

PUBLIC MATTER

FILED

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**STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case Nos.: 08-C-13604-PEM
)	09-O-10158 (Cons.)
MARTIN JOHN RUANE,)	
)	DECISION AND ORDER OF
Member No. 158104,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent Martin John Ruane is alleged to have committed misconduct in three consolidated matters. The first matter involves respondent's November 2009 conviction for driving under the influence of alcohol. The remaining two matters involve, among other things, respondent's misappropriation of \$47,820 from two separate clients.

Based on the facts and circumstances before the court, it is recommended that respondent be disbarred.

II. Pertinent Procedural History

On November 30, 2009, respondent appeared in the Marin County Superior Court and entered a guilty plea to a misdemeanor charge of driving while under the influence of an alcoholic beverage or drug (with an admitted prior conviction). Respondent was sentenced that same day.



On April 13, 2010, the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) transmitted a certified copy of respondent’s record of conviction to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On May 5, 2010, the Review Department of the State Bar Court issued an order referring this matter (State Bar Court case no. 08-C-13604) to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding respondent’s conviction were found to involve moral turpitude or other misconduct warranting discipline.

On May 19, 2010, the State Bar Court issued and properly served respondent with a Notice of Assignment and Notice of Initial Status Conference on case no. 08-C-13604. This mailing went unclaimed and was subsequently returned to the State Bar Court.

Following respondent’s failure to appear at the properly noticed initial status conference, the State Bar, on June 28, 2010, filed a motion for entry of default pursuant to rules 200 and 604 of the former Rules of Procedure of the State Bar of California (“former Rules of Procedure”).¹ Respondent’s default was entered on July 14, 2010. The order of entry of default was sent to respondent’s official address by certified mail, return receipt requested.² This mailing went unclaimed and was subsequently returned to the State Bar Court.

Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e)(1), on July 17, 2010. The court took this matter under submission following the filing of the State Bar’s brief on culpability and discipline.

¹ Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended.

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

On September 10, 2010, however, the State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent in case nos. 09-O-10158 (09-O-18140). On that same day, a copy of the NDC was served on respondent.

On September 27, 2010, the court issued an order consolidating case no. 08-C-13604 with case nos. 09-O-10158 (09-O-18140). Pursuant to the order of consolidation, the court subsequently issued an order vacating its submission of case no. 08-C-13604.

Respondent did not file a response to the NDC. On October 6, 2010, the State Bar filed and served on respondent a motion for the entry of his default.³

When respondent failed to file a written response within ten days after service of the motion for the entry of his default, the court, on October 22, 2010, filed an order of entry of default and involuntary inactive enrollment.⁴ A copy of said order was served on respondent at his membership records address. This copy was not subsequently returned to the court as undeliverable or for any other reason.

Thereafter, the State Bar waived the hearing and this matter was again submitted for decision following the filing of the State Bar’s November 5, 2010 brief on culpability and discipline.⁵

The State Bar’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].)

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

⁴Respondent’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.

⁵The exhibits attached to the State Bar’s August 3, 2010 and November 5, 2010 briefs on culpability and discipline are admitted into evidence.

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 8, 1992, and has since been a member of the State Bar of California.

B. Driving Under the Influence - Case No. 08-C-13604

1. Findings of Fact

On September 4, 2008, respondent drove a vehicle while under the combined influence of an alcoholic beverage and a drug. On November 30, 2009, respondent pled guilty to the corresponding charge of driving under the influence, in violation of Vehicle Code section 23152, subdivision (a). This marked respondent's second conviction for a violation of Vehicle Code section 23152, subdivision (a) within the past ten years.

2. Conclusions of Law

An attorney's conviction of driving under the influence, even with prior convictions of that offense, does not per se establish moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494.) Here, the court finds that the facts and circumstances surrounding respondent's conviction for driving under the influence of alcohol do not involve moral turpitude, but do involve other misconduct warranting discipline. (See *In re Carr* (1988) 46 Cal.3d 1089, and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.)

C. The Radwan Matter - Case No. 09-O-10158

1. Findings of Fact

On or about June 9, 2008, Farid Radwan ("Radwan") hired respondent to file and represent Radwan in a civil lawsuit. On or about August 6, 2008, Radwan signed the fee agreement.

From on or about June 9, 2008 through August 6, 2008, Radwan paid a total of \$6,000 as advanced attorney's fees. Respondent never prepared or filed a civil suit on behalf of Radwan, or performed any services for which he was hired.

On or about August 1, 2008, respondent sent Radwan a letter and a billing statement ("July billing statement") covering the period of July 1, 2008 through July 30, 2008. The billing statement included the following entries:

Date	Entry	Hours	Charge
7/22/08	Continue working on research and complaint	1.8	585.00
7/23/	Prepare complaint in final form to send to the court for filing; review and revise send to court	2.	877.50
	Filing fee - Marin Superior Court/Unlimited Jurisdiction	Cost	320.00

Respondent was not entitled to the \$320 he charged and collected from Radwan. Respondent misappropriated \$320 of Radwan's funds.

Between in or about July 2008 to in or about October 2008, Radwan repeatedly telephoned respondent and left messages demanding a refund of the unearned fees. Respondent received the messages, but did not refund the unearned fees.

2. Conclusions of Law

a. Count One - California Rules of Professional Conduct, Rule 3-110(A)⁶ [Failure to Perform]

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to prepare and file a civil lawsuit or perform any services on behalf of Radwan.

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

b. Count Two: Business and Professions Code Section 6106⁷ [Moral Turpitude - Misrepresentation]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

By falsely indicating in his July billing statement to Radwan that he had prepared and filed a complaint, and paid \$320 in costs for filing the complaint, when in fact respondent did not prepare a civil complaint, did not file a complaint in court, and did not pay the filing fee of \$320, respondent willfully committed acts involving moral turpitude, dishonesty and corruption in violation of section 6106.

c. Count Three: Section 6106 [Moral Turpitude - Misappropriation]

“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 charging and collecting \$320 from Radwan as filing fees, when in fact respondent did not file a complaint in court and did not pay a \$320 filing fee, respondent willfully committed acts involving moral turpitude, dishonesty and corruption in violation of section 6106.

d. Count Four: Rule 4-100(B)(4) [Failure to Pay Client Funds]

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to

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

receive. By willfully failing to refund unearned fees to Radwan, respondent willfully violated rule 4-100(B)(4).

D. The NonProfits United Matter - Case No. 09-O-18140

1. Findings of Fact

In or around February 2006, NonProfits United, Inc., hired respondent to recover property damage that resulted from a vehicle fire owned by Pride Industries, Inc. Pride Industries, Inc., is a member of NonProfits United, a self-insurance pool for nonprofit entities in California.

On or about December 27, 2007, respondent filed a lawsuit on behalf of Pride Industries, Inc., in a case entitled *Pride Industries v. Ford Motor Company et al.*, Sonoma County Superior Court case no. SCV242077.

Prior to on or about June 17, 2008, respondent negotiated a settlement with the defendants. On June 17, 2008, respondent filed a Notice of Settlement with the court.

On August 29, 2008, Eldorado National, Inc., issued a check to Martin J. Ruane, Inc., in the amount of \$47,500.00, representing settlement proceeds for the above-listed case. Respondent received the \$47,500.00 and deposited the funds into a personal bank account. At no time did respondent notify his clients or their administrator of the receipt of settlement, nor did he pay those funds to his clients. Subsequently, respondent misappropriated the \$47,500.00.

On September 1, 2008, Bragg & Associates (now York Insurance Services Group, Inc.) became the third party administrator for NonProfits, to administer claims on behalf of NonProfits.

In and between November 2008 and August 10, 2009, Jennifer Nogosek ("Nogosek"), Claims Manager for Bragg & Associates, telephoned respondent on at least three occasions, and requested information about the settlement proceeds.

On November 18, 2008, respondent left a voicemail for Nogosek, in which he stated, in part, that he hoped to get the settlement funds soon. Respondent knew when he made that statement that he had already received the funds and deposited them into a personal bank account.

On February 10, 2009, Nogosek sent a letter to respondent demanding, in part, that respondent obtain the \$47,500.00 recovery that was agreed to at settlement, not knowing that respondent had already received the settlement proceeds. Respondent did not inform Nogosek that he had already received said proceeds.

Respondent did not inform his client or Nogosek of the receipt of client funds, and failed to pay his client or their representative the settlement proceeds he received on their behalf.

2. Conclusions of Law

a. Count Five: Section 6106 [Moral Turpitude - Misappropriation]

By receiving and negotiating \$47,500 in settlement proceeds, failing to disburse said proceeds to his client, failing to account for the funds, and then misappropriating the funds, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106.

b. Count Six: Section 6106 [Moral Turpitude - Misrepresentation]

By falsely stating in his voicemail message of November 18, 2008, that he hoped to get the settlement proceeds soon, when in fact respondent had already received said funds and deposited said funds into his personal account, respondent committed an act or acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106.

c. Count Seven: Rule 4-100(B)(1) [Failure to Notify Client 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. The State Bar alleged that respondent violated rule 4-100(B)(1) by "willfully failing to refund unearned fees to Radwan." The court disagrees on

two grounds. First, a failure to refund unearned fees does not constitute a violation of rule 4-100(B)(1). And second, Count Seven applies to the NonProfits United Matter, not the Radwan matter. Accordingly, Count Seven is dismissed with prejudice.

d. Count Eight: Rule 4-100(B)(4) [Failure to Pay Client Funds]

By failing to pay settlement funds as requested by his client, respondent willfully violated rule 4-100(B)(4).

e. Count Nine: Section 6068, Subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to inform his client of the receipt of settlement funds, respondent failed to keep his client apprised of significant developments, in willful violation of section 6068, subdivision (m).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2.)⁸

A. Mitigation

No mitigating factors were submitted into evidence and none can be gleaned from the record.

B. Aggravation

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

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

1. Multiple Acts of Wrongdoing

As illustrated above, respondent committed multiple acts of wrongdoing. (1.2(b)(ii).)

2. Prior Record of Discipline

Respondent's prior record of discipline includes one previous imposition of discipline. (Std. 1.2(b)(i).)

Effective December 8, 2004, respondent was privately reprovved with conditions, in State Bar Court Case No. 02-C-15738, for a prior conviction of driving under the influence of alcohol. In mitigation, respondent had no prior record of discipline and cooperated with the State Bar throughout the proceedings. No aggravating factors were identified.

3. Significant Harm

Respondent's misconduct resulted in considerable financial harm to his clients. (Std. 1.2(b)(iv).) Said harm included respondent's misappropriation of \$47,500 belonging to NonProfits United and/or Pride Industries, Inc., and his failure to refund \$6,000 in unearned fees to Radwan.

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 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 Silvertown* (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 committed misconduct in three different matters, including the misappropriation \$47,820. Based on respondent’s egregious misconduct, his failure to timely

participate in the present proceedings, and the factors in aggravation as well as the lack of mitigation, the court finds no reason to deviate from the standards. Therefore, it is recommended that respondent be disbarred.

VI. Recommended Discipline

The court recommends that respondent **Martin John Ruane** 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.

It is further recommended that respondent make restitution and furnish satisfactory proof thereof to the State Bar's Office of Probation, as follows:

(1) To Farid Radwan in the amount of \$6,000 plus 10 percent interest per annum from August 6, 2008 (or reimburses the Client Security Fund to the extent of any payment from the fund to Farid Radwan in accordance with Business and Professions Code section 6140.5);

(2) To Pride Industries, Inc., or NonProfits United, Inc., in the total amount of \$47,500 plus 10 percent interest per annum from August 29, 2008 (or reimburses the Client Security Fund to the extent of any payment from the fund to Pride Industries, Inc., or NonProfits United, Inc., in accordance with Business and Professions Code section 6140.5);⁹

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.¹⁰

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

⁹ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d)

¹⁰ 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.)

California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

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: January 18, 2011



PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on January 18, 2011, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MARTIN J. RUANE
LAW OFFICES OF MARTIN J RUANE, INC
PO BOX 487
ROSS, CA 94957

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

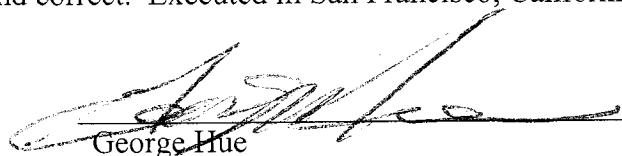
☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 18, 2011.



George Hue
Case Administrator
State Bar Court