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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)
)
KURT ANTHONY MILLER,) **No. 06-O-11794**
)
) **OPINION ON REVIEW AND ORDER**
A Member of the State Bar.)
)
_____)

I. INTRODUCTION

The hearing judge recommended that Kurt Anthony Miller be disbarred for misconduct in two client matters. In the first case, the hearing judge found that Miller performed incompetently and did not communicate with his client when he failed to appear at an immigration court hearing. In the second case, the hearing judge found that Miller failed to deposit \$75,000 of client settlement funds into a trust account, misappropriated that money, did not provide an accounting or respond to client inquiries and presented forged documents to the State Bar investigator. Miller seeks review, alleging he is not culpable of any misconduct. The State Bar supports the disbarment recommendation.

We adopt the hearing judge's factual findings but do not adopt all of the culpability determinations. In the first case, we do not find sufficient evidence to support any culpability. In the second case, we adopt the hearing judge's culpability findings except failure to respond to client inquiries. We also adopt the mitigation findings and find three factors in aggravation, although the hearing judge found none. Regardless of these modifications, Miller misappropriated \$75,000 and presented false documents to the State Bar to conceal his actions. His misconduct was extremely serious and we agree with the hearing judge's recommendation that Miller be disbarred.



II. PROCEDURAL HISTORY

The State Bar filed two Notice of Disciplinary Charges (NDC) against Miller that were consolidated for trial. The January 2007 NDC alleged misconduct involving Miller's missed appearance in immigration court (06-O-11794), and the February 2008 NDC alleged misconduct involving the \$75,000 misappropriation (06-O-14477).

III. STANDARD OF PROOF

A State Bar Court disciplinary hearing is an adversarial proceeding where the State Bar has the burden of proving misconduct by evidence meeting the "clear and convincing" standard. (Rules Proc. of State Bar, rule 213.) This standard requires evidence to be "so clear as to leave no substantial doubt" and must be "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.) We have independently reviewed the record by this standard of proof. (*In re Morse* (1995) 11 Cal.4th 184, 207.)

IV. CASE NUMBER 06-0-11794 (PENNY GHO MATTER)

A. FACTUAL FINDINGS

In January 2004, Miller began representing Penny Gho in immigration court. Gho, who was from Indonesia, was facing a removal hearing after being denied asylum. Immigration Specialists (IS), a support group for asylum-seekers, referred Gho to Miller and paid his legal fees for representing her. Between January 2004 and April 2005, Miller attended several court hearings for Gho. However, on November 14, 2005, he failed to appear at one of Gho's hearings.

Miller admitted he knew about and did not attend the November hearing, but explained that he had made arrangements for other counsel to appear. He testified that Gho told him she had retained new counsel, and was either getting married to, or had married, a U.S. citizen,

making her claim an adjustment to alien status rather than one for asylum. Since Miller only appeared in asylum matters, he contacted Gho's new counsel, Kenneth Goodsell, and they arranged for Goodsell to appear. For reasons not reflected in the record, Goodsell failed to appear at the November hearing, where Gho represented herself. The court set trial for October 25, 2006. On December 15, 2005, Goodsell filed a Notice of Appearance informing the court that he was representing Gho.

B. LEGAL CONCLUSIONS

Count 1: Miller Did Not Fail to Perform Competently (Rules Prof. Conduct, rule 3-110(A))¹

The State Bar alleged Miller recklessly, repeatedly and intentionally failed to perform with competence on two grounds: (1) he did not appear at the November hearing; and (2) he did not arrange for alternate counsel to appear. We find insufficient evidence on both grounds.

Miller did not perform incompetently by missing the November hearing. He had been representing Gho for a year and a half and relied on Goodsell's promise to appear. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 437-438 [violation of rule 3-100(A) not established where attorney submitted application to suspend deportation but failed to appear at two subsequent immigration court hearings].) Miller's sole non-appearance was at most a negligent act, and failing to perform competently cannot be premised on mere negligence. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 107.)

Also, Miller did not fail to arrange for alternate counsel for the November hearing. He testified that Goodsell told him before that hearing: "No, you don't have to come. I'll show up there, and everything will be fine." The State Bar did not present any witness, including Gho or Goodsell, to contradict Miller's testimony. In fact, the State Bar submitted only the November 14, 2005 court docket, which simply noted Miller's absence from the hearing.

¹ Unless otherwise noted, further references to rule(s) are to this source.

Although the hearing judge rejected much of Miller's trial testimony as lacking credibility, this finding does not necessarily "reveal the truth itself or warrant an inference that the truth is the direct converse of the rejected testimony." [Citation.]" (*Edmondson v. State Bar* (1981) 29 Cal.3d 339, 343.) The court docket alone does not establish that Miller failed to arrange for Goodsell's appearance. We do not adopt the hearing judge's culpability finding and dismiss this count with prejudice.

Count 2: Miller Did Not Fail to Communicate a Significant Development (Bus. & Prof. Code, § 6068, subd. (m))²

The State Bar alleged Miller violated section 6068, subdivision (m), because he failed to tell Gho that he was not going to attend the November hearing. The State Bar relied on two documents to support the hearing judge's culpability finding. The first is Miller's February 2, 2006 letter to the State Bar stating "I was not contacted by Ms. Gho prior to the hearing, and I have not spoken with her to this date." The second is a November 14, 2005, court order noting that Gho did not know why Miller was not present. Miller correctly argues on review that Gho's statement is inadmissible hearsay. Therefore, the only evidence before us is Miller's February letter, which is vague and merely establishes that Gho did not contact Miller before the hearing and Miller had not recently spoken to her. It does not prove that Miller failed to tell Gho that he would not attend the November hearing. We therefore do not adopt the hearing judge's culpability finding and dismiss this count with prejudice.

Count 3: Miller Did Not Share Legal Fees with a Non-Lawyer (rule 1-320(A))

The State Bar alleged that Miller shared legal fees with IS and therefore violated rule 1-320(A), which prohibits an attorney from directly or indirectly sharing legal fees with a non-

² Unless otherwise noted, further references to section(s) are to this source. Under section 6068, subdivision (m), "It is the duty of an attorney to . . . [¶] . . . [¶] . . . (m) . . . keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

lawyer. Miller testified that IS was a support group for those seeking asylum and was owned and operated by Mei Supoto and St. Elmo Neuman. The State Bar did not establish that IS was entirely owned or operated by non-attorneys, that Miller ever made an agreement with IS to split fees or that money derived from legal fees was used to pay him. We agree with the hearing judge that the evidence is insufficient and dismiss this count with prejudice.³

V. CASE NUMBER 06-0-14477 (CHRISTOPHER MARTIN MATTER)

A. FACTUAL FINDINGS

Christopher Martin is the owner of Martin Manufacturing, a company that designs, produces and markets motorized scooters. Martin hired Miller in 2003 to represent him on a patent infringement claim against American Power Products, Inc. (APP). Martin claimed that they had an oral agreement for Miller's legal services at \$150 per hour, and Miller claimed that they had a written 50% contingency fee agreement.

Miller filed a lawsuit against APP, which settled at an early mediation. APP agreed to pay \$250,000 in installments to Martin Manufacturing for past patent infringement.⁴ On October 30, 2003, APP sent Miller the first installment check of \$75,000, which was made payable to both Miller and Martin Manufacturing. The next day, Miller deposited the check into his personal checking account at Washington Mutual Bank (Washington Mutual). Martin testified that he was not aware that Miller received the check until weeks later. Conversely,

³ Although we do not find culpability, we note that Miller provided the State Bar investigator with misleading documents in the Gho Matter. Miller testified that he gave the investigator a copy of a \$500 IS-issued check which he represented was for work on Gho's case when, in fact, it was payment for a different case: "... I couldn't find a check from Immigration Specialists or Penny Gho to pay me for my representation of Ms. Gho. So I just took – because I felt somebody paid me. I just took an Immigration Specialists check, and I attached it, which is a May of 2003 check."

⁴ The payments were due on four dates: \$75,000 on or before November 1, 2003; \$50,000 on or before December 1, 2003; \$50,000 on or before February 29, 2004; and \$75,000 on or before March 31, 2004.

Miller testified that Martin told him to deposit the check right away so it wouldn't bounce.

Miller claimed that he thought his Washington Mutual Account was his client trust account.

However, bank records reflected it as a "personal" account, and Miller had used it to pay general business bills.

At a meeting between Martin and Miller on November 12, 2003, Miller announced that he was going to keep 50% of the \$75,000 as contingency legal fees or as a partnership interest. Martin denied they had such agreement and estimated Miller's hourly services in the APP litigation to be no more than \$6,000. Miller wrote Martin a check for \$37,500 out of the Washington Mutual checking account. Martin accepted it only as a partial payment and then did not cash it claiming that Washington Mutual told him the account had insufficient funds. However, Miller's bank records showed enough funds to cover this check from October 31, 2003 through December 17, 2003. About a week after the November 12, 2003 meeting, Martin wrote to Miller demanding full payment of the "trust monies" and acknowledging that he had received the check for \$37,500. Miller denied receiving this letter.

On December 1, 2003, Martin sent Miller an e-mail, announcing that an Arizona company would handle all of his future patent matters. He did not mention the \$75,000.

On December 2, 2003, APP sent Miller \$50,000 for the second settlement installment. Miller again deposited the money in his Washington Mutual account and sent Martin a check for \$25,000. Martin did not cash the check and eventually returned it to Miller. Instead, Martin contacted APP's counsel, Keith deBrucky, to request that APP immediately stop payment on the \$50,000 check, reissue it to him and send all future payments directly to Martin himself. APP complied with his request because the settlement was exclusively between APP and Martin Manufacturing. Washington Mutual records show that the \$50,000 check was returned from the bank, reversing the deposit on December 5, 2003.

On December 9, 2003, Miller responded to Martin's December 1st e-mail with a letter accusing him of trying to prevent Miller from getting "any monies for my hard work." Although the bank had already returned the \$50,000 check to APP, Miller suggested that Martin keep the \$25,000 previously sent and he would stop payment on the \$37,500 check, concluding that this arrangement "would give me \$75,000 for my services." Miller testified that this was an "accord and satisfaction letter" for his legal fees. Martin never responded because he claimed he did not receive the letter. Eight days later, on December 17, 2003, Miller unilaterally moved the \$75,000 from his Washington Mutual account, leaving a balance of \$20,647.18. Over the next 16 months, the account balance decreased, reaching a low of \$496.22 on March 18, 2005. Miller testified that he moved the money because it did not belong in his "trust account" since he had earned it as legal fees.

In late 2003 or early 2004, Miller called APP's counsel deBrucky and complained that Martin had not paid him. He asked that APP continue to make future checks payable to both Martin and Miller. DeBrucky did not agree to Miller's request and had already advised APP to send all future payments to Martin.

Martin testified that from November 2003 to April 2005, he sent a total of 19 letters (approximately one per month) to Miller by regular mail at his official membership records address, requesting the \$75,000 and Miller's bill for legal services. Miller was receiving mail at another law office, and the attorneys who collected his mail testified that they never received any letters for Miller from Martin.

In November 2005, nearly two years after Miller received APP's first \$75,000 settlement installment, Martin filed a lawsuit against Miller to recover the money, alleging, among other things, breach of fiduciary duty, negligence, misrepresentation and fraud. Martin's attorney

requested that Miller produce all contracts, including any retainer agreements, related to the APP dispute. Miller claimed he could not find any of the retainer agreements.

On September 14, 2006, Martin filed a complaint with the State Bar, alleging that Miller failed to pay him the \$75,000. The State Bar also requested the retainer agreements from Miller. Within a month, Miller claimed that he found two agreements and gave them to the investigator. The first agreement, dated September 30, 2002, provided for legal services at \$150 per hour in another matter.⁵ The second agreement, dated June 1, 2003, is between Miller and Martin Manufacturing and is not specific to any particular litigation. It simply provides for a contingency fee of 50% on claims arising out of "any and all infringements of client's intellectual properties." Miller's attorney in his civil lawsuit with Martin testified that after Miller found the retainer agreements and forwarded them to him, he never gave them to opposing counsel because Martin and Miller had agreed to a discovery stay beginning July 13, 2005.

After reviewing the retainer agreements, Martin testified that he never signed them. An expert witness in forensic document examination analyzed the signatures. Although he could not "conclusively eliminate" Martin as the signer, he declared that there was a "strong probability" that Martin did not sign either agreement.

In February 2007, Miller and Martin settled their civil lawsuit, and Miller paid Martin \$60,000. Miller testified that he settled the lawsuit, without admitting any wrongdoing, only because it was an insignificant amount of money to "buy his peace." Martin claimed he personally received only \$25,000 to \$28,000 after paying his attorney fees. Miller never paid Martin any other money from the \$75,000 settlement money nor did he ever provide Martin an accounting for his legal services.

⁵ Miller and Martin initially met in 2002 and they worked together on one of Martin's lawsuits against a company called Patmont Motor Werks.

B. LEGAL CONCLUSIONS⁶

**Count 1(B): Miller Failed to Deposit Client Funds in Identifiable Trust Account
(rule 4-100(A))**

An attorney violates rule 4-100(A) when he fails to deposit client funds in the manner designated by the rule. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.) Rule 4-100(A) requires that “[a]ll funds received or held for the benefit of clients...shall be deposited in one or more identifiable bank accounts labeled ‘Trust Account,’ ‘Client’s Funds Account’ or words of similar import, maintained in the State of California” The State Bar alleged Miller violated this rule when he deposited the first \$75,000 installment into his Washington Mutual personal checking account. Miller’s claim that he thought it was a trust account is not believable nor does it excuse his conduct. The bank records clearly reflect the account as personal and Miller used it to pay general business bills. Further, Miller stipulated that the State Bar had no record of a client trust account for him until 2007. We adopt the hearing judge’s finding that Miller violated rule 4-100(A).

**Count 1(A): Miller Did Not Fail to Maintain Client Funds in Trust
(rule 4-100(A))**

The State Bar alleged Miller did not maintain Martin’s settlement funds in trust because his bank account balance fell to \$497.22 without any proceeds being distributed to Martin. We agree with the hearing judge that Miller is not culpable for failing to *maintain* client trust funds since he never actually placed the \$75,000 in a trust account within the meaning of rule 4-100(A). (See *Alberston v. State Bar* (1984) 37 Cal.3d 1, 13, fn. 21 [attorney not culpable of failing to maintain disputed client funds in trust because funds were in office safe and not in

⁶ For the sake of clarity, we present the counts alleged in the Miller Matter in a different order than charged by the State Bar. Therefore, some numbers assigned to the misconduct charges do not appear sequentially.

dispute when withdrawn].) We adopt the hearing judge's finding and dismiss the charge with prejudice.

Count 1(C): Miller Misappropriated Client Funds and Committed an Act of Moral Turpitude (§ 6106)

The State Bar alleged Miller misappropriated at least \$75,000 of Martin's settlement funds, an act that constitutes moral turpitude. We agree.

On December 9, 2003, Miller wrote a letter to Martin, acknowledging their fee dispute over the \$75,000 and suggesting that he keep that amount as his share of the entire \$250,000 settlement. Shortly thereafter, and without agreement from Martin, he unilaterally set his fees at \$75,000 and removed the money from his Washington Mutual account on December 17, 2003. At that point, Miller misappropriated Martin's \$75,000 settlement funds. Moreover, the misappropriation continued over the next year and a half when, without dispersing any funds to Martin, the balance in Miller's account fluctuated between \$20,647.18 on December 18, 2003 and \$497.22 in March 2005. (See *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [conclusion of misappropriation supported by mere fact that balance in account falls below amount held in trust].)

We reject Miller's claim that his December 9th letter served as an accord and satisfaction. There is no evidence that Martin agreed to such a compromise. Even if Miller believed he had earned 50% under a contingency fee arrangement, he had a responsibility to place the funds in trust until the fee dispute could be resolved. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 [when client disputes amount of fees, funds must be placed in trust account until conflict is resolved].) Yet he removed the entire amount from the account without Martin's agreement. We thus agree with the hearing judge that Miller's misappropriation was intentional, dishonest and constitutes moral turpitude in violation of section 6106.

**Count 1(D): Miller Presented False Documents to State Bar and
Committed an Act of Moral Turpitude (§ 6106)**

The State Bar alleged Miller committed an act of moral turpitude, dishonesty and corruption when he provided the State Bar with two written fee agreements bearing forged signatures of Martin. We adopt the hearing judge's finding that the documents were false and that Miller is culpable of moral turpitude as alleged.

Several factors in the record support a moral turpitude finding. First, the hearing judge found that Miller's testimony lacked credibility and was inconsistent and implausible. Given this finding, we conclude the hearing judge did not believe Miller's claim that Martin signed the agreements. We give great weight to this credibility finding. (Rules Proc. of State Bar, rule 305(a).)

Second, Miller's claim that he could not find the retainer agreements for almost a year while the civil lawsuit was pending is suspect – particularly since the agreements could have greatly assisted his defense. The fact that Miller produced them within one month after the State Bar's request gives us additional reason to believe that the documents were not genuine.

Third, a forensic document expert concluded that there was a strong probability that the agreements were not signed by Martin. The expert made four significant findings that support his conclusion: (1) the questioned signatures did not represent the normal or genuine way Martin signs; (2) the two signatures allegedly written nine months apart showed little variation; (3) similar inks and writing instruments were used for both signatures; and (4) the signature pages were on a different type of paper than the rest of the retainer agreements.

Finally, Martin denied ever signing the retainer agreements. But because we question Martin's veracity in general, we rely on the other evidence detailed above and the hearing judge's credibility findings against Miller to conclude that Martin's signatures were forged.

Testimony from two witnesses who heard Martin admit he had a contingency fee agreement with Miller does not change our conclusion. Dean Maro, one of Martin's business acquaintances, and APP attorney deBrucky both testified that Martin said he had a such an agreement with Miller. However, Maro's testimony is entitled to little weight since Miller had helped him in several of Maro's own lawsuits. And Martin's statement to deBrucky is not reliable either because Martin only mentioned it at mediation to improve his bargaining position by convincing deBrucky that he didn't care how long the case lasted or how much it cost since he had a contingency fee agreement with Miller. The hearing judge weighed the credibility of all the witnesses and concluded the documents were false. We agree with the hearing judge's conclusion.

**Count 1(E): Miller Did Not Fail to Respond to Reasonable Client Inquiries
(§ 6068, subd. (m))⁷**

The State Bar alleged that Miller failed to promptly respond to Martin's written requests to forward the settlement funds and a bill for legal services rendered. Martin contends that he sent 19 letters to Miller's mailing address but never provided proof of delivery. Miller denied receiving any letters from Martin, as did the two attorneys responsible for collecting Miller's mail. Without independent proof to corroborate Martin's claim, we find his testimony alone lacks veracity and is insufficient to prove that Miller ever received the letters. We do not adopt the hearing judge's culpability finding and dismiss this count with prejudice.

⁷ This section makes it the duty of an attorney "To respond to reasonable status inquiries of clients . . . in matters with regard to which the attorney has agreed to provide legal services."

**Count 1(F): Miller Failed to Provide an Accounting
(rule 4-100(B)(3))⁸**

The State Bar alleged that Miller never provided Martin with a billing statement or accounting of the settlement funds. Miller contends he was not required to provide this unless he received a request from Martin. He is incorrect. “[T]he 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.) The duty to account applies whenever an attorney receives client funds. (Rule 4-100(B)(3).) Thus, we adopt the hearing judge’s finding of culpability.

VI. AGGRAVATION AND MITIGATION

A. AGGRAVATION

We find three factors in aggravation. First, Miller’s misconduct caused significant harm. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iv).)⁹ Martin had to sue Miller to recover \$25,000 to \$28,000 of the \$75,000 settlement proceeds. He also lost any interest income he could have earned on the money for over three years. (See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106.) Second, Miller committed multiple acts of misconduct. (Std. 1.2(b)(ii).) Third, Miller acted in bad faith and overreached when he asked APP’s attorney deBrucky to add his name to future settlement checks so that Martin could not negotiate them without Miller’s agreement. And he lied when he told deBrucky he needed this assistance because Martin had not paid him since he had possession of the entire \$75,000. We find this conduct reprehensible and a bad faith attempt to interfere with Martin’s ability to collect his settlement money. (Std. 1.2(b)(iii).)

⁸ This rule requires an attorney to “Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them”

⁹ Unless otherwise noted, further references to standard(s) are to this source.

The State Bar urges us to find additional aggravating factors of lack of candor and cooperation (std 1.2(b)(v)) and lack of remorse (std. 1.2(b)(vi)). We decline to do so because the misconduct that supports these factors has been considered in finding Miller culpable of the charged offenses. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 411.)

B. MITIGATION

We adopt the hearing judge's findings that Miller presented proof of two factors in mitigation. However, we afford very minimal credit for each mitigation factor.

First, Miller has no prior record of discipline since his admission to practice on December 3, 1996. We allow nominal mitigating weight, as did the hearing judge, to Miller's seven years of discipline-free practice. (Std. 1.2(e)(i); *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [seven years of law practice in California prior to misconduct was mitigating factor but accorded only slight weight].)

Second, while Miller made a limited showing of good character at trial (std. 1.2(e)(vi)), the hearing judge did not assign a weight to the mitigation evidence. The State Bar urges that no mitigation credit be given for good character since the witnesses – three attorneys, two real estate brokers, a manufacturer and a translator – do not represent a broad range of references. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 (six character witnesses, including three lawyers, afforded “limited” mitigation weight as not representing a broad range of references].) Also, the witnesses knew little, if anything, about the charges, and each would change his or her good opinion of Miller if the charges were found to be true. Even so, we defer to the hearing judge's finding that the witnesses' testimony was “credible and sufficient to demonstrate good moral character.” But we assign very limited weight because the

witnesses acknowledged they were not fully aware of Miller's misconduct nor did they represent a broad range of references.¹⁰

VII. LEVEL OF DISCIPLINE

The purpose of disciplinary proceedings is to protect the public, preserve public confidence in the profession and maintain the highest possible standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) To best achieve this purpose, we consider the standards, which serve as guidelines, as well as prior decisions based on similar facts. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) Several standards apply to Miller's misconduct that provide for discipline ranging from reproof to disbarment. Guided by standard 1.6(a), we consider the most severe sanction applicable to the misconduct. We find standard 2.2(a) controlling since it mandates disbarment for willful misappropriation unless "the most compelling mitigating circumstances clearly predominate," in which case a one-year actual suspension is warranted.

Miller willfully misappropriated \$75,000, which is a significant amount of money. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of \$1,355.75 considered significant].) The Supreme Court has recognized that willful misappropriation of client funds constitutes theft and has warned that "taking a client's money . . . is one of the most serious breaches of professional trust that a lawyer can commit." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) In the absence of strong mitigating circumstances, the usual discipline for such a breach of trust is disbarment. (*Ibid.*) We recommend disbarment as Miller's seven-year discipline-free practice and nominal showing of good character is not compelling mitigation.

¹⁰ We do not credit Miller with any mitigation for stipulating that the State Bar did not have any record of a trust account for him before 2007. While this assisted the State Bar in prosecuting its case, it would not have been difficult to prove and is more than offset by the forged retainer agreements that Miller presented.

In summary, Miller's conduct involved dishonesty toward his client, the legal system and the State Bar. (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 (dis. Opn. of Lucas, J.) [deception of State Bar may constitute even more serious offense than conduct being investigated].) Considering the additional aggravating circumstances of client harm, multiple acts of misconduct and overreaching in bad faith, we cannot justify deviating from the disbarment mandate under standard 2.2(a). Misappropriation harms not only the client but it also "endangers the confidence of the public at large in the legal profession. In all but the most exceptional of cases, we must impose the harshest discipline for such a breach in order to safeguard the citizenry from unethical practitioners." (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128.)

We conclude that the "risk that [Miller] may engage in other professional misconduct if allowed to continue practicing law is sufficiently high to warrant his disbarment. [Citations]." (*Chang v. State Bar, supra*, 49 Cal.3d at p. 129.) Our recommendation is supported by comparable case law as the appropriate sanction to ensure discipline proportionate to the misconduct. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for misappropriating \$29,000 with 11-year discipline-free practice, payment of restitution, emotional problems, and good character]; *Chang v. State Bar, supra*, 49 Cal.3d 114 [disbarment for misappropriating \$7,898.44 with eight-year discipline-free practice].)

VIII. RECOMMENDATION

We recommend that Kurt Anthony Miller, State Bar number 184143, be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys licensed to practice. We also recommend that he be ordered to comply with the provisions 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's order in this

matter. Further, we recommend that the State Bar be awarded costs in accordance with section 6086.10, which are enforceable both as provided in section 6140.7 and as a money judgment.

IX. ORDER

The order of the hearing judge below that Kurt Anthony Miller be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), shall continue in effect pending the consideration and decision of the Supreme Court upon this recommendation.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.

CERTIFICATE OF SERVICE

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

I am a Court Systems Analyst of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 21, 2009, I deposited a true copy of the following document(s):

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

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

EPHRAIM MARGOLIN
LAW OFFICE OF EPHRAIM
MARGOLIN
240 STOCKTON STREET, 4TH FL.
SAN FRANCISCO, CA 94108 - 5318

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

Cydney T. Batchelor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 21, 2009.



Samantha Foster
Court Systems Analyst
Office of the State Bar Court