

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 07-O-14363-PEM
)
CHRISTOPHER LAVAR TURPIN)
) DECISION
Member No. 210177)
)
A Member of the State Bar.)

I. Introduction

In this disciplinary proceeding, respondent **Christopher LaVar Turpin** is charged with multiple acts of misconduct in one matter. The charged acts of misconduct include two acts of moral turpitude and a failure to cooperate in a State Bar investigation. This court finds, by clear and convincing evidence, that respondent is culpable of the acts of moral turpitude. Based on the extent and serious nature of the present misconduct, the court recommends, among other things, that respondent be actually suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, present fitness to practice, and learning and ability in the general law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) on December 30, 2008. On March 3, 2009, respondent filed a response to the NDC.

On December 8, 2009, the parties filed a partial stipulation as to facts, conclusions of law, and the admission of documents. A two day trial was held on December 8 and 9, 2009. The

State Bar was represented by Deputy Trial Counsel Brandon K. Tady and respondent represented himself. The court took this matter under submission on December 9, 2009.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the parties' stipulation,¹ and the evidence and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 1, 2000, and has been a member of the State Bar of California since that time.

B. Credibility Determinations

Dr. Jayendra Amin, Stephen Mashney, and respondent each testified at trial. With respect to the credibility of these witnesses, the court carefully weighed and considered each witness's demeanor while testifying; the manner in which each witness testified; each witness's interest or lack thereof in the outcome of this proceeding; and each witness's capacity to accurately perceive, recollect, and communicate the matters on which he or she testified. (See, e.g., Evid. Code, § 780 [lists of factors to consider in determining credibility].)

The court found the testimony of Dr. Jayendra Amin and Stephen Mashney to be credible. On the other hand, the court found respondent's testimony generally lacked credibility—as discussed below.

C. Background Facts

From February 2004 to March 2006, respondent was employed as an associate attorney by the Mashney Law Offices ("the firm"). On February 3, 2004, respondent signed an "Associate Attorney Employment Agreement" ("employment agreement") with the firm.

¹ The parties agreed that the facts contained in the stipulation constitute an admission of the facts.

The employment agreement provided that respondent would work full-time for the firm and that respondent “shall not, without the written consent of the firm, directly or indirectly render services of a professional nature to or for any person except as an employee of the firm.”

The employment agreement also provided that respondent’s compensation was an annual salary of \$50,000 plus 15% of the net attorney’s fee proceeds that the firm obtained from the cases assigned to respondent. The employment agreement remained in full force and effect until February 6, 2006.

D. The Alvarez Matter

Raul Alvarez (“Alvarez”) went to Dr. Jayendra Amin (“Dr. Amin”) for laser tattoo removal. Alvarez claimed that Dr. Amin burned his skin with a laser during the tattoo removal procedure.

On September 7, 2005, Alvarez hired the firm to represent him in connection with a medical malpractice matter against Dr. Amin (the “Alvarez matter”). The fee agreement stated the firm would receive 40% of any settlement obtained in the Alvarez matter. Alvarez did not retain the firm to make an employment claim against Dr. Amin.

In September 2005, the owner of the firm, attorney Stephen Mashney (“Mashney”), assigned the Alvarez matter to respondent to handle. Respondent told Mashney that he estimated the Alvarez matter was worth \$40,000.

Respondent met with Dr. Amin in October 2005. Respondent and Dr. Amin settled the Alvarez matter for \$10,000. On October 17, 2005, however, respondent told Mashney that the Alvarez matter settled for \$5,000.

On October 20, 2005, respondent prepared a release agreement. In the release agreement respondent wrote “we agreed to resolve the employment dispute between [Alvarez] and [Dr. Amin] by payment totaling \$5,000.00.” Respondent also wrote that in the exchange for the

payment of \$5,000, “[Alvarez] and his attorneys, Mashney Law Offices, agree not to file a lawsuit against [Dr. Amin] for any employment dispute or any medical malpractice dispute if the payment is received.” Respondent and Dr. Amin each signed the release agreement.

That same day, respondent sent a fax to Dr. Amin on the firm’s letterhead. In the fax, respondent told Dr. Amin to issue two checks—one in the amount of \$5,000 payable to Mashney Law Offices and Raul Alvarez, and the other in the amount of \$5,000 payable to respondent.

As requested, Dr. Amin provided respondent with two \$5,000 cashier’s checks on October 20, 2005. The first check was made payable to Mashney Law Offices and Raul Alvarez. Respondent gave this check to the firm. The second check was made payable to respondent. On October 20, 2005, respondent cashed the second check and retained the funds.

Meanwhile, Mashney was suspicious about the \$5,000 settlement claim because respondent had initially estimated that the Alvarez case was worth \$40,000. Mashney also questioned the speed of the settlement and respondent’s lack of communication with Mashney regarding the progression of the settlement negotiations.

Therefore, between October 20 and 25, 2005, Mashney called Dr. Amin to discuss the settlement in the Alvarez matter. Dr. Amin informed Mashney that the Alvarez matter settled for \$10,000. Mashney sent his investigator and clerk, Mohammed, to personally speak with Dr. Amin. Dr. Amin confirmed with Mohammed that the case has settled for \$10,000.

On October 25, 2005, Mashney told respondent that he knew the Alvarez matter had settled for \$10,000, and not \$5,000. Respondent admitted that the case settled for \$10,000 and did not offer any explanation as to why he told Mashney that the Alvarez matter settled for \$5,000. Mashney demanded that respondent return the additional \$5,000.

That same day, Mashney had Mohammed accompany respondent to his bank to purchase a cashier’s check in the amount of \$5,000 payable to the firm. Respondent purchased the

cashier's check and gave it to Mashney as reimbursement for the settlement funds respondent had taken in the Alvarez case.

On October 25, 2005, Mashney sent a letter to Dr. Amin acknowledging that the Mashney Law Offices received \$10,000 from Dr. Amin in full and final settlement of the Alvarez matter. That same day, Mashney sent a letter to Alvarez stating "[a]s you are aware, the case referenced above settled for a total of \$10,000." This letter contained an accounting of the \$10,000, with \$4,000 to be paid to the firm as attorney's fees and \$6,000 to be paid to Alvarez.

On October 26, 2005, Alvarez signed the letter confirming his claim settled for \$10,000. The firm paid Alvarez \$6,000, and it retained \$4,000 in attorney's fees.

On February 6, 2006, respondent signed a new Associate Attorney Employment Agreement. This agreement reduced the percentage of respondent's commissions. Approximately two months later, respondent left the firm and opened his own law office.

On October 26, 2007, Mashney complained to the State Bar about respondent's conduct in the Alvarez matter. Mashney wrote the complaint to the State Bar after a number of his ex-clients, some of whom respondent took to his own law office, told him that respondent took settlement checks without paying them.

On January 18, 2008, State Bar investigator Rose Morales ("Morales") wrote and sent respondent a letter requesting information and documents concerning Mashney's State Bar complaint. The letter was sent to respondent's then current official State Bar membership records address ("official address"). The letter was not returned by the United States Postal Service.

On February 19, 2008, Morales wrote and sent a second letter to respondent requesting information and documents concerning Mashney's State Bar complaint. The letter was sent to respondent's official address. The letter was not returned by the United States Postal Service.

Between January and March 2008, respondent was in the process of moving his office from Beverly Hills to Los Angeles.

E. Conclusions of Law

Count One: Conversion (Business and Professions Code, Section 6106)²

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. By the terms of his associate agreement with the firm, respondent was not authorized to pay himself any portion of the funds from the settlement in the Alvarez matter. By intentionally converting \$5,000 from the settlement in the Alvarez matter for his own use and benefit, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Count Two: Fraud (Section 6106)

At the time respondent created the release agreement, presented it to Dr. Amin, and signed it, respondent knew that the release agreement was false in that the agreement stated that the amount of settlement was \$5,000, rather than \$10,000. Respondent created the false release agreement, presented it to Dr. Amin, signed it, and misrepresented the amount of Alvarez' settlement to Mashney to facilitate and conceal his conversion of \$5,000 from the settlement in the Alvarez matter for his own use and benefit.

The court finds that respondent's testimony regarding the settlement of the Alvarez matter lacks credibility. Respondent testified that he told Dr. Amin that he would be starting his own law firm in the near future and that Dr. Amin asked him to assist him with some future legal work. Respondent went on to state that Dr. Amin then agreed to retain respondent to represent him in the future for \$5,000.

² All further references to section(s) are to the provisions of the Business and Professions Code, unless otherwise indicated.

Dr. Amin, on the other hand, testified that he had no reason to hire respondent in the future because he had medical malpractice insurance. Dr. Amin believed that the \$10,000 was to cover Alvarez' medical malpractice claim. Dr. Amin felt that the purpose behind writing two checks was immaterial to him; and he was willing to sign the settlement agreement because it covered what he was most interested in—the medical malpractice claim.

Dr. Amin's testimony was bolstered by the fact that the court received no tangible evidence of an attorney-client relationship between respondent and Dr. Amin. Had Dr. Amin actually hired respondent, the court would expect to see a fee agreement, some proof that respondent performed work on Dr. Amin's behalf, or, at a minimum, some evidence that respondent refunded unearned attorney's fees back to Dr. Amin.

By intentionally creating the false release agreement, presenting it to Dr. Amin, signing the release agreement, and misrepresenting the amount of Alvarez' settlement to Mashney, respondent acted to conceal his conversion of \$5,000 in the Alvarez matter, thereby committing acts involving moral turpitude, dishonesty and corruption, in willful violation section 6106.

Count Three: Failure to Cooperate (Section 6068, Subdivision (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. The evidence establishes that the State Bar mailed two investigation letters to respondent at his official address. Respondent did not reply to either of these letters, nor were they returned by the United States Postal Service.

Respondent acknowledges that he did not respond to the State Bar investigator's letters, however, he attributes his lack of response to the fact that he never actually saw the letters. At the time the letters were sent, respondent was in the process of moving his office from Beverly Hills to Los Angeles.

There is no indication in the record that the State Bar investigator ever called or spoke with respondent. And despite his failure to reply to the State Bar investigator's letters, respondent did participate in the present proceedings.

Based on the evidence, the court questions whether respondent willfully failed to cooperate in a State Bar investigation. Because the court is unable to resolve this issue by clear and convincing evidence, respondent shall be given the benefit of the doubt. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 438 [any reasonable doubts must be resolved in respondent's favor].) Accordingly, Count Three is dismissed with prejudice.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.2(e).)³ The instant matter involves one factor in mitigation.

Respondent entered into an extensive stipulation as to facts and admission of documents with the State Bar. (Std.1.2(e)(v).) Respondent's cooperation with the State Bar constitutes some consideration in mitigation.

Although respondent has no prior record of discipline, his four years of discipline-free practice prior to the present misconduct are insufficient to warrant consideration in mitigation. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473.)

B. Aggravation

It is the State Bar's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) The record establishes one factor in aggravation. (Std. 1.2(b).)

³ All further references to standard(s) are to this source.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent continues to assert, despite overwhelming evidence to the contrary, that: (1) he settled the Alvarez matter for only \$5,000; and (2) he was paid \$5,000 to perform future legal work on Dr. Amin’s behalf. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

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.

In this case, the standards provide for the imposition of sanctions ranging from suspension to disbarment. (Std. 2.3.) 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.)

In the present matter, the State Bar recommends that respondent be disbarred.⁴

Respondent, on the other hand, requests that no period of actual suspension be imposed.

The court looks to *Chang v. State Bar* (1989) 49 Cal.3d 114, for guidance. In that case, the attorney was found culpable, in a single-client matter, of misappropriating \$7,900 in client funds, failing to provide his client with an accounting, and making misrepresentations both to his client and to the State Bar. In aggravation, the attorney's misconduct caused significant harm and he never acknowledged the impropriety of his actions. No mitigating circumstances were found. The Supreme Court ordered that the attorney be disbarred.

The present matter is similar to *Chang*, however, it is distinguished by a few key points. In *Chang*, the California Supreme Court's order of disbarment was predicated on the Court's doubt as to whether the attorney had the ability to conform his future conduct to the professional standards demanded of California attorneys. (*Chang v. State Bar, supra*, 49 Cal.3d 114, 129.) The Supreme Court specifically addressed three areas of doubt: (1) the attorney's failure to acknowledge the impropriety of his conduct; (2) the attorney's failure to make any efforts toward restitution; and (3) the attorney's lack of candor before the State Bar. (*Ibid.*) In contrast, the present case does not rise to the level of *Chang* because it does not involve a lack of candor to the State Bar⁵ or a failure to make restitution.

That being said, the court is still greatly concerned by the nature of respondent's misconduct and his failure to acknowledge or appreciate the impropriety of his actions. Therefore, in the interests of public protection the court recommends, among other things, that respondent be actually suspended for two years and until he provides proof to the State Bar Court

⁴ In its pre-trial statement, the State Bar recommended either disbarment or a two-year period of suspension.

⁵ While the court finds, based on the evidence, that much of respondent's testimony lacked credibility, the court did not go so far as to make an affirmative finding that respondent's testimony lacked candor.

of his rehabilitation, present fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

VI. Recommended Discipline

Accordingly, it is recommended that respondent **Christopher LaVar Turpin**, State Bar Number 210177, be suspended from the practice of law in California for four (4) years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years⁶ subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two (2) years of probation, and he will remain suspended until the following requirement is satisfied:
 - i. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must also comply with the following additional conditions of probation:
 - i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation ("Office of Probation") on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probationary period;

⁶ The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
 - iv. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code; and
 - v. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request; and
 - vi. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (“MCLE”) requirements, and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.);
3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for four (4) years will be satisfied and that suspension will be terminated.

It is also recommended that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results

in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

It is further recommended that respondent be ordered to comply with the 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.⁷

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: February _____, 2010

PAT McELROY
Judge of the State Bar Court

⁷ Respondent is required to file a rule 9.20 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* (1998) 44 Cal.3d 337, 341.)