes. Thus, we afford no mitigation.

B. Aggravation

The State Bar has the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) The record supports all three aggravating factors found by the hearing judge. First, the numerous ethical violations London committed evidence multiple acts of misconduct (std. 1.2(b)(ii)). In addition, his failure to return unearned fees to Zhang significantly harmed Zhang (std. 1.2(b)(iv)), who had to pay his subsequent attorney an additional \$5,000.

Additionally, clear and convincing evidence shows that London does not have “a full understanding of the seriousness of his misconduct,” which is a troubling aggravating factor. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68; see also std. 1.2(b)(v).) When asked if he did anything wrong, London testified that he “would like to provide a better service for my clients.” He believed that it was wrong not to have the proper staffing to support his practice, but his new office location offers the support staff he needs to “help with clients.” London’s testimony demonstrates that he fails to acknowledge or understand

that his misappropriation of \$40,000 from his CTA compromised his fiduciary duty to protect Pang's funds. London has failed to realize the impact his misconduct had on his clients. His failure to appreciate the wrongfulness of his actions and the extent of his misconduct is particularly troubling.

IV. LEVEL OF DISCIPLINE

In determining the appropriate level of discipline, we first consider the applicable standards. While we are "not compelled to strictly follow [the standards] in every case," we look to them for guidance (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and afford them great weight in order to ensure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220.) Ultimately, we are guided by standard 1.3, which instructs that the purpose of disciplinary proceedings is to protect the public, the courts and the legal profession.

Several standards apply here, providing a broad range of potential discipline from reproof to disbarment.¹² However, since London is culpable of misappropriating entrusted funds, our focus is on standard 2.2(a), which provides for the most severe sanction. (Std. 1.6(a) [sanction imposed shall be most severe of different applicable sanctions].) This standard calls for disbarment in cases of willful misappropriation unless "the amount of funds . . . misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate," in which case a one-year actual suspension is warranted.

Neither of the exceptions in standard 2.2(a) applies here. London misappropriated \$40,000, a significant amount, and he failed to establish compelling mitigation that clearly outweighs the serious factors in aggravation, particularly his multiple acts of misconduct and

¹² Applicable standards include: std. 2.2(b), providing for at least a three-month suspension for trust account violations under rule 4-100; std. 2.3, providing for actual suspension to disbarment for moral turpitude violations under section 6106; std. 2.6, providing for suspension to disbarment for violations of an attorney's duties under section 6068; and std. 2.10, providing for reproof to suspension for all other violations not covered by a particular standard.

lack of insight into that misconduct. London could not explain why he misappropriated the funds seven days after receiving them or what he did with those funds. But he transferred the money directly into his personal account, demonstrating that he used it for his own purposes.

In addition, we find the overall nature and extent of London's misconduct to be particularly troubling. The case is not limited to a single act of misappropriation, but includes 14 violations in five cases over a period of four years. Thus, 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 insufficient evidence to justify a departure from the disbarment recommendation provided by standard 2.2(a). The decisional law involving intentional misappropriation supports our recommendation for disbarment as discipline which is proportionate to London's misconduct. (*Grim v. State Bar* (1991) 53 Cal.3d 21 [disbarment for misappropriation of \$5,500, where cooperation with State Bar and good character did not constitute compelling mitigation in view of aggravating circumstances]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of \$20,000 and failure to account, despite no priors in seven years]; *Cooper v. State Bar* (1987) 43 Cal.3d 1016 [disbarment for misappropriation of \$1,116 and pattern of misconduct, despite no prior discipline in 25 years of practice, where unwillingness to acknowledge serious nature of misconduct].)

V. RECOMMENDATION

We recommend that Adam Mitchell London be disbarred and that his name be stricken from the roll of attorneys.

We further recommend that London 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 in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 of that code and as a money judgment.

VI. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered London's involuntary enrollment as an inactive member of the State Bar as required by section 6007, subdivision (c)(4). The order of involuntary inactive enrollment became effective on March 29, 2010, and London has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.