

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos. 09-O-12236  
)  
)  
**PHILIP NOEL OFFICER,** ) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
)  
**Member No. 47031,** )  
)  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

Respondent Philip Noel Officer was charged with five counts of misconduct, which included the misappropriation of over \$92,000. Respondent failed to participate either in person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel Margaret Warren. The court finds by clear and convincing evidence that respondent is culpable of the charged violations. In view of the misconduct and the other circumstances surrounding this case, the court recommends that respondent be disbarred from the practice of law.

**Significant Procedural History**

The notice of disciplinary charges (NDC) in this case was filed on December 28, 2010, and was properly served on respondent on the same date. Respondent did not file a

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

response or otherwise participate in the case and his default was entered on March 22, 2011.<sup>2</sup>

The matter was submitted for decision on April 12, 2011, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.

### **Findings of Fact and Conclusions of Law**

#### **I. Culpability Findings**

##### **Facts**

Pursuant to former rule 200(d)(1)(A) of the Rules of Procedure of the State Bar,<sup>3</sup> upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on June 26, 1970, and has been a member since then.

In 2006, respondent was counsel of record for Petrona Aparicio in a marital dissolution proceeding pending in the San Bernardino County Superior Court. In December 2006 the parties in the dissolution case stipulated, and the court ordered, that respondent was to deposit the proceeds of the sale of the Aparicio family home into his client trust account, disburse \$10,000 to each party, and hold the remaining sum pending disposition by the court. Thereafter, respondent received three checks totaling \$184,255.16 and deposited that amount into his client trust account. In February 2007 and March 2007 respondent disbursed a total of \$41,263.79 of the funds to his client, approximately \$4,800 to himself as fees, and \$46,063.79 to the husband. Respondent was thereafter required to maintain \$92,127.58 in his trust account pending further

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<sup>2</sup> As detailed in the declaration attached to the State Bar's motion for entry of default, in addition to service of the NDC by certified mail, the State Bar took several reasonable steps to notify respondent of this proceeding. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

<sup>3</sup> On January 1, 2011, new Rules of Procedure of the State Bar of California became effective. However, as the new rules substantially modify the default procedures, the court orders the application of the former Rules of Procedure in this case based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.)

order of the court. Beginning in May 2007 the balance in the account dropped below this amount and by the end of April 2008 the balance was zero.

In March 2009 respondent appeared in court and stated to the court that that he maintained all of the funds received on behalf of the Aparicio parties in a client trust account but that he had moved the account to another bank. The court ordered respondent to provide proof of monies in a trust account and to provide his client trust account number to husband's counsel. The court continued the hearing to the end of March 2009. Respondent did not appear at the continued hearing and did not provide proof that he had the funds in his trust account or otherwise account for the funds. When respondent told the court that he maintained all the funds in client trust account, he knew that he did not have the money in the account.

In April 2009 the husband complained to the State Bar about respondent's conduct. In June and July 2009, a State Bar Investigator mailed letters to respondent at his State Bar membership address regarding the complaint. The letters requested that respondent respond in writing to specified allegations of misconduct regarding the complaint. Respondent received the letters but did not provide the State Bar with a written response or otherwise participate in the State Bar's investigation.

### **Conclusions of Law**

#### ***Count One – (Rule 4-100(A) [Trust Account Violation])***

Respondent willfully violated rule 4-100(A) of the California Rules of Professional Misconduct by not maintaining in trust the funds received on behalf of the Aparicio parties until further court order.

***Count Two – (§ 6106 [Moral Turpitude])***

Respondent willfully violated Business and Professions Code section 6106 by dishonestly or with gross negligence misappropriating \$92,127.58 of the funds received on behalf of the Aparicio parties.

***Count Three – (§ 6068, subd. (d) [Misleading a Judge])***

Respondent willfully violated section 6068 subdivision (d) by misrepresenting to the court that he maintained the funds he received on behalf of the Aparicio parties in a client trust account.

***Count Four – (§ 6103 [Failure to Obey Court Order])***

Respondent willfully violated Business and Professions Code section 6103 by disobeying or violating the court orders to maintain the funds received on behalf of the Aparicio parties in trust pending further order and failing to provide proof to the court as to what had happened to the funds.

***Count Five – (§ 6068, subd. (i) [Failure to Cooperate in Investigation])***

Respondent willfully violated section 6068, subdivision (i), by not providing the State Bar with a written response to the husband's complaint or otherwise participating in the State Bar's investigation.

**II. Aggravation<sup>4</sup>**

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)**

Respondent's failure to cooperate with the State Bar before the entry of his default is an aggravating factor. (Std. 1.2(b)(vi).)

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<sup>4</sup> All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

### III. Mitigation

No mitigating circumstances are found.

#### 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; std 1.3.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) 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.)

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. Standard 2.2(a) is the most severe of the applicable sanctions and it provides that a member’s willful misappropriation of entrusted funds shall result in disbarment unless the amount of funds misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate. Respondent misappropriated \$92,127, which is not insignificantly small, and compelling mitigating circumstances do not predominate in this case.

Comparable case law also supports disbarment. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for misappropriating \$29,000 and lying that he spent the money on relatives’ medical expenses, no prior discipline]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for misappropriating \$7,800 and making misrepresentations to State Bar designed to conceal the

theft, no prior discipline]; *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 [disbarment for misappropriating over \$26,000 and trying to deceive State Bar during its investigation, no prior discipline].)

Respondent misappropriated over \$92,000 and lied to cover-up his misdeeds. He failed to accept responsibility for his actions and failed to participate in this case. Failing to participate in this case shows that he comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's misconduct and his failure to participate in this case demonstrate his inability or unwillingness to comply with his professional obligations. As a consequence, the risk of future misconduct is great. Disbarment is therefore necessary to protect the public, the courts and the profession.

### **Recommendations**

It is recommended that respondent Philip Noel Officer be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

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.

### **Costs**

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

**Restitution**

Unless he provides satisfactory proof to the Office of Probation showing that the money has been repaid or that it is no longer owing, respondent must make restitution to Petrona and Carlos Aparicio in the amount of \$92,127.58, plus interest of 10 per cent per annum from April 29, 2008 (or reimburse the Client Security Fund to the extent of any payment from the Fund to the Aparicios, in accordance with Business and Professions Code, section 6140.5) and must provide satisfactory proof to the State Bar. The restitution must be paid within 30 days of the effective date of the Supreme Court's order herein.

**Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Philip Noel Officer, State Bar number 47031, be involuntary enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Former rule 220(c), Rules Proc. of State Bar.)

Dated: July \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court