

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **08-O-13116-RAH**
) 08-O-11670 (Cons.)
ATTILIO MARIO REGOLO, JR.)
) **DECISION AND ORDER OF**
Member No. 140964) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

1. INTRODUCTION AND PROCEDURAL MATTERS

The trial in this matter commenced on August 10, 2010. The Office of the Chief Trial Counsel of the State Bar of California (Office of the Chief Trial Counsel) was represented by Margaret Warren. Respondent Attilio Mario Regolo, Jr. represented himself.

A Notice of Disciplinary Charges (NDC) was filed on July 13, 2009, in case number 08-O-13116. In this matter respondent was charged with violating Business and Professions Code sections 6068, subdivision (a), and 6106, by practicing law while he was administratively suspended for his failure to pay disciplinary fees and comply with the Mandatory Continuing Legal Education (MCLE) requirements. As is set forth in more detail below, on August 12, 2010, respondent stipulated, on the record, to the misconduct alleged in this NDC.

Another NDC was filed on October 16, 2009, in case number 08-O-11670, alleging misconduct in two client matters. This NDC was amended on October 30, 2009, and was again amended by stipulation of the parties prior to trial on April 1, 2010.¹

Due to his failure to file a pretrial statement, respondent was precluded from offering any testimonial or documentary evidence at trial, other than his own testimony. (Rule 211(f), Rules of Procedure of the State Bar of California.) As is more specifically set forth below, counts five and six of this amended NDC were dismissed at trial, on the motion of respondent.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 6, 1989, and since that time has been an attorney at law and a member of the State Bar of California.

B. The Unauthorized Practice of Law (Case No. 08-O-13116)

1. Findings of Fact

On July 1, 2008, respondent was actually suspended from practicing law for nonpayment of fees and noncompliance with MCLE requirements. Respondent paid his outstanding fees, and was reinstated on July 31, 2008, for that suspension. However, he remained suspended for his noncompliance with his MCLE requirements until August 7, 2008.

On July 23, 2008, respondent, while still suspended, called opposing counsel on behalf of his client, Blanca Ortega. In that call, respondent discussed possible settlement of Ms. Ortega's personal injury claim. That same day, respondent sent a letter confirming the telephone

¹ Case nos. 08-O-13116 and 08-O-11670 were consolidated in December 2009.

conversation. These acts constituted the practice of law. In neither of these communications did respondent advise opposing counsel that he was not entitled to practice law.

2. Conclusions of Law

a. Count One – Business and Professions Code § 6068, subdivision (a) [Failure to comply with laws/unauthorized practice of law]

By making the telephone call regarding settlement and by sending a confirming letter on behalf of his client, while he was suspended from the practice of law, respondent held himself out as practicing or entitled to practice law and practiced law while he was not an active member of the State Bar, in willful violation of Business and Professions Code section 6125 and 6126, and therefore, failed to support the laws of the State of California, in willful violation of Business and Professions Code section 6068, subdivision (a).

b. Count Two – Business and Professions Code § 6106 [Moral Turpitude]

By not advising opposing counsel that he was suspended and not entitled to practice law, and by representing to opposing counsel that he was entitled to practice law, respondent misrepresented his status with the State Bar to opposing counsel and committed an act or acts of moral turpitude, dishonesty and/or corruption, in willful violation of Business and Professions Code section 6106.

C. The Buttanda and Cerda Matter (Case No. 08-O-11670)

1. Findings of Fact

In October 2005, respondent represented Salvatore Buttanda (Buttanda) in a marital dissolution action. His wife was named Grace Cerda (Cerda). On October 19, 2005, the parties to the dissolution signed a stipulation addressing the distribution of the funds that would be generated by the sale of the Buttanda/Cerda residence in Whittier, California (the residence.)

This stipulation became an order of the court. By the terms of the stipulation, the proceeds from the sale of the residence were to be “held in constructive trust for the benefit of the parties, without characterization and shall be non-prejudicial to either party.” Further the stipulation provided that the funds would be placed in respondent’s client trust account (CTA) “pending further Court Order or an agreement signed by both parties and their attorneys of record indicating otherwise.”

The residence was sold in November 2005. On November 15, 2005, the proceeds, in the amount of \$167,706.03, were deposited in respondent’s CTA. Respondent made disbursements from the CTA as follows, resulting in the following required balances:

Date	Payee	Amount of Payment	Required Resulting Balance
December 1, 2005	Salvatore Buttanda	\$65,000.00	\$102,706.03
December 22, 2005	Grace Buttanda/Cerda	\$65,000.00	\$37,706.03
April 24, 2006	Salvatore Buttanda	\$10,000.00	\$27,706.03
December 27, 2006	Salvatore Buttanda	\$2,000.00	\$25,706.03

The disbursements on April 24, 2006 and December 27, 2006, in the amounts of \$10,000 and \$2,000, respectively, were made without a court order or the written agreement of both parties and their attorneys.

The balance in the CTA fell below \$25,706.03 on the following dates:

Date	Actual Balance
December 30, 2005	\$22,194.29
January 19, 2006	\$17,794.29
June 16, 2006	\$15,930.28
August 31, 2006	\$5,178.90
November 1, 2006	\$509.09
February 1, 2007	\$0.00

Respondent was required to hold at least \$25,706.03 in the CTA on all of the above dates. As a result of the above actions, respondent misappropriated \$25,706.03.

On July 25, 2007, the court ordered that Buttanda receive \$7,900 of the sale proceeds and that the remaining sale proceeds be split between Buttanda and Cerda. In addition, the court ordered Buttanda to pay, from the \$7,900, the following amounts: \$1,000 to Cerda as an equalization payment, and \$2,500 to Cerda's attorney, Jennifer J. Kropke, for attorney's fees.

During the period between August 1, 2005 and January 19, 2007, respondent repeatedly issued checks drawn upon respondent's CTA to pay his personal or business expenses, as follows:

Date	Payee	Amount
August 1, 2005	Kathy Smith	\$1,000.00
October 28, 2005	Valiante Paralegal	\$1,000.00
November 11, 2005	Valiante Paralegal Services	\$1,750.00
December 9, 2005	Heidi Wong	\$ 420.00
December 22, 2005	Heidi Wong	\$ 420.00
January 6, 2006	Heidi Wong	\$ 420.00
February 3, 2006	Heidi Wong	\$ 425.00
February 24, 2006	Heidi Wong	\$1,300.00
March 1, 2006	Heidi Wong	\$ 420.00
March 2, 2006	Heidi Wong	\$ 840.00
March 2, 2006	Heidi Wong	\$ 420.00
May 5, 2006	Heidi Wong	\$ 420.00
August 24, 2006	Beverly Hills BMW	\$ 347.98
September 1, 2006	Beverly Hills BMW	\$ 500.16
September 15, 2006	Heidi Wong	\$ 600.00
September 22, 2006	V-Cut Smoke Shop	\$ 210.00
October 6, 2006	Heidi Wong	\$ 300.00
October 18, 2006	Office Electronics	\$ 116.06
December 8, 2006	Heidi Wong	\$ 352.00
January 2, 2007	Heidi Wong	\$ 225.00
January 19, 2007	Heidi Wong	\$ 315.00

Respondent deposited personal funds into the CTA as follows: \$100.00 on March 10, 2006; \$78.06 on April 3, 2006; and \$278.91 on November 2, 2006.

On July 18, 2008, respondent filed a motion to interplead funds and requested that his attorney fees and costs be paid from the interpleaded funds. In support of that motion, respondent filed a declaration that stated, “I have been paid nothing for my attorney’s fees and costs...”

This statement was not true. In fact, respondent had been paid for his attorney’s fees and costs. Respondent stated at trial that the information contained in the declaration was a mistake and that he later withdrew the motion. However, the evidence before the court demonstrates that the motion to interplead funds was actually denied by the Los Angeles Superior Court following respondent’s unsuccessful effort to procure a continuance of this motion and his subsequent failure to appear at the hearing on this motion.

2. Conclusions of Law

a. Count One – Rules of Professional Conduct of the State Bar of California, Rule 4-100(A) ² [Failure to maintain client funds in client trust account]

By failing to maintain the required amount of client funds in the CTA on December 30, 2005, January 19, 2006, June 16, 2006, August 31, 2006, November 1, 2006, and February 1, 2007, as set forth above, respondent violated rule 4-100(A).

b. Count Two – Business and Professions Code § 6106 [Moral turpitude - misappropriation]

By misappropriating \$25,706.03 of the proceeds from the sale of the residence, respondent willfully committed an act of moral turpitude, dishonesty or corruption, in violation of Business and Professions Code section 6106.

² All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

c. Count Three – Business and Professions Code § 6103 [Failure to obey a court order]

By disbursing \$10,000 and \$2,000 to Buttanda on April 24, 2006 and December 27, 2006, respectively, without a court order or agreement of the parties, respondent willfully disobeyed or violated a court order 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, in willful violation of Business and Professions Code section 6103.

d. Count Four – Rule 4-100(A) [Commingling personal funds in client trust account]

By allowing his personal funds to remain in the CTA between August 2005 and January 2007, using them to pay personal and business expenses, and by depositing personal funds into the CTA between March and November 2006, respondent commingled personal funds in his client trust account, in willful violation of rule 4-100(A).

e. Counts Five & Six – Rule 4-100(A) [Failure to maintain client funds in Trust Account] and Business and Professions Code section 6106 [Moral turpitude - misappropriation]

Counts five and six were dismissed with prejudice at trial, over the objection of the Office of the Chief Trial Counsel. These counts are based upon respondent's representation of Norma Girardi.

On August 15, 2005, respondent deposited a \$10,000.00 settlement check from Gioia Cheese into the CTA. Later, on September 2, 2005, respondent deposited a second settlement check from Gioia Cheese into the CTA. Both checks were in settlement of a lawsuit.

The Office of the Chief Trial Counsel alleges in count five, paragraph 37 (which is incorporated into count six) as follows: "Assuming that Respondent was entitled to one-third (1/3) of the settlement funds as his attorney fees, Respondent was required to maintain at least

\$30,000 of Ms. Girardi's funds in his CTA from September 2, 2005 through September 16, 2005." However, the evidence presented at trial showed that, in fact, respondent represented Girardi on an hourly basis, not a contingent fee basis. Because the Office of the Chief Trial Counsel "assumed" that the relationship was a contingent fee arrangement, and because the entire proof presented at trial was based on that wrong assumption, the Office of the Chief Trial Counsel failed to clearly and convincingly prove the alleged violations. As such, both counts five and six must fail, and at trial, the court ruled accordingly. Counts five and six are dismissed with prejudice.

3. LEVEL OF DISCIPLINE

A. Factors in Aggravation

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³

1. Prior Record of Discipline (Std. 1.2(b)(i))

Respondent's prior record of discipline is an aggravating circumstance.

On November 18, 1997, the California Supreme Court issued an order in Case No. S064165 (95-O-13584; 95-O-14842 (Cons.)) suspending respondent from the practice of law for two years, stayed, with two years' probation. This discipline involved two matters. In the first matter, respondent stipulated to misconduct involving six counts of improper legal advertising. In the second matter, respondent failed to maintain client funds in trust. In aggravation, respondent committed multiple acts of wrongdoing. In mitigation, respondent acted in good

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

faith, did not harm any clients, displayed spontaneous candor and cooperation, and had no prior record of discipline.

2. Dishonesty re declaration in motion for fees (Std. 1.2(b)(iii))

The court finds that respondent's dishonesty in the declaration attached to his motion to interplead funds in the Buttanda and Cerda matter warrants additional consideration in aggravation.

3. Multiple acts (Std. 1.2(b)(ii))

Respondent's misconduct evidences multiple acts of wrongdoing.

4. Failure to Cooperate (Std. 1.2(b)(vi))

At trial, evidence was presented that respondent failed to cooperate with the Office of the Chief Trial Counsel in its investigation and prosecution of this case. While there were occasions where respondent failed to respond to the deputy trial counsel involved in the case, the court finds respondent's sporadic conduct excusable considering the surrounding circumstances in his life. During the time that he was being contacted by the Office of the Chief Trial Counsel, respondent was caring for his wife, who was seriously ill with lung and brain cancer. Respondent's wife died a few months prior to the trial. Consequently, aggravation for failing to cooperate is not warranted.

B. Factors in Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) The court finds no factors in mitigation.⁴

⁴ Respondent testified that he is remorseful; however, an expression of remorse, standing alone, is an insufficient basis for mitigation. (See Std. 1.2(e)(vii).)

4. DISCUSSION

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

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 shall 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 Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although

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.) There is no reason to deviate from the standards in this case.

Respondent has been found culpable of the unauthorized practice of law, failing to maintain funds in his client trust account, failing to comply with a court order, commingling personal funds in his client trust account, and the misappropriation of client funds. Aggravating factors include his prior discipline, multiple acts of misconduct, and dishonesty. No mitigation was found.

The Office of the Chief Trial Counsel recommends that respondent be disbarred. The court agrees. Lesser discipline than disbarment is not warranted considering the severity of the charges, the amount of funds misappropriated, and the lack of compelling mitigating circumstances. (See Std. 2.2(a).) Moreover, it is evident that respondent's prior discipline, coupled with his prior probation, has not served to rehabilitate respondent or to deter him from further misconduct. In such circumstances, disbarment is appropriate. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent.

5. RECOMMENDED DISCIPLINE

This court recommends that respondent Attilio Mario Regolo 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 also recommended that respondent make restitution and furnish satisfactory proof thereof to the State Bar's Office of Probation, as follows:

(1) To Salvatore Buttanda in the amount of \$7,303.02⁵ plus 10 percent interest per annum from July 25, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Salvatore Buttanda in accordance with Business and Professions Code section 6140.5); and

(2) To Grace Cerda in the total amount of \$15,903.02⁶ plus 10 percent interest per annum from July 25, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Grace Cerda in accordance with Business and Professions Code section 6140.5)

(3) To Jennifer J. Kropke, Esq., in the total amount of \$2,500 plus 10 percent interest per annum from July 25, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Jennifer J. Kropke, Esq., in accordance with Business and Professions Code section 6140.5).⁷

If respondent has already paid any portion of the aforementioned restitution, he is required to provide the Office of Probation with proof of payment in a form acceptable to the Office of Probation.

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

⁵ This number was derived as follows. In July 2007, respondent was required to keep \$37,706.03 for Buttanda and Cerda in his CTA. Without court authority, respondent paid out \$12,000 to Buttanda. On July 25, 2007, the court ordered that respondent pay Buttanda \$7,900 of the sale proceeds and that the remaining proceeds be split between Buttanda and Cerda. Out of the \$7,900, Buttanda was required to pay a \$1,000 equalization payment to Cerda and \$2,500 to Cerda's attorney. This left a remainder of \$4,400. $\$37,706.03 - \$7,900 = \$29,806.03$. $\$29,806.03 / 2 = \$14,903.02$ (round up to the nearest penny). Cerda's share is $\$14,903.02 + \$1,000 = \$15,903.02$, and Buttanda's share is $\$14,903.02 - \$12,000 + \$4,400 = \$7,303.02$.

⁶ See Footnote Five.

⁷ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁸

6. COSTS

It is recommended that costs be awarded to the Office of the Chief Trial Counsel 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.

7. 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).)

Dated: December _____, 2010

RICHARD A. HONN
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.)