

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-O-11187-DFM (09-O-15131)
)	
ANTHONY CHIBUEZE IGWEMEZIE)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 147446)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this disciplinary matter, Elina Kreditor appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent ANTHONY CHIBUEZE IGWEMEZIE 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.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on March 10, 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 section¹ 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 March 23, 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 April 20, 2010. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d) which indicate that this correspondence was returned bearing a stamp that said “no longer at this address.”

Respondent did not appear at the April 20, 2010 status conference. On April 21, 2010, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. This correspondence was returned marked “Attempted – not known. Unable to forward.”

Respondent did not file a responsive pleading to the NDC. On April 30, 2010, a motion for entry of default was filed and properly served on Respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

On May 20, 2010, 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. This correspondence was returned marked “refused.”

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 on June 9, 2010.

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 Bar², 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.)

Jurisdiction

Respondent was admitted to the practice of law in California on July 2, 1990, and has been a member of the State Bar at all times since.

Case no. 09-O-11187 (Johnson-Tyner Matter)

In or about January 2008, Nikki Johnson-Tyner employed Respondent to represent her and her three minor daughters in their personal injury claims arising from a September 2007 automobile accident. Johnson-Tyner and her daughters received medical treatment at Advanced Health Center of Inglewood (AHCI) related to their claims.

In or about July 2008, Respondent settled Johnson-Tyner's daughters' claims for \$500 each and Johnson-Tyner's claim for \$3,000, without Johnson-Tyner's knowledge or informed consent. Respondent did not inform Johnson-Tyner of his settlement of the claims.

On July 18, 2008, Respondent deposited the three \$500 settlement drafts he received on behalf of Johnson-Tyner's daughters into his client trust account at First Federal Bank (the CTA).

² Future references to the Rules of Procedure are to this source.

On September 4, 2008, Respondent deposited the \$3,000 settlement draft he received on behalf of Johnson-Tyner into the CTA.

Respondent did not inform Johnson-Tyner of his receipt of any of the four settlement drafts.

Respondent was entitled to no more than 25% of Johnson-Tyner's daughters' settlement proceeds and no more than 33-1/3% of Johnson-Tyner's settlement proceeds, plus costs he incurred, if any.

Respondent did not provide any accounting to Johnson-Tyner for the settlement funds he received on behalf of Johnson-Tyner and her daughters, or proof that he incurred any costs related to the representation, and did not disburse any portion of the settlement funds he received to Johnson-Tyner or her daughters.

AHCI's bill for each of Johnson-Tyner's daughters' claims totaled \$180, or a combined \$540. AHCI's bill for Johnson-Tyner totaled \$3,286.

As Respondent provided no proof of costs he incurred related to the representation, Respondent was entitled to no more than \$375 from the combined \$1,500 he received on behalf of Johnson-Tyner's daughters, leaving a combined \$1,125 for Johnson-Tyner's daughters and AHCI; and Respondent was entitled to no more than \$1,000 from the \$3,000 he received on behalf of Johnson-Tyner, leaving \$2,000 for Johnson-Tyner and AHCI.

Between July 23 and September 25, 2008, the balance in the CTA fell to \$143.26, or \$981.74 below the combined \$1,125 that should have remained in the CTA for Johnson-Tyner's daughters and AHCI, as follows:

Date	Balance
07-28-08	\$ 245.76
07-31-08	\$ 235.76

09-25-08	\$ 143.26
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Between September 22 and 25, 2008, the balance in the CTA fell to \$143.26, or \$1,856.74 below the \$2,000 that should have remained in the CTA for Johnson-Tyner and AHCI, as follows:

Date	Balance
09-22-08	\$ 743.26
09-25-08	\$ 143.26

Respondent misappropriated \$981.74 belonging to Johnson-Tyner's daughters and AHCI for his own use and purposes.

Respondent misappropriated \$1,856.74 belonging to Johnson-Tyner and AHCI for his own use and purposes.

In or about August 2008, Johnson-Tyner was notified by AHCI that Respondent had settled the claims, but had not paid AHCI's bills related to the claims. Johnson-Tyner attempted to contact Respondent regarding the unresolved matters related to the claims, including payment of AHCI's bills, but was informed that Respondent was unavailable.

In late September 2008, Respondent contacted Johnson-Tyner and told her that he would call her the next day to arrange a meeting to discuss the unresolved matters related to the claims. Respondent did not contact Johnson-Tyner.

On or about January 2, 2009, Johnson-Tyner called Respondent and left him a message that she would be submitting a complaint with the State Bar of California (State Bar). On or about January 5, 2009, Johnson-Tyner confirmed with Respondent's receptionist that Respondent received the message. On or about January 6, 2009, Respondent contacted Johnson-

Tyner and informed her that he would contact her early the following week to discuss her claims. Respondent did not contact Johnson-Tyner.

On January 22, 2009, Johnson-Tyner called Respondent and left a message that she would proceed with her State Bar complaint if she did not hear from Respondent by February 2, 2009.

Respondent did not contact Johnson-Tyner to discuss her claims after January 6, 2009.

On or about March 3, 2009, the State Bar opened an investigation identified as case number 09-0-11187, concerning a complaint submitted against Respondent by Johnson-Tyner.

On or about April 23, 2009, a State Bar investigator mailed a letter regarding the investigation to Respondent at his State Bar membership records address (membership records address). The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service (USPS) in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

In the April 23, 2009 letter, the investigator requested a written response to the allegations raised by Johnson-Tyner's complaint by May 7, 2009. Respondent did not respond to the April 23, 2009 letter.

On or about May 11, 2009, a State Bar investigator mailed another letter regarding the investigation to Respondent at the membership records address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

In the May 11, 2009 letter, the investigator requested a written response to the allegations raised by Johnson-Tyner's complaint by May 21, 2009. Respondent did not respond to the May 11, 2009 letter and did not respond to the allegations raised by Johnson-Tyner's complaint.

Counts 1 and 6 - 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 informing Johnson-Tyner of his settlement of the claims, Respondent wilfully failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services in violation of section 6068, subdivision (m).

By not contacting Johnson-Tyner to discuss her claims after January 6, 2009, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in violation of section 6068, subdivision (m).

Count 2 - Rule 4-100(B)(1) (Not Promptly Notifying Client of Receipt of Funds)

Rule 4-100(B)(1) of the Rules of Professional Conduct³ requires that an attorney promptly notify a client of the receipt of the client's funds, securities or other properties.

There is clear and convincing evidence that Respondent did not promptly notify Johnson-Tyner of the receipt of settlement funds in wilful violation of rule 4-100(B)(1).

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.

³ Future references to rule are to this source.

By not providing any accounting to Johnson-Tyner for the settlement funds he received on behalf of Johnson-Tyner and her daughters, Respondent wilfully failed to render appropriate accounts to his client regarding all funds coming into Respondent's possession in violation of rule 4-100(B)(3).

Count 4 - Rule 4-100(B)(4) (Failure to Promptly Pay)

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 attorney which the client is entitled to receive.

By not maintaining at least \$1,125 in the CTA on behalf of Johnson-Tyner's daughters and AHCI and by not maintaining at least \$2,000 in the CTA on behalf of Johnson-Tyner and AHCI, Respondent wilfully failed to maintain the balance of funds received for the benefit of a client in violation of rule 4-100(B)(4).

Count 5 - 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.

By misappropriating funds belonging to Johnson-Tyner, Johnson-Tyner's daughters and AHCI for his own use and purposes, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption.

Count 7 - 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 providing a written response to the State Bar's letters of April 23 and May 11, 2009, Respondent wilfully failed to cooperate and participate in a disciplinary investigation pending against Respondent regarding the Johnson-Tyner case in wilful violation of 6068, subdivision (i).

Case No. 09-O-11187 (Richard Matter)

In or about September 2007, Marie Richard (Richard) employed Respondent to represent her, her minor daughter, and her minor son in their personal injury claims arising from a September 2007 automobile accident. Richard and her children received medical treatment at Airport Chiropractic Center (ACC) related to their claims.

On or about October 4, 2007, Respondent acknowledged liens in favor of ACC and against any recovery he obtained on behalf of Richard and her minor children related to their claims. By signing the lien, Respondent agreed to withhold such sums from any recovery obtained on behalf of Richard and her minor children as was necessary to protect ACC's interests. ACC's liens against the recovery totaled \$6,785 (or \$4,155 for Richard, \$1,505 for Richard's son, and \$1,125 for Richard's daughter).

In or about July 2008, Respondent settled Richard's claim for \$5,000; Richard's son's claim for \$1,655; and Richard's daughter's claim for \$1,275.

On July 23, 2008, Respondent deposited the three settlement drafts that he received, totaling \$7,930, on behalf of Richard and Richard's children into his CTA.

On September 10, 2008, Respondent issued a check for \$4,000 from his CTA to Richards. The check was intended to represent his clients' share of the settlement proceeds to which they were entitled. The amount, however, did not factor in the full medical liens against the settlement proceeds.

In July 2008, before Respondent issued check number 1255 to Richard and without

satisfying ACC's liens against the recovery, the balance in the CTA fell to \$235.76, or \$3,764.24 below the \$4,000 that should have remained in the CTA for Richard, Richard's children, and \$6,549.24 below the \$6,785 that should have remained in the CTA for ACC, as follows:

Date	Balance
07-24-08	\$ 3,805.76
07-25-08	\$ 3,345.76
07-28-08	\$ 245.76
07-31-08	\$ 235.76

On September 25, 2008, the balance in the CTA fell to \$143.26, or \$6,641.74 below the \$6,785 that should have remained in the CTA for ACC.

Respondent was entitled to no more than 25% of Richard's children's settlement proceeds and no more than 33-1/3% of Richard's settlement proceeds, plus costs he incurred, if any.

Respondent misappropriated \$3,764.24 belonging to Richard and Richard's children for his own use and purposes.

Respondent misappropriated \$6,641.74 belonging to ACC for his own use and purposes.

On or about January 27 and February 9, 2009, ACC sent a written demand to Respondent for payment of its liens against the recovery obtained on behalf of Richard and Richard's children. Respondent did not satisfy the liens. ACC also sent copies of the written demands to Richard.

Upon receipt of ACC's written demands, Richard left several messages for Respondent, requesting that Respondent contact Richard and pay ACC's liens.

Respondent did not contact Richard and did not satisfy ACC's liens.

On or about August 10, 2009, the State Bar opened an investigation identified as case number 09-0-15131, concerning a complaint submitted against Respondent by Richard.

On or about September 17, 2009, a State Bar investigator mailed a letter regarding the investigation to Respondent at his membership records address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

In the September 17, 2009 letter, the investigator requested a written response to the allegations raised by Richard's complaint by October 1, 2009. Respondent did not respond to the September 17, 2009 letter.

On or about October 8, 2009, a State Bar investigator mailed another letter regarding the investigation to Respondent at the membership records address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

In the October 8, 2009 letter, the investigator requested a written response to the allegations raised by Richard's complaint by October 22, 2009. Respondent did not respond to the October 8, 2009 letter and did not respond to the allegations raised by Richard's complaint.

Count 8 - 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.

By not maintaining at least \$4,000 in the CTA on behalf of Richard and Richard's children between July 23 and July 31, 2008, and by not maintaining at least \$6,785 in the CTA

on behalf of ACC between July 23 and September 25, 2008, Respondent wilfully failed to maintain the balance of funds received for the benefit of a client in violation of rule 4-100(A).

Count 9 - Section 6106 (Moral Turpitude)

By misappropriating funds belonging to Richard, Richard's children, and ACC for his own use and purposes, Respondent wilfully committed an act involving moral turpitude, dishonesty or corruption in violation of section 6106.

Count 10 - Rule 4-100(B)(4) (Failure to Promptly Pay)

By not satisfying ACC's liens, Respondent wilfully failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client's medical provider was entitled to receive in violation of rule 4-100(B)(4).

Count 11 - Section 6068, subd. (i) (Not Participating in Disciplinary Investigation)

By not providing a written response to the State Bar's letters of September 17 and October 8, 2009, Respondent did not participate in the investigation of the allegations of misconduct regarding the Richards case in wilful violation of 6068, subdivision (i).

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. Misconduct⁴, std. 1.2(b).)

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

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Johnson-Tyner's claims were settled without her knowledge or consent. Both she and Richards were exposed to liability for unpaid medical liens.

⁴ 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).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

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 approximately 18 years of discipline-free practice when the misconduct commenced. The existence of such a period of discipline-free practice is, however, a significant mitigating factor.

DISCIPLINE

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).) Discipline is progressive, but 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, in two client matters, of violating rules 4-100(A) and (B)(1) and (3) (one count each) and 4-100(B)(4) (two counts) as well as two counts of violating section 6106 for misappropriating entrusted funds. In aggravation, the court found multiple acts of misconduct, client harm and not participating in the disciplinary proceedings prior to the entry of default. The only mitigating factor was approximately 18 years of discipline-free practice when the misconduct commenced.

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 State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because the amounts misappropriated are not insignificantly small⁵ and there are no extenuating circumstances that clearly predominate

⁵ Respondent misappropriated at least \$11,296.74 (\$3,125 (Johnson-Tyner) + \$1,530 (Richards) + \$6,641.74 (ACC)). Attorneys have been disbarred for misappropriating less than that. (See,

in this case. (Std. 1.7(b).) The serious and unexplained nature of the misconduct and the lack of participation in these proceedings 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.

In addition, the court also recommends that Respondent be ordered to make restitution to Nikki Johnson-Tyner in the amount of \$3,125 (\$2,000 for herself and \$1,125 divided equally among her three daughters); to Marie Richards in the amount of \$1,530⁶; and to Airport Chiropractic Center in the amount of \$6,641.74 (\$6,785 lien - \$143.26 in CTA) for its unpaid lien in the Richards matter.

DISCIPLINE RECOMMENDATION

Disbarment

IT IS HEREBY RECOMMENDED that Respondent **Anthony Chibueze Igwemezie** 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 the following parties 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, rule 291):

i.e., *Chang v. State Bar* (1989) 49 Cal.3d 114 (\$7,000); *Boehme v. State Bar* (1988) 47 Cal.3d 448 (\$3,335).)

⁶ This is the balance after deducting \$2,400 in attorney fees and \$4,000 already paid to Richard on September 8, 2008.

1. to Nikki Johnson-Tyner in the amount of \$3,125 plus 10% interest per annum from September 25, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Nikki Johnson-Tyner, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Marie Richards in the amount of \$1,530 plus 10% interest per annum from September 10, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Marie Richards, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
3. to Airport Chiropractic Center in the amount of \$6,641.74 plus 10% interest per annum from September 25, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Airport Chiropractic Center, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

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

9.20 Notification Obligation

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 be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall 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: August _____, 2010

DONALD F. MILES
Judge of the State Bar Court