

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 06-O-11648-RAP
	)	
<b>LAURENCE DAVID STRICK,</b>	)	
	)	<b>DECISION INCLUDING DISBARMENT</b>
<b>Member No. 75097,</b>	)	<b>RECOMMENDATION AND</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<u>A Member of the State Bar.</u>	)	<b>ENROLLMENT ORDER</b>

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **LAURENCE DAVID STRICK** is charged with five counts of misconduct.<sup>1</sup> The court finds, by clear and convincing evidence, that respondent is culpable of all five counts for failure to maintain client funds in a trust account; failure to render accounts of client funds; failure to pay client funds promptly; committing an act of moral turpitude by misappropriating funds; and for accepting representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client.

For the reasons stated below, it is recommended that respondent be disbarred.

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<sup>1</sup> The State Bar of California dismissed count five in the interests of justice by stipulation filed July 18, 2008.

## **II. PROCEDURAL HISTORY**

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on December 13, 2007. A response was filed on February 26, 2008. The State Bar was represented by Deputy Trial Counsel Ashod Mooradian and Acting Supervising Trial Counsel Kimberly G. Anderson. Respondent represented himself in this matter.

The parties filed a stipulation as to facts conclusions of law and admission of documents on July 18, 2008. The parties stipulated that respondent is culpable as charged in the first three counts of the NDC. Additionally, on July 22, 2008, the parties orally stipulated that respondent is culpable as charged in count six of the NDC.

Trial was held on July 21 and 22, 2008. Respondent, Ruth Guerra, Jayson Sher, D.C., and Nasrim Amadi, D.C., testified at trial. Following post-trial briefing by the parties, the court took this case under submission for decision on August 11, 2008.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 28, 1977, and since that time has been a member of the State Bar of California.

### **B. Credibility Determinations**

With respect to the credibility of Ruth Guerra, Jayson Sher, D.C., and Nasrim Amadi, D.C., the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest and lack of personal interest, as the case may be; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g., Evid. Code, § 780 [lists factors to consider in determining credibility].) The court finds that the testimony of all three witnesses to be credible.

The court finds that the testimony of respondent was, at times, not credible.

### **C. Statement of Stipulated Facts**

On or about September 20, 2004, Ruth Guerra and George Alvarez, employed respondent to represent them in a personal injury matter that occurred on or about September 11, 2004 (Guerra matter). Guerra was driving her automobile at the time of her injury and Alvarez was her passenger.

At the time of entering into employment in the Guerra matter, respondent was aware that both Guerra and Alvarez were injured and were seeking treatment for those injuries. He accepted representation of both of them, but did not provide them with written notice of adverse interests nor did he obtain their informed written consent waiving their adverse interests.

On or about September 15, 2004, Guerra received an initial examination from Dr. Nasrin Amadi for a total cost of \$200, but, thereafter, did not receive further treatment from him.

On September 28, 2004, Guerra began treatment with Jayson I. Sher, D.C., for injuries she suffered in connection with the collision.

On September 29, 2004, Guerra signed a notice of doctor's lien (notice) regarding her medical treatment with Dr. Sher.

On or about November 5, 2004, respondent signed and sent to Dr. Sher a signed notice of doctor's lien (notice) regarding Guerra's treatment. It provided that Dr. Sher would be granted a lien against any and all proceeds of any settlement, judgment or verdict, which may be paid as a result of the Guerra matter.

Dr. Sher ultimately provided medical services to Guerra in the amount of \$3,305.

On or about February 2, 2005, Blue Cross of California sent respondent a "right to recovery" letter regarding Guerra's September 11, 2004, Northridge Hospital emergency room medical bill which provided that under the terms of the Blue Cross agreement, Blue Cross is ". . .

entitled to reimbursement from any settlement or judgment for all related benefits paid on your client's behalf." Blue Cross claimed it was entitled to \$1,469.20 for claims paid on Guerra's behalf to Northridge Hospital for emergency medical services.

On or about February 8, 2005, Guerra sent respondent a copy of her Northridge Hospital emergency room medical bill as well as the same "right to recovery" form from her insurance provider, Blue Cross.

On June 3, 2005, respondent negotiated and Guerra agreed to a \$8,500 settlement of all claims made against Century-National Insurance Company. Also on June 3, 2005, respondent negotiated and Alvarez agreed to a \$7,500 settlement of all claims made against Century-National Insurance Company.

On or about June 15, 2005, respondent received and Guerra endorsed a settlement check in the Guerra matter from Century-National Insurance Company, in the amount of \$8,500.

On or about June 15, 2005, respondent received Alvarez's settlement check in the amount of \$7,500. Alvarez was no longer residing in California and, by telephone, requested that respondent endorse the check on his behalf. Respondent endorsed the check by simulating Alvarez's signature. No notation was made to indicate that the simulated signature was made by respondent on his behalf.

On June 17, 2005, respondent opened an IOLTA account at Wells Fargo Bank (Wells Fargo CTA) where respondent also maintained a business checking account (Wells Fargo business checking account). He maintained the Wells Fargo CTA until about January 2006.

On June 17, 2005, respondent deposited both the Guerra and Alvarez settlement checks into the Wells Fargo CTA. During all pertinent times in this matter, no funds of any other client were deposited in the Wells Fargo CTA.

On July 1, 2005, respondent made a \$1,000 online transfer from the Wells Fargo CTA to his Wells Fargo business checking account for “Alvarez Attorneys Fees”.

On July 5, 2005, a \$25 stop payment fee was credited against the Wells Fargo CTA.

On July 5, 2005, respondent made a \$2,200 online transfer from the Wells Fargo CTA to his Wells Fargo business checking account for “Guerra Attorneys Fees”.

On July 6, 7 and 11, 2005, respondent made online wire transfers from the Wells Fargo CTA to Alvarez in the amounts of \$1,100, \$2,875, and \$1,400, respectively, for a total of \$5,375, leaving a remainder of \$2,125 from his settlement.

On July 5, 2005, respondent presented Guerra check number 1002 drawn on his Wells Fargo CTA for \$3,000, enclosing an accounting for her settlement payment. According to that accounting, respondent withheld \$3,090 from her settlement funds to pay her medical liens.

On August 2, 18 and 26, 2005, respondent made online transfers of funds from the Wells Fargo CTA to his Wells Fargo business checking account. On August 18, he transferred \$400 and, on August 26, \$1,500. On August 26, the Wells Fargo CTA’s balance was \$500. However, as of that date, respondent had not paid Dr. Sher, Dr. Amadi, or Blue Cross the amounts owed to them pursuant to their medical liens.

On November 4, and December 15, 2005, respondent made online transfers from the Wells Fargo CTA to his Wells Fargo business checking account in the amounts of \$400 and \$75, respectively. On December 15, the balance in the Wells Fargo CTA was \$25, yet respondent had not paid Dr. Sher, Dr. Amadi, or Blue Cross the amounts owed to them pursuant to their medical liens.

As of December 15, 2008, a total of \$3,065 of Guerra’s funds was unaccounted for and missing from respondent’s Wells Fargo CTA.

On or about January 10, 2006, respondent issued Dr. Sher check number 1014, from his Wells Fargo CTA in the amount of \$2,200, in satisfaction of his medical lien; however, on that date, the balance in respondent's Wells Fargo CTA was \$25.

On January 11, 2006, by online transfer from the Wells Fargo business checking account, respondent deposited \$2,300 into his Wells Fargo CTA.

Respondent did not maintain a balance of at least \$3,090 in his Wells Fargo CTA for payment of Guerra's medical liens although he had withheld \$3,090 from her settlement funds to pay the liens.

#### **D. Additional Findings of Fact**

Respondent did not have a client trust account at the time he was hired by Guerra and Alvarez. He opened the Wells Fargo CTA so that he could deposit their settlement checks. Wells Fargo Bank required respondent to deposit \$25 into the CTA to open the account. The Wells Fargo CTA never held any other clients' funds.

There were no client funds in respondent's Wells Fargo CTA as of December 18, 2005, and the medical liens of Dr. Sher, Dr. Amadi and Blue Cross had not been paid. Respondent testified that he had written checks to all three providers and, accordingly, thought they all had been paid. Believing that all liens and client funds had been paid out in the Guerra and Alvarez matters, respondent was surprised to see funds in his client trust account. Assuming that the funds were his fees in the matters, he started to withdraw the funds until there were no longer any funds in the Wells Fargo CTA other than the \$25 he deposited to open the account.

Respondent's testimony is not credible. Respondent did not introduce any evidence to support his contention that he wrote checks to the medical providers, i.e., account journals, check stubs, check numbers. Additionally, respondent's testimony that, when he noticed funds in his CTA after paying his clients and the medical providers, he assumed they were his funds is also

not credible. The Guerra and Alvarez settlement funds were the only funds in his Wells Fargo CTA. Respondent had previously withdrawn his fees on both settlements. It is absurd to believe that an attorney would notice funds in a CTA and conclude that the funds were his fees without checking his account journal, especially when the funds in the CTA were from the only two settlements he had. Also, respondent did not withdraw the funds at once, but over a period of time making small withdrawals, a clear sign that respondent was aware that the funds were not his fees. Respondent's actions belie his testimony.

On January 6, 2006, respondent paid Dr. Sher \$2,200 in a negotiated settlement of the Guerra lien, which originally was in the amount of \$3,305. Respondent testified that he negotiated this amount with Dr. Sher; however, he did not produce any evidence to support his claim that the \$2,200 payment to Dr. Sher was only for the Guerra lien and not for the Alvarez lien. Dr. Sher credibly testified that the \$2,200 payment he received from respondent was in settlement for both the Guerra and Alvarez liens, as supported by his chart notes, which show \$1,100 payment in both matters.

Once again, respondent's testimony concerning the payment of Dr. Sher's medical liens is not credible. Dr. Sher's testimony was credible and supported by chart notes. It is clear that Dr. Sher accepted the \$2,200 from respondent in payment of both Guerra and Alvarez matters in the amounts of \$1,100 each.

Since Dr. Sher accepted and was paid \$1,100 in settlement of his medical lien in the Guerra matter, it also clear that respondent did not distribute \$1,965 in Guerra settlement funds. Respondent has not explained what happened to the undistributed funds, but the record shows that by December 18, 2005, there were no client funds in respondent's Wells Fargo CTA. Clearly, respondent misappropriated the \$1,965 undistributed funds being held for Guerra.

Nasrin Amadi, D.C., examined both Guerra and Alvarez after their automobile accident and had signed medical liens for \$200 each. Dr. Amadi's medical liens were never paid by respondent. Dr. Amadi contacted respondent by telephone and asked about the status of the Guerra and Alvarez matters. Respondent told him that the case had been dropped and then hung up the telephone. Respondent testified that he told Dr. Amadi that the insurance company was not settling and, since the case was small, he may have to drop the matter. The court finds that Dr. Amadi's testimony is credible in this matter; not so respondent's.

Ruth Guerra was issued a check for \$3,000 from respondent's Wells Fargo CTA as her portion of the settlement of her claim. Respondent told her that he was holding money to pay her doctors. Shortly after receiving her funds, Guerra was contacted by Blue Cross and then a collection agency for Blue Cross concerning Blue Cross' \$980 medical lien that had not been paid.

On September 26, 2005, Guerra faxed a letter to respondent regarding the Blue Cross bill. Guerra did not get a response from respondent. Respondent denies receiving the fax. The fax sheet does not confirm whether it was received at respondent's fax number.

Guerra telephoned and e-mailed respondent several times but her contacts went unanswered. Again, respondent denies receiving these messages. Sometime in September or October 2005, Guerra spoke to respondent on one occasion, and, like his telephone conversation with Dr. Amadi, respondent brushed-off Guerra's inquiries, telling her that he was taking care of it, and then hung up the telephone. Guerra continued to receive correspondence regarding her Blue Cross lien. Since she could not get any information from respondent, Guerra filed a complaint with the State Bar.

During this time period, Guerra was involved in another personal injury matter and returned to Dr. Sher for treatment. Guerra informed Dr. Sher that her original case had settled. She discovered that Dr. Sher had not been paid on his medical lien.

Eventually, in January 2006, Guerra received a check from respondent in the amount of \$890. Respondent claims that he sent the check to Guerra so that she could pay the Blue Cross medical lien. Guerra received the check, and although she was aware the funds were to pay her Blue Cross lien but, believing that the funds belonged to her, cashed the check and kept the \$890. The Blue Cross medical lien and Dr. Amadi's bill were not paid until after the trial in this matter was concluded but prior to the matter being submitted for decision.

Respondent testified that he was feeling a great deal of stress during the time of his representation of Guerra and Alvarez and the payment of the medical liens. Respondent's teenage daughter was diagnosed with a serious illness when she was 13 months old and required constant care. Respondent's daughter and wife lived in northern California while he practiced in Southern California. Respondent would travel home on the weekends to be with his family. Respondent spent more and more of his time in northern California to assist in caring for his daughter.

In 2004, respondent concentrated on being a contract attorney so he would have no clients of his own and could be of more assistance to his family. However, his father unexpectedly passed away. His father had been exclusive caregiver for respondent's mother, who was disabled with Alzheimer's disease. Respondent's mother was placed in a permanent Alzheimer's disease facility located near his brother's residence. Respondent was able to help with his mother's care and still spend his weekends in northern California to assist with his family needs.

Respondent's daughter's illness grew more serious and respondent testified his stress level went from barely tolerable to intense, trying to deal with mother's illness and his daughter's illness. Respondent's brother relocated to New York and left respondent as the sole family member to deal with mother's needs, which were growing, due to the progression of her illness. It was at this time that the Guerra matter settled.

#### **E. Conclusions of Law**

##### ***Count 1 – Failure to Maintain Client Funds in Trust (Rule 4-100(A), Rules of Professional Conduct<sup>2</sup>)***

The court finds by clear and convincing evidence that respondent violated rule 4-100(A), failure to maintain balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, by not maintaining a balance of at least \$3,090 for payment of Guerra's medical liens although he withheld that sum from her settlement funds for that purpose.

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

The court finds by clear and convincing evidence that respondent violated rule 4-100(B)(3), failure to render appropriate accounts to a client regarding all of the client's funds coming into respondent's possession, by failing to advise Guerra that he had not paid her medical liens; by not accounting for her funds initially retained to pay for the liens; and by giving Guerra an inaccurate accounting for the disposition of her settlement funds.

##### ***Count 3 – Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))***

The court finds by clear and convincing evidence that respondent violated rule 4-100(B)(4), failure to pay promptly, as requested by a client, any funds in respondent's possession which the client was entitled to receive, by not promptly paying Dr. Sher, Dr. Amadi and Blue

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<sup>2</sup> Any further references to rule are to this source.

Cross any portion of the funds they were entitled to receive from Guerra's settlement funds pursuant to their liens although \$3,090 was withheld from her funds for that purpose.

***Count 4 – Moral Turpitude (Bus. & Prof. Code, section 6106<sup>3</sup>)***

The court finds by clear and convincing evidence that respondent wilfully violated section 6106, by misappropriating \$3,090 in client funds held in trust. He repeatedly used entrusted funds for other purposes and repeatedly allowed the balance in his client trust account to drop below \$3,090, going as low as \$25.

***Count 6 – Potential Conflict – Representing Multiple Clients (Rule 3-310(C)(1))***

The court finds by clear and convincing evidence that respondent wilfully violated rule 3-310(C)(1), accepting representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client, by representing both Guerra and Alvarez in their personal injury matters without their informed written consent waiving their potential adverse interests.

**IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

**A. Mitigation**

There is clear and convincing evidence that, during the time of the misconduct, respondent's daughter was suffering from the effects of juvenile rheumatoid arthritis and resided in San Francisco with her mother. In addition, respondent became the primary care giver for his mother as she was suffering from the effects of Alzheimer's disease. (Rule Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (standard or std.), std. 1.2(e)(iv).)

Respondent stipulated to many of the facts and legal conclusions prior to trial. (Std. 1.2(e)(v).)

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<sup>3</sup> Any further references to section are to this source.

## **B. Aggravation**

The record establishes several factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Respondent has a record of three prior disciplinary actions. (Std. 1.2 (b)(i).)

On August 8, 1997, the State Bar Court issued a private reproof against respondent in State Bar case nos. 96-O-04211 and 96-O-07262. Respondent stipulated that his conduct was in violation of section 6103 and rule 3-700(D)(2).

On February 16, 2000, the Supreme Court filed an order (S084072) that respondent be suspended from the practice of law for six months, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, in State Bar Court case no. 99-H-10271. Respondent stipulated that his conduct was in violation of rule 1-110.

On September 18, 2001, the Supreme Court filed an order (S099135) that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and the he be placed on probation for two years subject to the conditions of probation, including six months' actual suspension, in State Bar Court case nos. 00-O-10391; 00-O-14904; and 01-O-01759, for violations of rules 1-110, 3-110(A), 3-700(A)(2) and 3-700(D)(2) and sections 6103 and 6068, subdivisions (i) and (m).

Respondent's current misconduct evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching, or other violations of the State Bar Act or Rules of Professional Conduct. Respondent insisted that he had paid medical liens when he had not. (Std. 1.2 (b)(iii).)

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) The delay in paying Guerra's Blue Cross bill and Dr. Amadi's bill exposed her to liability for these unpaid bills. In fact, the unpaid Blue Cross lien resulted in its being referred to a collection agency. Blue Cross and Dr. Amadi were not paid until after the trial in this matter was concluded but prior to the matter being submitted for decision.

## V. DISCUSSION

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

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the review department noted in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) The court also looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 1.7(b) provides that, a member found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined in standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. The court finds that respondent has a record of three prior impositions of discipline as defined in standard 1.2(f) and the most compelling circumstances do not predominate.

Further, standard 2.2(a) provides that culpability of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. The amount of client funds misappropriated is not insignificantly small nor does his mitigating evidence clearly predominate. Accordingly, pursuant to the standards, the court recommends that respondent be disbarred.

The court also found instructive *Grim v. State Bar* (1991) 53 Cal.3d 21 and *Worth v. State Bar* (1978) 22 Cal.3d 707. both cases in which the attorneys had lesser misconduct and greater mitigating factors than in the instant case.

In *Grim*, the Supreme Court disbarred an attorney for misappropriating \$5546 of client funds. The attorney did not make restitution until after the State Bar commenced disciplinary proceedings. In aggravation, the attorney was previously disciplined for commingling funds, took advantage of a client residing in another state and mismanaged his trust account. In mitigation, witnesses testified to his good moral character and the attorney cooperated with the State Bar.

In *Worth*, the Supreme Court disbarred an attorney who was found culpable of misappropriating \$1633 in client settlement funds and then testifying falsely in the subsequent disciplinary proceeding against him. The attorney had been admitted to practice for 21 years and

had been previously disciplined for mishandling a client's funds and other related misconduct in an earlier proceeding.

Having considered the facts and the applicable standards and the law, the court recommends that respondent be disbarred. Respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if lesser discipline were recommended.

#### **VI. RECOMMENDED DISCIPLINE**

The court recommends that respondent **LAURENCE DAVID STRICK** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

#### **VIII. RULE 9.20 and COSTS**

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

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

#### **IX. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective

three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October 24, 2008.

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RICHARD A. PLATEL  
Judge of the State Bar Court