

FILED JUNE 07, 2010

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)
)
DAVID G. RONQUILLO,)
)
A Member of the State Bar.)
)
_____)

Nos. **07-O-12701; 07-O-14524**

OPINION AND ORDER ON REVIEW

BY THE COURT:¹

This matter, which involves an attorney’s intentional misappropriation of \$124,065 in trust funds from two clients, illustrates the importance of the disciplinary goal of public protection as provided by Standard 1.3 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.² In addition to misappropriation involving moral turpitude, the hearing judge found that respondent, David G. Ronquillo, failed to maintain client funds in a trust account and to render an accounting. The hearing judge recommended that Ronquillo be disbarred and ordered that he be involuntarily enrolled as an inactive member.

Ronquillo does not dispute the hearing judge’s culpability determinations. Rather, he is seeking review of only one issue: whether the hearing judge abused his discretion in excluding the testimony of five character witnesses after Ronquillo failed to file a required pretrial statement. Ronquillo argues that the character testimony, which was intended solely to establish

¹Before Remke, P. J., Epstein, J. and Purcell, J.

²Standard 1.3 states in pertinent part: “The primary purposes of disciplinary proceedings . . . are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” All further references to “standard(s)” are to this source unless otherwise indicated.

mitigation, would have justified a more lenient discipline than the hearing judge's disbarment recommendation.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ronquillo was admitted to practice in California in December 1975. He has one prior record of discipline in 2004 that resulted in thirty days' actual suspension.

As this is a plenary review, we have independently reviewed the record (Cal. Rules of Court, rule 9.12). We find clear and convincing evidence to support the hearing judge's findings and conclusions as to the five counts of misconduct charged in the Notice of Disciplinary Charges filed on October 30, 2008. Because these findings and conclusions bear greatly on the degree of discipline (see *In re Wright* (1973) 10 Cal.3d 374, 376), we summarize them below.

The procedural history is undisputed. On December 2, 2008, Ronquillo personally appeared in propria persona at a status conference where the hearing judge ordered that the pretrial settlement be filed no later than July 6, 2009. The hearing judge also set a pretrial conference for July 13, 2009. On December 10, 2008, Ronquillo was served by mail at his official address with an order specifying the same dates for filing the pretrial statement and the pretrial conference.³ The order also set the trial date for July 20, 2009. Ronquillo does not dispute that he had notice of these dates, yet he provided no evidence that he took any affirmative steps to file his pretrial statement. Based on his failure to file a pretrial statement, the hearing judge ordered at the pretrial conference that Ronquillo was precluded from calling witnesses or submitting evidence.

³Pursuant to rule 306(c) of the Rules of Procedure of the State Bar, we take judicial notice of the State Bar's membership records, which confirm Ronquillo's official address. We further take judicial notice of the hearing judge's December 10, 2008, order in this matter, pursuant to rule 306(b) of the Rules of Procedure of the State Bar.

Ronquillo now claims that he did not timely file a pretrial statement because his *counsel*, whom he retained after the December 2008 status conference, did not have notice of the July 6th pretrial conference until two days before the conference when he spoke with the State Bar prosecutor. Ronquillo's counsel appeared in this matter as early as February 2009 and had ample opportunity to review the file as well as all outstanding orders. Regardless of whether Ronquillo's attorney had actual notice of the pretrial hearing date, we find that he had constructive notice of the orders and pleadings served on Ronquillo, including the order to timely file a pretrial statement. (*Nelson v. Nelson* (1933) 131 Cal.App. 126, 133.)

We find that the hearing judge did not abuse his discretion in excluding Ronquillo's character witnesses. The exclusionary order was neither arbitrary nor capricious (*In re Cortez* (1971) 6 Cal.3d 78, 85), and did not exceed the bounds of reason. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) The hearing judge had broad inherent authority to exercise reasonable control over his proceedings. (*Jones v. State Bar* (1989) 49 Cal.3d 273, 287.) Also, he was expressly authorized under Rules of Procedure of the State Bar, rule 211(f), to order the exclusion of evidence as the result of Ronquillo's failure to file a pretrial statement. Indeed, the pretrial statement is an important tool to aid the hearing judge in managing trials, and it benefits both the court and counsel in avoiding surprise and needless consumption of time at trial. Accordingly, we reject Ronquillo's claim of abuse of discretion. (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 37-39 [hearing judge did not abuse discretion

by issuing sanction order prohibiting respondent from calling witnesses or introducing any exhibits for failure to submit an acceptable pretrial statement].⁴

A. Case No. 07-O-12701 (Shepherd Matter)

Thomas Shepherd, a resident of Ontario, Canada, was injured in a tragic automobile accident in 1999 while driving between California and Nevada. His wife was killed, as was the uninsured driver of the other vehicle, who was later found liable for the accident. Two other passengers in Shepherd's car also were injured. In 2000, Shepherd hired Ronquillo to represent him. After Ronquillo obtained judgment against the uninsured driver's estate and determined that it had no assets to satisfy the judgment, he pursued a claim against Shepherd's insurer, Dominion of Canada ("Dominion"). In December 2005, Dominion settled the matter for \$235,606,⁵ and after a deduction of Ronquillo's legal fees and costs, Shepherd's share of the settlement was \$115,065. On December 20, 2005, Ronquillo deposited the \$235,606 into his client trust account (CTA), but the next day, he withdrew the entire amount to repay a third party who had advanced monies to Ronquillo to cover office and other litigation expenses unrelated to Shepherd's case. At the time of the trial, Ronquillo had not repaid anything to Shepherd, despite repeated requests by Shepherd and another attorney he hired to obtain restitution from Ronquillo.

We find that Ronquillo violated Rules of Professional Conduct, rule 4-100(A)⁶ because he failed to maintain in his CTA the funds received on behalf of Shepherd. We further conclude

⁴We note that Ronquillo did not seek interlocutory review of the exclusionary order prior to trial. At trial, he testified at length about mitigating factors. More importantly, after completion of his testimony, the hearing judge asked Ronquillo's counsel if he had any evidence in mitigation. Ronquillo's attorney replied that he did not have any such evidence, and he neither requested a continuance to allow time for his character witnesses to appear and testify, nor made an offer of proof regarding any additional evidence on the issue of mitigation. Any claim of error due to the exclusion of the character witnesses is therefore waived.

⁵All funds concerning the Shepherd matter are stated here in U.S. dollars.

⁶All further references to "rule(s)" are to this source unless otherwise indicated.

that Ronquillo violated Business and Professions Code section 6106⁷ because he intentionally misappropriated \$115,065 in settlement funds held in trust for Shepherd and used that money to satisfy his personal obligations. This misappropriation constitutes moral turpitude. (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 829-830 [attorney's willful misappropriation of trust funds ordinarily constitutes moral turpitude].)

B. Case No. 07-O-14524 (Rhines Matter)

Ronquillo defended Jeffrey and Holly Rhine in April 2007 in an unlawful detainer action. Pursuant to a retainer agreement between the Rhines and Ronquillo, signed on April 27, 2007, the Rhines paid him \$10,000 as a “deposit” which was “to be used to pay costs and expenses and fees for legal services.” In accordance with the retainer agreement, he immediately deposited the \$10,000 into his CTA. Three days later, on April 30th, he withdrew the entire amount to pay for office expenses. It is undisputed that Ronquillo earned only \$1,000 of the Rhines’ advanced fees.

We find that Ronquillo violated rule 4-100(A) because he failed to maintain the unearned fees he received in his CTA pursuant with the terms of his retainer agreement with the Rhines. We further find Ronquillo committed an act of moral turpitude in violation of section 6106 because he intentionally misappropriated \$9,000 of the Rhines’ advanced fees to satisfy his own expenses. As he testified: “It was a decision I was making because I was trying to keep this practice and during this period of time I just did not have the wherewithal to be able to pay [these expenses].” At the time of trial, Ronquillo had not repaid the Rhines despite their repeated demands for restitution. Additionally, we find that Ronquillo violated rule 4-100(B)(3) because he failed to account to the Rhines, disregarding their continuing requests for an accounting.

⁷All further references to “section(s)” are to this source unless otherwise indicated.

II. MITIGATION/AGGRAVATION

A. Mitigation

Ronquillo offered no evidence in mitigation other than his testimony that he did not intend to permanently deprive Shepherd or the Rhines of their funds. He testified: “[I]t was not done with a willful intent to withhold this money forever.” Ronquillo also professed his desire to repay Shepherd and the Rhines, but he has not done so. The hearing judge found that Ronquillo did not establish clear and convincing evidence in mitigation. We agree. Taking money from clients to pay for personal and/or office expenses is theft, regardless of the intention to repay the funds at some future date.

B. Aggravation

The hearing judge found three factors in aggravation, and we agree.

Ronquillo was previously suspended for 30 days in 2004 for misusing his CTA to pay personal and law office expenditures in violation of rule 4-100(A). We consider this prior discipline to be a serious aggravating factor under standard 1.2(b)(i) because it mirrors the misconduct before us. In fact, the wrongdoing in the Shepherd matter occurred while Ronquillo was still on probation from his 2004 discipline. We also agree with the hearing judge that Ronquillo’s culpability is aggravated by multiple acts of misconduct (std. 1.2(b)(ii)) and that his misappropriations greatly harmed his clients financially. (Std. 1.2(b)(iv).)

III. DISCIPLINE ANALYSIS

We start with the standards in determining the appropriate discipline to recommend. According to standard 1.6(a), we should consider the most severe discipline provided by the various standards applicable to the misconduct. Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) suggests disbarment for willful misappropriation unless the amount of money is insignificant or the most compelling mitigating

circumstances clearly predominate.⁸ Neither of the exceptions in standard 2.2(a) applies here. Ronquillo misappropriated \$124,065, a significant amount, and he failed to establish compelling mitigation that clearly outweighs the serious factors in aggravation, particularly his prior misconduct.

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), but we find insufficient evidence to justify a departure from the disbarment recommendation provided by standard 2.2(a). The decisional law involving intentional misappropriations supports our recommendation for disbarment as discipline which is proportionate to Ronquillo's misconduct. (*Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of \$10,000 from multiple clients and failure to return files with no priors in five years]; *In re Kelley* (1988) 45 Cal.3d 649 [disbarment for misappropriation of \$20,000 and failure to account with no priors in seven years].)

IV. RECOMMENDATION

For the foregoing reasons, we recommend that David G. Ronquillo be disbarred and that his name be stricken from the roll of attorneys. We further recommend that:

⁸Ronquillo appended as exhibits to his opening brief the declarations of five attorneys, which are not part of the record on review. We therefore decline to consider them. Even if, *arguendo*, the declarations were part of the record, they would not change our discipline recommendation. The five attorneys who attested to Ronquillo's skill as an attorney, his devotion to his family and church, and his community activities had little or no knowledge of the circumstances surrounding his misconduct. The declarations would not constitute clear and convincing evidence of compelling mitigation. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses unfamiliar with details of misconduct]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled to limited mitigation because they did not constitute a broad range of references].)

He must make restitution to Thomas Shepherd in the amount of \$115, 065 plus interest thereon from the date of the withdrawal of the funds from Ronquillo's CTA. Further, he must make restitution to Jeffrey and Holly Rhine in the amount of \$9,000 plus interest thereon from the date of the withdrawal of the funds from Ronquillo's CTA. Any restitution owed to Shepherd, the Rhines and the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

He must comply with rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order herein;

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

V. ORDER

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