PUBLIC MATTER **FILED JUNE 22, 2010**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **RICHARD MIRASOL CHIU,** **Member No. 145258,** A Member of the State Bar.	)	Case No.: **09-J-10858-RAP** **DECISION & ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. INTRODUCTION

This is an expedited, streamlined disciplinary proceeding based on the discipline that the State of Texas recently imposed on respondent **RICHARD MIRASOL CHIU**[1] for professional misconduct that he committed while practicing law in that state. (Cal. Bus. & Prof. Code, § 6049.1;[2] Rules Proc. of Cal. State Bar, rule 620 et seq.) In this California proceeding, which proceeded by way of default, the State Bar of California (hereafter "California Bar") was represented by Deputy Trial Counsel David T. Sauber. Respondent did not appear in person or by counsel.

As noted in more detail *post*, the now final Texas disciplinary judgment conclusively establishes that respondent is also culpable of professional misconduct in California. Respondent's misconduct in Texas includes the misappropriation of at least $1,796.66 in client

[1] Respondent was admitted to the practice of law in the State of California on December 15, 1989, and has been a member of the State Bar of California since that time.

[2] All references to California sections are to sections of the California Business and Professions Code.

funds that respondent was to have used to pay the medical expenses of two personal-injury clients. Respondent has made restitution in the amount of $933.33, but has not made restitution for the remaining balance of $863.33 ($1,796.66 less $933.33). This court concludes that, under California law, the appropriate level of discipline for the misconduct established in this proceeding is disbarment, which is the same discipline that Texas imposed on respondent for the same misconduct.[3]

II. SIGNIFICANT PROCEDURAL HISTORY

On November 23, 2009, the California Bar filed the notice of disciplinary charges (hereafter "NDC") in this proceeding and served a copy of it on respondent at his latest address shown on the official membership records of the California Bar by certified mail, return receipt requested in accordance with California section 6002.1, subdivision (c). However, the United States Postal Service returned, to the California Bar, that copy of the NDC undelivered and stamped "Attempted Not Known." Even though respondent never received his copy of the NDC, "The service [was] complete at the time of the mailing . . . ." (Cal. § 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

In addition to serving a copy of the NDC on respondent by mail on November 23, 2009, the California Bar undertook two or three other steps in an apparently unsuccessful attempt to give respondent actual notice of this disciplinary proceeding.[4] Accordingly, at least for purposes of due process, respondent was given adequate notice of this California proceeding. (*Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

[3] In its February 10, 2010 motion for entry of respondent's default, the California Bar notes that respondent has also been disbarred in the State of Washington. Regrettably, the California Bar did not indicate when or why respondent was disbarred in Washington.

[4] See declarations attached to California Bar's February 10, 2010 motion for entry of respondent's default.

Respondent's response to the NDC was to have been filed no later than December 23, 2009.[5] (Cal. § 6002.1, subd. (c); Rules Proc. of Cal. State Bar, rule 103(a); see also Rules Proc. of Cal. State Bar, rule 63(a) [computation of time]; Cal. Code Civ. Proc., § 1013, subd. (a).) Respondent, however, did not file a response. Thus, on February 10, 2010, the California Bar filed with the court and served on respondent a motion for the entry of respondent's default.

Respondent never filed a response to the motion for entry of his default or to the NDC, and the time in which he had to file each of those responses has run. Because all of the statutory and rule prerequisites were met, this court filed an order on March 3, 2010, in which it entered respondent's default and, as mandated by California section 6007, subdivision (e)(1), ordered respondent's involuntary enrollment as an inactive member of the California Bar effective March 6, 2010.[6]

On March 24, 2010, the California Bar filed a discipline brief. On that same date, the matter was submitted for decision without a hearing.

III. STREAMLINED PROCEEDINGS UNDER CALIFORNIA SECTION 6049.1

Under California section 6049.1, subdivision (a), a certified copy of a final sister-state order or judgment imposing discipline on a California attorney for professional misconduct that the attorney committed in the sister state is, within certain parameters, conclusive evidence that the attorney is also culpable of professional misconduct in California. Under California section 6049.1, this court may accept all of the Texas findings of professional misconduct as conclusive evidence of respondent's misconduct in California even though the Texas findings were made

[5] In its motion for entry of respondent's default, the California Bar incorrectly asserts that respondent's response to the NDC was due no later than December 18, 2009. The California Bar's error, however, is harmless because the California Bar did not file or serve its motion for entry of respondent's default until well after respondent's December 23, 2009 filing deadline.

[6] Of course, an inactive member of the California Bar cannot lawfully practice law in this state. (Cal. § 6126, subd. (b).)

under the preponderance-of-the-evidence evidentiary standard (Texas Rules Disciplinary Proc., rule 2.17(M)) and not under the more strenuous clear-and-convincing-evidence evidentiary standard applied in California disciplinary proceedings (Rules Proc. of Cal. State Bar, rule 213). (Cal. § 6049.1, subd. (a); *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 357 & fn. 8, 359; see also *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206 ["Only final judgments and orders may be given preclusive effect. [Citation.]"].)

Furthermore, this court accepts all of the Texas findings of professional misconduct as conclusive evidence of respondent's misconduct in California because, as noted *post*, each of the Texas findings contains a determination that respondent is culpable of violating a Texas Disciplinary Rule of Professional Conduct that is *substantially identical* to a California rule or statute. (Cf. Cal. § 6049.1, subd. (b)(2); *In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 357 & fn. 8, 361; *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 217; see also *In the Matter of Kittrell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 205.)

Finally, even though the Texas findings of misconduct conclusively establish respondent's culpability of misconduct in California, the Texas findings do not establish the appropriate degree of discipline in California. Instead, this court must independently determine and recommend the appropriate level of discipline under California law just as it does in original disciplinary proceedings. (*In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 358; *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163-164.)

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IV. FINDINGS OF FACT AND CONCLUSIONS

Attached as exhibit 1 to the NDC is a certified copy of the Default Judgment of Disbarment that was entered on January 14, 2009, in *Commission for Lawyer Discipline v. Richard M. Chiu*, case number H0120623578, in the Evidentiary Panel of the State Bar of Texas

District Number 4F11 Grievance Committee (hereafter "Texas judgment"). In addition, copies of the relevant Texas Disciplinary Rules of Professional Conduct are attached as exhibit 2 to the NDC. The Texas judgment and the copies of relevant Texas rules are ADMITTED into evidence in this proceeding. (Cf. Cal. § 6049.1, subd. (d); Rules Proc. of Cal. State Bar, rule 624.)

The Texas judgment establishes the following facts and supports the following conclusions of law.

A. Findings of Facts

Respondent was admitted to the practice of law in Texas on December 7, 1993. Thereafter, in around July 2005, respondent represented Mario and Aida Suson (hereafter collectively "Susons") in a personal injury matter. When the Susons' case was settled, the Susons authorized respondent to pay, out of the settlement proceeds, Dr. Tamas Szabo for the medical care he provided to them.

Respondent, however, failed to notify or to promptly tender payment to Dr. Szabo. And, when Dr. Szabo learned of the settlement, Attorney Gabor Szabo made numerous attempts to contact respondent to secure payment for Dr. Szabo.

Finally, on about April 27, 2006, respondent sent Dr. Szabo two checks totaling $1,796.66 drawn on respondent's client trust account (hereafter "CTA") at Wells Fargo Bank for the Susons. One of the checks was for $933.33 and was sent on behalf of Aida Suson. The other check was for $863.33 and was sent on behalf of Mario Suson.

When Dr. Szabo presented these two checks for payment, they were returned unpaid because respondent's CTA at Wells Fargo Bank had been closed. Attorney Szabo again made numerous attempts to collect payment from respondent.

Then, in about mid-August 2006, respondent sent Dr. Szabo a new $933.33 check and a new $863.33 check to replace the checks in those amounts that were returned unpaid because

respondent's CTA at Wells Fargo Bank was closed. At the same time, respondent also sent Dr. Szabo a $148 check to cover the expenses that Dr. Szabo incurred when the first two checks respondent gave him were returned unpaid.

When the two replacement checks and the $148 expense check were presented for payment, the bank paid only the $933.33 replacement check. Both the $863.33 replacement check and the $148 expense check, which were both drawn on respondent's CTA at IBC Bank, were returned unpaid because they were insufficiently funded.

In about mid-March 2007, respondent sent Dr. Szabo a $1,012 check to replace the two checks that were returned unpaid because they were insufficiently funded (i.e., the $863.33 replacement check plus the $148 expense check ($863.33 plus $148 equals $1,011.33). However, the $1,012 check, which was drawn on respondent's operating account at Chase Bank, was also returned unpaid because it was insufficiently funded.

In the Texas judgment, respondent was ordered to pay Dr. Szabo $1,012 in restitution. The record does not establish whether respondent has paid any portion of this restitution.

B. Conclusions

Respondent's conduct, as summarized *ante*, was found to have violated Texas Disciplinary Rules of Professional Conduct, rules 1.14(a), 1.14(b), and 8.04(a)(3).[7] Texas rules 1.14(a) and 1.14(b) are substantially identical to California State Bar Rules of Professional Conduct, rules 4-100(A) and 4-100(B)(1)&(4), respectively.[8] And Texas rule 8.04(a)(3) is substantially identical to California section 6106. Accordingly, respondent's violations of the

[7] All references to Texas rules are to the Texas Disciplinary Rules of Professional Conduct.

[8] Unless otherwise specified, all further references to California rules are to the California State Bar Rules of Professional Conduct.

Texas rules conclusively establish respondent's violations of the corresponding California rules and California section as set forth *post*.

Trust Account Violations (Cal. rule 4-100(A)) & Misappropriations (Cal. § 6106)

Respondent's violation of Texas rule 1.14(a) conclusively establishes that respondent is culpable of willfully violating California rule 4-100(A) which mandates, inter alai, that attorneys hold client funds in a trust account. Respondent willfully violated California rule 4-100(A) because he failed to maintain, in his CTA, the $1,796.66 he was to have paid to Dr. Szabo for the Susons. Moreover, respondent's violation of Texas rule 8.04(a)(3) conclusively establishes that respondent deliberately misappropriated the $1,796.66 from Dr. Szabo in willful violation of section 6106's proscription of acts involving dishonesty.

Failure to Notify (Cal. rule 4-100(B)(1)) & Failure to Pay Out (Cal. rule 4-100(B)(4))

Respondent's violation of Texas rule 1.14(b) conclusively establishes that respondent willfully violated California rule 4-100(B)(1) by failing to promptly notify Dr. Szabo of respondent's receipt of client funds. In addition, respondent's violation of Texas rule 1.14(b) conclusively establishes that respondent willfully violated California rule 4-100(B)(4) by failing to pay Dr. Szabo $1,796.66 in accordance with the Susons' instructions and in response to Dr. Szabo's numerous requests for payment..

V. AGGRAVATING AND MITIGATING CIRCUMSTANCES

A. Aggravation

1. Multiple Acts of Misconduct

Respondent's misconduct in this consolidated proceeding evidences multiple acts of misconduct. (Rules Proc. of Cal. State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)

2. Significant Harm

Respondent's misconduct clearly harmed Dr. Szabo because respondent has not made complete restitution of $1,796.66 he misappropriated. Even though respondent made restitution for the $933.33 that he was to have paid Dr. Szabo for Aida Suson, respondent has not made restitution for $863.33 he was to have paid Dr. Szabo for Mario Suson. (Cal. std. 1.2(b)(iv).)

B. Mitigation

Respondent has not establish, by clear and convincing evidence, any mitigating circumstance.

VI. DISCIPLINE DISCUSSION

California 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. (See also *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the California standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law of California. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

California standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In this case, the most severe sanction for respondent's misconduct is found in California standard 2.2(a), which applies to respondent's misappropriation of $1,796.66 from the Susons, which involved dishonesty in willful violation of California section 6106.

Standard 2.2(a) provides:

> Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Respondent misappropriated $1,796.66. And $1,796.66 is not an "insignificantly small" sum of money. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367, 1368 [$1,355.75 is not an "insignificantly small" sum of money].). Even though respondent eventually paid Dr. Szabo $933.33 in partial restitution, restitution (partial or complete) does not reduce or otherwise alter the amount originally misappropriated.

There are no mitigating circumstances. Nor is there anything in the record that suggests, much less establishes, a compelling reason for this court to recommend something other than disbarment under California standard 2.2(a). (*In re* Silverton (2005) 49 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) As the California Supreme Court has repeatedly stated:

> misappropriation of a client's funds is a grievous breach of an attorney's professional ethics. Not only does it harm the individual client whose money has been taken, it also endangers the confidence of the public at large in the legal profession. In all but the most exceptional of cases, we must impose the harshest discipline for such a breach in order to safeguard the citizenry from unethical practitioners. [Citations.]

(*Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129.)

As the Texas judgment makes clear, respondent did not respond to Dr. Szabo's numerous requests for payment until April 2006 when respondent sent Dr. Szabo two "worthless" checks drawn on a closed CTA. It then took respondent almost another four months until August 2006 to send Dr. Szabo a "good" check in the amount of $933.33 for Aida Suson, which the bank paid. However, with that one "good" check, respondent sent Dr. Szabo two more "worthless" (i.e., insufficiently funded) checks totaling $1,011.33, which were drawn on respondent's CTA at IBC Bank. Moreover, about seven more later in March 2007, respondent sent Dr. Szabo yet another "worthless" (insufficiently funded) check in the amount of $1,012, which was drawn on

respondent's operating account at Chase Bank. As of the date of the Texas judgment, respondent had still not made restitution for the $863.33 he was to have paid Dr. Szabo for Mario Suson.

Thereafter, respondent defaults were entered in both the Texas disciplinary proceeding and the present California disciplinary proceeding. Respondent's defaults in Texas and California counsels the strict application of standard 2.2(a) in this proceeding. In short, the court will recommend that respondent be disbarred under standard 2.2(a) and that he be required to make restitution with interest for the $863.33 he was to have paid Dr. Szabo for Mario Suson.

VII. DISCIPLINE RECOMMENDATION

The court recommends that respondent **RICHARD MIRASOL CHIU** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

The court further recommends that RICHARD MIRASOL CHIU be ordered to make restitution to Dr. Tamas Szabo in the amount of $863.33 plus 10 percent interest per year from April 27, 2007 (or to reimburse the Client Security Fund, to the extent of any payment from the fund to Dr. Szabo (or to the Susons) plus interest and costs in accordance with Business and Professions Code section 6140.5). The court further recommends that any reimbursement plus interest and costs to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

VIII. CALIFORNIA RULE 9.20 & COSTS

The court further recommends that CHIU 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.[9]

The court further recommends that costs be awarded to the State Bar of California in accordance with California Business and Professions Code section 6086.10 and are enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER OF INACTIVE ENROLLMENT

In accordance with California Business and Professions Code section 6007, subdivision (c)(4), the court orders that RICHARD MIRASOL CHIU 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 of Cal., rule 220(c)).[10]

Dated: June 21, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court

[9] Respondent is required to file a California 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.)

[10] Again, as noted *ante*, an inactive member of the California Bar cannot lawfully practice law in California. (Cal. Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive may not lawfully represent others before any state agency or in any administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)