

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-TE-14000-RAH
)	
DAVID M. ROBINSON)	DECISION AND ORDER OF INACTIVE
)	ENROLLMENT (BUS. & PROF. CODE
Member No. 175913)	SECTION 6007(c)(1))
)	
<u>A Member of the State Bar.</u>)	

1. INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California, seeking to involuntarily enroll respondent David M. Robinson (respondent) as an inactive member of the State Bar pursuant to Business and Professions Code section¹ 6007, subdivision (c)(1) and rule 461 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

The Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Diane J. Meyers. Respondent represented himself. A hearing was held in this matter on September 29, 2009. This matter was submitted for decision that same day.

After thorough consideration, the court finds that respondent’s conduct poses a substantial threat of harm to his clients or the public, and orders respondent’s involuntary inactive enrollment pursuant to section 6007, subdivision (c)(1).

¹ Future references to “section(s)” are to this source.

2. JURISDICTION

Respondent was admitted to the practice of law in California on February 27, 1995, and has been a member of the State Bar at all times since.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 6007, subdivision (c) authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted, or, alternatively, there is a reasonable likelihood that the harm will continue; and (3) there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

The instant application is based on disciplinary charges pending in the State Bar Court. (Rules Proc. of State Bar, rules 461(a)(3).

A. Procedural Background

This matter is based on allegations contained in two filed Notices of Disciplinary Charges. The Office of the Chief Trial Counsel seeks to enroll respondent inactive relying on alleged misconduct in four cases contained in those Notices of Disciplinary Charges: case numbers 08-O-14021, 08-O-14889, 09-O-10223, and 09-O-10230. The balance of the cases currently filed against respondent, namely 07-O-12331, 07-O-12603, 08-O-10674, 08-O-10693,

08-O-11999, and 09-O-12663, are not included in the application filed by the Office of the Chief Trial Counsel, and, therefore, have not been considered by this court.

The Office of the Chief Trial Counsel submitted certified copies of bank records in support of its allegations contained in the application for respondent's involuntary inactive enrollment (application). (Exhibits 1 through 5.) In addition, the Office of the Chief Trial Counsel submitted four declarations in support of its application. These declarations are from the clients who retained respondent. (Exhibits 6 through 9.)

Respondent filed a declaration in opposition to the application, but submitted no other evidence.

B. Client Matters

1. Everardo Casillas (Case No. 08-O-14021)

Everardo Casillas retained respondent to represent him in a claim against Farmers Insurance as a result of damage to his home. Respondent obtained a settlement on behalf of Casillas. Respondent received settlement funds totaling \$11,335.58, and deposited this amount into his client trust account (CTA) on April 10, 2008. In May 2008, Casillas received a letter from respondent dated May 22, 2008. That letter set forth a breakdown of amounts received in settlement, attorney's fees, and a net recovery to Casillas in the amount of \$6,801.30.

Between September 5 and December 12, 2008, Casillas made several requests by telephone to respondent for payment of the amount owed. Based on the evidence presented, the court concludes that respondent had not paid Casillas the money as of August 21, 2009, the date of Casillas's declaration.

Between May 31, 2008 and February 28, 2009, respondent's CTA account balance dipped below \$6801.30, to a low of \$18.21.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 4-100(A) of the Rules of Procedure of the State Bar of California² [failure to maintain client funds in trust account];³
- b. Rule 4-100(B)(4) [failure to pay client funds promptly];⁴ and
- c. Section 6106 [moral turpitude – misappropriation].⁵

2. Daniel McLaen/DRM Investments (Case No. 08-O-14889)

Daniel McLaen formed a joint venture called “DRM Investments” (DRM) with Sandra Citron and Innovative Property Solutions, Inc., for the purpose of investing in real estate in Florida. In February 2006, DRM employed respondent to provide legal representation to DRM. DRM, McLaen, and Innovative Property Solutions, Inc., forwarded the combined amount of \$226,000 to respondent to be used to purchase property in Florida. These parties instructed respondent to maintain the \$226,000 in an interest-bearing trust account. The \$226,000 was deposited into a Wells Fargo Bank account identified as the “Hallendale account.” This was not an account identified as a “client trust account” or with other similar identification. In June and November 2007, respondent wrote McLaen and reaffirmed that he was holding this sum, plus interest, in this account.

² References to “rule(s)” are to this source, unless otherwise noted.

³ Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds.

⁴ 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 member which the client is entitled to receive.

⁵ Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. “There is no doubt that the wilful misappropriation of a client’s funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.)

The Florida investment failed to materialize. Thereafter, respondent approached DRM about the possibility of investing the money in a different property in Alabama. DRM agreed to begin the process of acquiring the Alabama property. Thereafter, in September 2008, DRM notified respondent that it no longer wanted to invest in the Alabama property, and requested the return of the funds. Respondent did not return the funds.

Respondent did not maintain the funds in the Hallendale account. Instead, he used the funds for his own use and purpose, unrelated to the DRM investments.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 4-100(A) [failure to maintain client funds in trust account];
- b. Section 6106 [moral turpitude – misappropriation]; and
- c. Rule 4-100(B)(4) [failure to pay client funds promptly].

3. Hadar and Jennifer Ziv (Case No. 09-O-10223)

Respondent represented Hadar and Jennifer Ziv (the Zivs) in a property damage claim arising from a fire. Respondent reported to the clients that he settled the claim in a letter dated August 29, 2008. The amount of the gross recovery was \$20,198.55, and respondent's breakdown of the disbursements showed the net recovery to the Zivs as \$12,119.13.

On August 8, 2008, respondent deposited the gross recovery into his general account, not his client trust account. Between August 15 and 22, 2008, the balance of the general account dropped below \$12,119.13, at one point reaching \$2,631.76.

On October 30, 2008, the Zivs sent respondent a demand for payment of their portion of the settlement. The Zivs did not receive a response, so on December 1, 2008, they sent respondent another demand for payment of their portion of the settlement. Respondent received

both of these demands. The Zivs spoke to respondent on December 5 and 6, 2008. He stated that he would “Fed Ex” a cashier’s check to them on Monday, December 8, 2008. He did not do so. As of July 30, 2009, the date of the Zivs’ declaration, respondent had not paid to the Zivs any portion of the amount owed.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 4-100(A) [failure to maintain client funds in trust account];
- b. Section 6106 [moral turpitude – misappropriation]; and
- c. Rule 4-100(B)(4) [failure to pay client funds promptly].

4. Trifish Finance, Inc. (Case No. 09-O-10230)

Respondent represented Trifish Finance, Inc., (Trifish) in a matter entitled *Western Surety Co. v. Automotive Funding Group, Inc., et al.*, Los Angeles County Superior Court case number BC367038 (the Action). Respondent sought to recover funds held by the court in an interpleader action, from which he would be entitled to a 30% attorney’s fee, and Trifish would be entitled to the balance. Respondent recovered \$4,382.33, and on July 15, 2008, he deposited the check into his CTA. Trifish’s share of that recovery was \$3,067.56. Respondent did not notify Trifish that he had received the funds.

On August 1, 2008, the balance in respondent’s CTA fell to \$138.11. On December 15, 2008, the balance in the account fell to \$38.11. On January 2, 2009, it fell to \$2.11.

Despite receiving e-mail correspondence sent to respondent from Trifish on September 17, October 7, October 30, and November 6, 2008, inquiring about, or demanding payment, respondent did not respond. Trifish demanded payment on November 12, 2008. Respondent received this demand, but did not respond. On February 11, 2009, Trifish sent another demand

for the funds. Respondent answered on February 13, 2009, stating that he would have the check sent by February 16, 2009. On February 17, Trifish contacted respondent again, stating that it did not receive the check, and demanding that he drop it off that day. On that day, in correspondence to Trifish, respondent agreed to the demand, but did not comply. As of July 31, 2009, Respondent had not disbursed any amount of these funds to Trifish.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 4-100(A) [failure to maintain client funds in trust account];
- b. Rule 4-100(B)(1) [failure to notify client of receipt of client funds];⁶
- c. Section 6106 [moral turpitude – misappropriation]; and
- d. Rule 4-100(B)(4) [failure to pay client funds promptly].

4. DISCUSSION

As mentioned earlier, section 6007, subdivision (c)(2) lays out three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public.

The first factor is whether the attorney has caused or is causing substantial harm to his clients or the public. Here, there is a reasonable probability that the Office of the Chief Trial Counsel will be able to prove that respondent has misappropriated over \$245,000.00 in four client matters. It is difficult to imagine a legitimate argument that this would not constitute substantial client harm.⁷ In addition, there is also a reasonable probability that the Office of the

⁶ Rule 4-100(B)(1) requires that an attorney promptly notify a client of the receipt of the client's funds, securities, or other properties.

⁷ At the hearing on this matter, respondent argued that in the case of DRM/McLaen (an alleged \$226,000.00 misappropriation) and Trifish (an alleged \$3,065.45 misappropriation), the clients were so wealthy that these amounts were insignificant to them, and therefore, the Office

Chief Trial Counsel will be able to prove other misconduct that substantially harmed respondent's clients, including failing to comply with the rules regarding managing trust accounts and timely paying clients the funds they are owed. Accordingly, the court finds that the Office of the Chief Trial Counsel has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients.

The second factor is whether the attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or whether there is a reasonable likelihood that the harm will reoccur or continue. The evidence before the court demonstrates that the harm respondent caused his clients continues to this day. Even in the face of the present proceedings, there is no indication in the record that respondent has made any effort to refund the misappropriated funds.

Considering the evidence before the court and respondent's attitude regarding the substantial harm his clients have suffered, the court finds that respondent's clients and the public are likely to suffer far greater injury from the denial of the involuntary inactive enrollment than respondent is likely to suffer if it is granted. In addition, the size of respondent's alleged misappropriations and the lack of a reasonable explanation regarding the status and location of these funds leads the court to conclude that there is a reasonable likelihood the present harm will reoccur or continue.

The third factor is whether there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. As noted above, the court has found that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on several counts involving violations of rule 4-100 and section 6106.

of the Chief Trial Counsel had not met its burden of showing *substantial* harm. The court flatly rejects this argument.

Hence, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2) has been established by clear and convincing evidence.⁸ The court concludes that respondent's conduct poses a substantial threat of harm to his clients and the public. Consequently, he should be enrolled involuntarily inactive.

5. ORDER

Accordingly, **IT IS ORDERED** that respondent David M. Robinson be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1) effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 466(b).) State Bar Court staff is directed to give written notice of this order to respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

IT IS FURTHER ORDERED that:

1. Within 30 days of the effective date of the involuntary inactive enrollment, respondent must:

- a. Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
- b. Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;

⁸ Respondent was given proper notice of this proceeding pursuant to rule 461 of the Rules of Procedure. (See Rules Proc. of State Bar, rule 466(b)(1).)

- c. Refund any part of any fees paid in advance that have not been earned; and
- d. Notify opposing counsel in pending matters, or in the absence of counsel, the adverse parties, of his involuntary inactive enrollment, and file a copy of the notice with the court, agency or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit must also contain respondent's current State Bar membership records address where communications may thereafter be directed to him; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement.

Dated: October _____, 2009

RICHARD A. HONN
Judge of the State Bar Court