

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 07-O-11083-LMA
)	
CHRISTOPHER ALLEN ZAJIC)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 123878)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on October 26, 2009. Respondent **Christopher Allen Zajic** is charged with five counts of misconduct including an allegation that he misappropriated \$300,000 in trust funds. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Michael J. Glass. Respondent failed to participate in this matter either in-person or through counsel.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on July 9, 2009. On that same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).¹ The NDC was not returned by the U.S. Postal Service.

On or about July 27, 2009, respondent sent a letter to the court and the State Bar. In this letter, respondent stated that he attempted to resign from the State Bar over two years ago, but

¹Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

later learned that his resignation had been denied. Respondent went on to state that he does not intend to fight or respond to the present charges.

As respondent did not file a response to the NDC, on September 4, 2009, the State Bar filed and properly served on respondent a motion for the entry of respondent's default.²

When respondent failed to file a written response within ten days after service of the motion for the entry of his default, on September 21, 2009, the court filed an order of entry of default and involuntary inactive enrollment.³ A copy of said order was properly served on respondent at his membership records address, and was not returned by the U.S. Postal Service.

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision.⁴

The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

II. Findings of Fact

A. Jurisdiction

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

²The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

³Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

⁴Exhibits 1-3 attached to the State Bar's September 4, 2009 motion for the entry of respondent's default and Exhibit 1 attached to the State Bar's October 26, 2009 brief regarding culpability and discipline are admitted into evidence.

Respondent was admitted to the practice of law in California on July 5, 1986, and has been a member of the State Bar of California at all times since that date.

B. Case No. 07-O-11083

On March 7, 1994, Della Belkowski (“Belkowski”) established a revocable trust which was amended in 1998. In November 1998, Belkowski executed a final amendment to the trust which provided for the distribution of her estate upon her death.

On August 21, 1999, Belkowski died. At the time of Belkowski’s death, the primary asset of the trust was Belkowski’s personal residence (“the property”) valued at \$465,000. The trust also included a \$17,000 promissory note, \$10,000 in Belkowski’s checking account at Washington Mutual Bank, and a \$110,000 certificate of deposit at Washington Mutual Bank.

From August 21, 1999 through August 3, 2005, respondent acted as the successor trustee for the Belkowski trust. Respondent did not have any written fee agreement with Belkowski or the trust beneficiaries as required by Business and Professions Code section 6148.

Jeremy and Marc Murray were the beneficiaries of the trust.

On March 21, 2000, respondent deposited \$110,269.03 from the liquidated certificate of deposit belonging to the trust into the trust’s checking account at Washington Mutual Bank.

Commencing in March 2000 and while acting as the trustee, respondent commingled his law firm’s income and personal income in the trust’s checking account. Respondent also paid his law firm’s expenses and personal expenses from the trust’s checking account. Due to respondent’s mishandling of the trust’s checking account, Washington Mutual Bank assessed \$1,017.00 in fees for more than three dozen checks which respondent issued against insufficient funds.

While acting as the trustee, respondent failed to timely make over 60 monthly mortgage payments on the property to Downey Savings and Loan Association (“DSL”), which resulted

in five foreclosure proceedings between April 15, 2002 and February 25, 2005 and \$16,632 in foreclosure fees and late payment fees.

While acting as the trustee, respondent failed to undertake reasonable efforts to manage the trust and failed to rent the property from 1999 until early 2001, at a loss of more than \$20,000 in rental income. In 2001, South Coast Realty began to manage and lease the property at a rate of \$2,500 per month, for a fee of \$175 per month, producing more than four years of monthly net income which averaged over \$1,800. Respondent did not account to the beneficiaries or the court for the rental proceeds.

While acting as the trustee, respondent withdrew funds from the trust's checking account purportedly as attorney fees for himself, and for his wife and his father who were also attorneys.

Beginning in April 2005, the beneficiaries of the trust repeatedly requested an accounting for the trust. Respondent had not provided any annual accounting to the beneficiaries as required under Probate Code sections 16060 through 16063 and under the express terms of the trust.

On June 6, 2005, the beneficiaries filed a petition for an order compelling respondent to account for the trust's funds and an order removing respondent as the trustee in the Santa Barbara County Superior Court ("the Court"), case no. 01167640.

On August 3, 2005, respondent agreed to and did remove himself as trustee. Respondent and the beneficiaries stipulated that respondent would provide a formal accounting of all trust activities from August 21, 1999 through August 3, 2005 to the beneficiaries' attorney no later than September 5, 2005, and that he would turn over any funds currently held in the trust's account for the benefit of the trust or beneficiaries no later than August 10, 2005.

On August 4, 2005, the Court ordered respondent to resign as trustee and to provide an accounting within 30 days. Respondent provided an accounting to the beneficiaries' attorney dated September 28, 2005.

With the accounting respondent prepared a series of itemized statements purporting to support his trustee and attorney fees for the prior six years. Respondent created the statements in 2005 in large part by estimating the value of the services he had performed for the trust in the prior six years.

On October 27, 2005, the Court reviewed respondent's accounting. The Court found that the accounting was incomplete and missing information.

On March 30, 2006, the successor trustee for the trust, Kim Sutherland ("Sutherland"), filed objections to respondent's accounting, including but not limited to the following objections:

- a. Respondent's accounting listed eight distributions to respondent for attorney fees totaling \$105,063, when the reasonable value of the services was less than one-half of that amount; and
- b. Respondent's accounting did not explain multiple checks to respondent, respondent's wife, and respondent's law firm in the amount of \$145,509.66, and more than 200 ATM and cash withdrawals from Washington Mutual Bank in excess of \$150,436.91 while acting as the trustee.

On August 10, 2006, the Court ordered respondent to file an accounting with the Court by August 31, 2006 at 4:00 p.m. On September 5, 2006, respondent filed his account and report of trustee with the Court. On September 14, 2006, respondent filed his first amended account and report of trustee with the Court.

On October 3, 2006, Sutherland filed objections to respondent's accounting. Sutherland contended, in part, as follows:

- a. Respondent failed to account for or distribute in excess of \$125,000 belonging to the trust and that respondent only turned over 45 cents from the trust's checking account:
- b. Respondent borrowed \$25,000 or more from Robert Raffaelli ("Raffaelli"), secured with a lien against the property; respondent then paid Raffaelli \$3,600 in interest on the loan with the trust's funds, and after respondent resigned as trustee and after Sutherland closed escrow on the property, Sutherland paid Raffaelli \$25,000 for the loan; and,

- c. Respondent withdrew funds as attorney fees from the trust's checking account to pay himself, his wife and his father, without notice to the beneficiaries and without prior court approval as required by Probate Code section 15687.

On November 14, 2006, respondent filed his second amended account and report of trustee with the Court.

On March 12, 2007, the Court held a trial regarding respondent's second amended account and report of trustee. The Court concluded that none of the fees respondent paid to himself from the trust funds were earned by him and that respondent allowed the property to go into foreclosure on several occasions. The Court found that respondent owed over \$300,000 to the trust and the beneficiaries that he wrongfully withdrew, plus attorney fees and costs advanced by the beneficiaries to recapture that money.

On April 9, 2007, the Court filed its order after hearing and judgment. The Court found by clear and convincing evidence that the first amended account should not be approved and that Sutherland's and the beneficiaries' objections were meritorious. The Court specifically found as follows:

- “1. That Christopher A. Zajic breached his fiduciary duties as trustee of the Della L. Belkowski Revocable Trust and violated the trust during the period from August 1999 until his resignation as trustee on August 3, 2005; Mr. Zajic failed to properly manage the trust, to segregate and keep the trust's assets separate from his own, to pay some of its expenses (including taxes, mortgage payments and insurance payments), to rent the trust's residence for an unreasonable amount of time following the testator's death and (once the property was rented) to deposit all rental payments in the trust. Mr. Zajic failed to keep proper books and records (including check books and registers) and never accounted to the beneficiaries as required by the express provisions of the trust. Mr. Zajic drafted the trust, and is chargeable with knowledge of its contents. Mr. Zajic did not maintain check books nor check registers for the nearly six years he was trustee. Mr. Zajic's failure to exercise reasonable care was demonstrated by clear and convincing evidence, as was the fact that he earned no fees as trustee or as attorney for the trust.
2. That the entries in the Second Amended Account and Report are determined to be misleading and unreliable in that there are payments in

Schedule A (which should be in schedule 14) which are incorrect, missing or were never deposited into the trust. The disbursements listed in Schedule B are misleading and incomplete in that none of the purported payments listed as attorney's fees were made as indicated; and Mr. Zajic wrote dozens of checks to himself, his law firm and his wife for legal services in an amount exceeding \$145,000.00, which were not identified in Schedule B. Mr. Zajic regularly failed to pay the monthly Downey Savings and Loan mortgage payment of approximately \$541.00, resulting in five foreclosure proceedings and foreclosure fees unnecessarily incurred by the trust in an amount exceeding \$13,000.00. The schedule of distributions demonstrates Mr. Zajic's failure to properly manage the trust, and demonstrates his failure to pay the regular monthly mortgage insurance, mortgage, and tax obligations.

3. That the uncontroverted evidence established that Mr. Zajic engaged in two hundred and seventy in (sic) cash and ATM withdrawals from the account in a sum exceeding \$150,436.91. The uncontroverted evidence established that in depositing rent checks into the trust account, Mr. Zajic inappropriately took cash for himself (in a sum exceeding \$5,000.00), for which he has failed to account. The uncontroverted evidence established that Mr. Zajic wrote checks against the trust account when there were not sufficient funds to cover said checks; as a result Washington Mutual imposed NSF fees of \$1,017.00. Mr. Zajic borrowed \$25,113.18 from Mr. Robert Rafaelli and caused the trust to pay Mr. Raffaelli (sic) the aforementioned sum along with interest.
4. That Mr. Zajic has withdrawn \$300,000.00 from the Della L. Belkowski Trust account, has failed to properly account for said money and judgment against him and in favor of Ms. Kim Sutherland, successor trustee, in the amount of \$300,000.00 is hereby ordered.
5. The successor trustee shall have and recover her attorney's fees and costs."

Respondent misappropriated \$300,000 of the trust's funds for his personal purposes and for purposes unrelated to the trust. Respondent filed the misleading accounting with the Court with the intent to conceal his mishandling and misappropriation of the trust funds from the Court and the beneficiaries.

III. Conclusions of Law

A. Count 1 – Moral Turpitude - Misappropriation (Business and Professions Code, Section 6106)⁵

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. ““There is no doubt that the wilful misappropriation of a client’s funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) By misappropriating \$300,000 belonging to the trust, respondent willfully committed acts involving moral turpitude, dishonesty or corruption in violation of section 6106.

B. Count 2 – Seeking to Mislead a Judge (Section 6068, subdivision (d))

Section 6068, subdivision (d) provides, in pertinent part, that it is the duty of an attorney to never seek to mislead a judge by an artifice or false statement of fact or law. By filing a misleading accounting with the Court, respondent willfully employed, for the purposes of maintaining the causes confided in him, means which were inconsistent with truth, and sought to mislead the judge or judicial officer by an artifice or false statement of fact in violation of section 6068, subdivision (d).

The court, however, affords Count 2 no additional weight. Count 2—as noted below—involves the same misconduct that the court relied upon in count 3.

C. Count 3 – Moral Turpitude - Misrepresentation (Section 6106)

By filing the misleading accounting with the Court with the intent to conceal his mishandling and misappropriation of the trust funds from the Court and the beneficiaries, respondent willfully committed an act involving moral turpitude, dishonesty and corruption in violation of section 6106.

⁵ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

D. Count 4 – Failure to Comply with All Laws (Section 6068, subdivision (a))

Section 6068, subdivision (a), provides that an attorney has a duty to support the laws of the United States and of this state. By withdrawing funds as attorney fees from the trust's checking account to pay himself, and his father and wife (who were also attorneys) without notice to the beneficiaries or without prior court approval, respondent violated Probate Code section 15687. By commingling personal funds with trust funds, respondent violated Probate Code section 16009. And by not providing accurate and complete accountings of the trust's funds, respondent violated Probate Code sections 16060 through 16063.

By violating Probate Code sections 15687, 16009, and 16060 through 16063, respondent willfully failed to support the laws of this state in violation of section 6068, subdivision (a).

E. Count 5 – Failure to Obey a Court Order (Section 6103)

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.” By filing the accountings late on September 28, 2005 and on September 5, 2006, respondent willfully disobeyed or violated an order of the court requiring him to do an act connected with or in the course of respondent's profession which he ought in good faith to have done, in violation of section 6103.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factors were submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶ Respondent, however, has no prior record of discipline in 14 years of practice prior to engaging in his first act of misconduct in the

⁶ All further references to standard(s) are to this source.

current proceeding.⁷ Respondent's 14 years of discipline-free practice warrant some consideration in mitigation.

B. Aggravation

Respondent committed multiple acts of misconduct by failing to perform with competence, failing to account, and failing to refund unearned fees. (Std. 1.2(b)(ii).)

Respondent's misconduct also resulted in significant harm to his client, the public, and the administration of justice. (Std. 1.2(b)(iv).)

Respondent's failure to participate in the present proceedings prior to the imposition of his default constitutes an additional factor in aggravation. (Std. 1.2(b)(vi).)

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.)

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 must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most

⁷ Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges that respondent be disbarred. The court agrees. The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar, supra*, 51 Cal.3d 215, 221.)

Here, respondent intentionally misappropriated \$300,000 and declined to participate in the present proceedings. The court finds no reason to deviate from the standards. As respondent’s conduct clearly demonstrates, no resolution short of disbarment would provide adequate protection to the public, the courts, and the legal community. Consequently, the court recommends that respondent be disbarred.

VI. Recommended Discipline

The court recommends that respondent **Christopher Allen Zajic**, State Bar Number 123878, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is also recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and 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.⁸

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

VIII. Costs

It is recommended 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.

Dated: December ____, 2009

LUCY M. ARMENDARIZ
Judge of the State Bar Court

⁸ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)