

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 07-O-13835-RAH
)	
EDMUND TODD CROWLEY)	
)	DECISION AND ORDER OF
Member No. 154948)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on August 9, 2010. Respondent **Edmund Todd Crowley** is charged with four counts of misconduct including allegations that he misappropriated client funds. At the time of submission, the Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) was represented in this matter by Deputy Trial Counsel Elina Kreditor (“DTC Kreditor”). Respondent did not participate in these proceedings.

The Office of the Chief Trial Counsel filed a Notice of Disciplinary Charges (“NDC”) against respondent on May 28, 2010.¹ On that same day, a copy of the NDC was properly served

¹ Prior to filing the NDC, DTC Kreditor communicated with respondent by telephone. Respondent expressed his desire not to proceed to trial. DTC Kreditor sent respondent a disbarment stipulation, but respondent did not return it. DTC Kreditor made several subsequent attempts to communicate with respondent. As of July 16, 2010 (the filing date of the motion for default), DTC Kreditor had not had any contact with respondent since April 2010.

on respondent in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).²

As respondent did not file a response to the NDC, the State Bar filed and properly served a motion for entry of default.³ Respondent subsequently failed to file a written response to the motion for entry of default, and, on August 6, 2010, the court issued an order of entry of default and involuntary inactive enrollment.⁴ A copy of said order was properly served on respondent at his membership records address. This copy was not subsequently returned to the court by the U.S. Postal Service as undeliverable or for any other reason.

The Office of the Chief Trial Counsel waived its right to a hearing, and this matter was submitted for decision.⁵ The Office of the Chief Trial Counsel’s and the court’s efforts to contact respondent were fruitless. 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 and Conclusions of Law

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).)

² Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

³ The motion also contained a request that the court take judicial notice of all of respondent’s official membership addresses. The court grants this request.

⁴ Respondent’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.

⁵ Exhibit 1 attached to the State Bar’s July 16, 2010 motion for the entry of respondent’s default and Exhibits 1-2 attached to the State Bar’s August 9, 2010 brief regarding culpability and discipline are admitted into evidence.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1991, and has been a member of the State Bar of California at all times since that date.

B. Findings of Fact

In 1999, respondent was employed as an attorney by Schiff Nutrition International, Inc. ("Schiff").

In October 2004, stock of a certain public company was issued to Schiff in connection with the bankruptcy of a Schiff customer. Respondent utilized a transfer agent to sell portions of the stock and issued several checks to Schiff. Respondent then deposited said checks, totaling \$37,583.00, in a bank account controlled solely by respondent. Respondent did not notify Schiff of the receipt of these funds.

In July 2006, respondent received a check on behalf of Schiff in the amount of \$71,244.58 from Schiff's insurance broker. Respondent deposited the check into a Wyoming bank account respondent set up in Schiff's name. Respondent then transferred the funds to a Utah bank account controlled solely by respondent. Respondent did not notify Schiff of the receipt of these funds. Respondent did not remit the proceeds of the settlement check to Schiff. Instead, respondent used the funds for his own purposes.

On December 20, 2006, Schiff asked respondent about the \$71,244.58 settlement check. Respondent admitted to Schiff that he misappropriated funds from Schiff.

During his employment at Schiff, respondent misappropriated \$108,827.58 in funds belonging to Schiff. It was only in February 2007, following Schiff's investigation into respondent's misappropriation of funds belonging to Schiff, that respondent admitted to the misappropriation and repaid Schiff the misappropriated amount.

C. Conclusions of Law

1. Count One - Rules of Professional Conduct, Rule 4-100(A)⁶ - [Failure to Maintain Client Funds in Trust]

Rule 4-100(A) provides, in part, that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account. The Office of the Chief Trial Counsel alleges that respondent willfully violated rule 4-100(A) by transferring client funds from an account in Schiff's name to an account controlled solely by respondent. The court disagrees. The evidence in the record fails to establish—by clear and convincing evidence—that the bank account respondent transferred Schiff's money into was not a client trust account. Accordingly, Count One is dismissed with prejudice.

2. Count Two - Rule 4-100(A) - [Failure to Maintain Client Funds in Trust]

The Office of the Chief Trial Counsel alleges that respondent willfully violated rule 4-100(A) by depositing checks issued to Schiff in the amount of \$37,583.00 into a bank account controlled solely by respondent. Once again, the court disagrees. The evidence in the record fails to establish—by clear and convincing evidence—that the bank account respondent transferred Schiff's money into was not a client trust account. Accordingly, Count Two is dismissed with prejudice.

3. Count Three - Rule 4-100(B)(1) - [Failure to Notify of Receipt of Client Funds]

Rule 4-100(B)(1) requires that an attorney promptly notify a client of the receipt of the client's funds, securities, or other properties. By not informing Schiff of respondent's receipt of the \$71,244.58 settlement check and the additional checks issued to Schiff totaling \$37,583.00, respondent failed to promptly notify a client of the receipt of the client's funds, securities, or other properties, in willful violation of rule 4-100(B)(1).

⁶ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

4. Count Four - Business and Professions Code, Section 6106 [Moral Turpitude - Misappropriation]⁷

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 \$108,827.58 in funds belonging to Schiff, respondent willfully committed acts involving moral turpitude, dishonesty or corruption in violation of section 6106.

III. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁸ Respondent, however, has no prior record of discipline in approximately 13 years of practice prior to engaging in his first act of misconduct in the current proceeding.⁹ Practicing law for 13 years before committing misconduct is a mitigating factor.¹⁰

B. Aggravation

The court finds two factors in aggravation. (Std. 1.2(b).)

1. Significant Harm

Respondent’s misconduct resulted in financial harm to his client. (Std. 1.2(b)(iv).) Said harm involved the misappropriation of \$108,827.58 in funds belonging to Schiff.

⁷ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

⁸ All further references to standard(s) are to this source.

⁹ Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent’s membership records.

¹⁰ The Supreme Court and Review Department have routinely considered the absence of prior discipline in mitigation even when the current misconduct was serious. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106-107.)

2. Failure to Cooperate

Respondent's lack of cooperation during the disciplinary investigation and proceedings is also an aggravating factor. (Std. 1.2(b)(vi).)

IV. 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 and 2.3 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 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 Office of the Chief Trial Counsel 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 misappropriated over one hundred thousand dollars. Based on respondent’s egregious misconduct, his failure to timely participate in the present proceedings, and the factors in aggravation, the court finds no compelling reason to deviate from the standards. Therefore, it is recommended that respondent be disbarred.

V. Recommended Discipline

The court recommends that respondent **Edmund Todd Crowley** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

The court further 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.¹¹

VI. 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).)

VII. 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: October ____, 2010

RICHARD A. HONN
Judge of the State Bar Court

¹¹ 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.)