FILED MAY 31, 2011

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **EDWARD ANTHONY PUTTRE** **Member No. 152382** A Member of the State Bar.	)	Case No.: **08-O-13820-LMA** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

I. INTRODUCTION

In this disciplinary matter, Susan Chan appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent EDWARD ANTHONY PUTTRE did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and be ordered to make restitution.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on November 24, 2010, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section[1] 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of

[1] Future references to section are to the Business and Professions Code.

mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On December 3, 2010, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on January 3, 2011. This correspondence was returned to the State Bar Court bearing the handwritten notation: "Return to sender. Addressee has not been at this address for over 1 year."

Respondent did not appear at the status conference. On January 3, 2011, he was properly served with a status conference order at his official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On January 10, 2011, a motion for entry of default, filed pursuant to the current Rules of Procedure of the State Bar, was filed and properly served on respondent at his official address by certified mail, return receipt requested. An errata to the declaration filed in support of the motion was filed and properly served on January 12, 2011 on respondent at his official address by certified mail, return receipt requested, and by regular mail. Respondent did not respond to the motion.

By order filed on January 26, 2011, the court denied the motion for entry of default as this matter would be more properly adjudicated pursuant to the former Rules of Procedure.[2]

On January 28, 2011, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested and by regular mail. The motion, filed pursuant to the former Rules of Procedure, advised him that minimum discipline of disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

On February 15, 2011, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. The latter was

[2] Future references to the Rules of Procedure are to the Rules of Procedure in effect until December 31, 2010, unless otherwise specified.

returned unclaimed and unable to forward by the United States Postal Service.

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, including notice by certified mail and by regular mail, 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.)

The matter was submitted for decision without hearing after the State Bar filed a brief on March 1, 2011.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar[3], rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 1991, and has been a member of the State Bar at all times since.

B. Facts

On March 24, 2003, Mitchell Jarvis hired respondent to represent him in a civil matter against the City of San Francisco. On the same date, they entered into a written fee agreement wherein Jarvis agreed to pay respondent a 40% contingency fee from any post-trial recovery in the civil matter.

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[3].Future references to the Rules of Procedure are to this source.

Respondent filed a complaint for Jarvis and, on March 23, 2005, a post-trial judgment was entered against the defendant. (*Jarvis v. City of San Francisco,* San Francisco County Superior Court case no. CGC-03-418509.)

On May 26, 2005, respondent received a settlement check in the amount of $64,324.34 for Jarvis from the defendant which he deposited into his Bank of America client trust account (CTA) on the same date.

Under the terms of the written fee agreement, respondent was entitled to 40% of the recovery ($25,729.74) and Jarvis was entitled to the balance ($38,594.60).

As of July 17, 2007, respondent paid a total of $17,228.50 from Jarvis' funds to Valerie Tom, as authorized by Jarvis. Accordingly, as of July 17, 2007, respondent was required to maintain at least $21,366.10[4] of the settlement funds in his CTA for Jarvis.

On January 21, 2009, the balance in respondent's trust account dropped to zero. Respondent, therefore, misappropriated at least $21,366.10 from Jarvis for his own use and benefit.

On January 6, 2008, Jarvis sent and respondent received an e-mail requesting an accounting of the settlement funds in the civil matter. He did not provide Jarvis with an accounting and has not done so as of November 23, 2010, when the NDC was filed.

On October 13, 2006, respondent filed a complaint for Jarvis in an insurance matter. (*Jarvis v. Fireman's Fund Insurance Co.,* San Francisco County Superior Court case no. CGC06-456952.)

From January through at least July 2008, Jarvis sent e-mails and left telephone messages for respondent requesting an update on the status of the insurance matter. Although respondent

[4] $38,594.60 minus $17,228.50.

received Jarvis' e-mails and telephone messages, he did not respond to them and has not done so as of November 23, 2010, when the NDC was filed.

On August 1, 2008, the State Bar opened an investigation pursuant to a complaint filed by Jarvis regarding allegations of misconduct by respondent in this matter. On November 4, 2008, a State Bar investigator sent respondent a letter asking respondent to answer in writing specific allegations of misconduct regarding the Jarvis complaint. Respondent received the letter but did not answer it.

C. Conclusions of Law

1. Count 1 - Rule 4-100(A)(Maintaining Client Funds in Trust Account)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining $21,366.10 of Jarvis' funds in his CTA.

2. Count 2 - Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misappropriating $21,366.10 of Jarvis' funds. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

3. Count 3 - Rule 4-100(B)(3) (Failure to Account)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such

records for no less than five years after final appropriate distribution of the funds or property.

By not providing Jarvis with an accounting of the settlement funds, respondent wilfully violated rule 4-100(B)(3).

4. Count 4 - Section 6068, subd. (m) (Communication)

Section 6068, subdivision (m) requires 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 not responding to Jarvis' emails and telephone messages inquiring about the status of the insurance matter, respondent did not respond promptly to Jarvis' reasonable status inquiries in wilful violation of section 6068, subdivision (m).

5. Count 5 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar's November 4, 2008, letter, respondent did not participate in the investigation of the allegations of misconduct regarding the Jarvis matter in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

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[5], std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

[5].Future references to standard or std. are to this source.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than blemish-free practice for over 16 years when the misconduct commenced in January 2008 .

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

Standards 2.2(a) and (b) and 2.6 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful 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 one-year "minimum discipline" set forth in the standard "is not faithful to the teachings of [the Supreme] court's decisions" and "should be regarded as a guideline, not an inflexible mandate." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

The standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

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.)

Respondent has been found culpable of violating rules 4-100(A) and (B)(3) and section 6106 and 6068, subdivisions (i) and (m). In aggravation, the court found multiple acts of misconduct and lack of participation (little weight afforded this last factor). There were no mitigating circumstances in this default matter.

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case and the amount misappropriated is not insignificantly small. (Std. 2.2(a); *In re Demergian* (1989) 48 Cal.3d 284 [Disbarred for misappropriation of $25,000 despite substantial mitigation].) The serious and unexplained nature of the misconduct and the lack of participation in these proceedings underlying respondent's actions suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State

Bar. 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. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

Disbarment

The court recommends that respondent EDWARD ANTHONY PUTTRE be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

Restitution

It is recommended that respondent make restitution to Mitchell Jarvis in the amount of $21,366.10 plus 10% interest per annum from January 21, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Mitchell Jarvis, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Restitution is to be made within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, *new* rule 5.136). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

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.

ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent EDWARD ANTHONY PUTTRE, be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4) and *new* rule 5.111(D)(1) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three days from the date of service of this order and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court