

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos.: 10-O-11176-LMA (11-O-11478;
)	11-O-14010; 11-O-14080;
ROBERT WARREN LOGAN,)	11-O-14712)
)	
Member No. 198922,)	DECISION
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary proceeding, respondent Robert Warren Logan is charged with four counts of misconduct, including client trust account violations, failure to return unearned fees (\$1,500) in one client matter, and failure to cooperate with the State Bar.

Respondent admitted that he violated three of the four counts. This court finds, by clear and convincing evidence, that respondent is culpable of all four counts. In view of respondent's misconduct and the evidence in aggravation and compelling mitigation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, that he be placed on probation for three years and that he be actually suspended for nine months and until he makes restitution.

¹ 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.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 24, 2011. Respondent filed a response on December 2, 2011.

The parties filed an extensive stipulation as to facts and conclusions of law on February 27, 2012. A hearing was held on February 28, 2012. Senior Trial Counsel Robin Brune represented the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent represented himself. This matter was submitted at the end of trial on February 28, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 10, 1998, and has been a member of the State Bar of California at all times since that date.

Case Nos. 11-O-11478; 11-O-14010; 11-O-14080; 11-O-14712 – The Commingling and State Bar Investigation Matters

Facts

Respondent maintained a trust account at Umpqua Bank entitled "California Law Foundation, Lawyer Trust Account, Robert W. Logan, Attorney Client Trust Account" (CTA). The last four digits of the account number were 1653.

During the period between November 1, 2010, and July 1, 2011, respondent did not withdraw his personal funds from the CTA at the earliest possible time. Instead, he used the account for personal purposes, specifically, to pay personal debts unrelated to client matters and to receive small cash withdrawals.

Respondent made the following payments from the CTA for his personal expenses:

Date	Check Number	Payee	Amount
11/1/2010	Electronic	Wells Fargo (Dealer Fee & Payments)	\$614.10
11/8/2010	1008	Sunset Oaks (Apartment rental)	\$1,000.00
11/9/2010	1010	Holiday Quality	\$ 63.84
11/19/2010	Electronic	Wells Fargo	\$538.86
11/30/2010	1011	Walmart	\$ 67.84
12/17/2010	Electronic	Wells Fargo	\$538.86
12/23/2010	Electronic	Wells Fargo	\$538.86
12/24/2010	Electronic	Barnes & Noble	\$154.66
12/28/2010	1014	Walmart	\$ 15.74
12/28/2010	1016	Barnes & Noble	\$ 50.69
1/4/2011	Electronic	Walmart	\$ 74.47
1/26/2011	Electronic	Direct TV	\$293.20
1/31/2011	Electronic	Walmart	\$ 24.66
2/8/2011	Electronic	Wells Fargo	\$971.22
2/9/2011	1087	Redding Dance Center	\$130.00
2/11/2011	Electronic	Wells Fargo	\$971.22
2/15/2011	1090	Walmart	\$ 11.56
2/15/2011	1092	Walmart	\$ 12.17
2/18/2011	1091	WINCO	\$ 50.12
2/28/2011	Electronic	Direct TV	\$250.00
3/9/2011	1101	Holiday Quality	\$ 24.33
3/10/2011	1102	Walmart	\$ 25.65
3/10/2011	1104	Target	\$ 15.45
3/24/2011	1112	Sunset Oaks	\$1,200.00
3/25/2011	Electronic	Direct TV	\$223.64
3/28/2011	1106	Little Country Church	\$ 20.00
3/28/2011	1117	Holiday Quality	\$ 17.98
3/29/2011	1119	Holiday Quality	\$ 69.77
3/29/2011	1120	Walmart	\$ 24.68
4/6/2011	1022	Little Country Church	\$ 20.00
4/8/2011	1024	DMV	\$ 31.00
4/11/2011	Electronic	Sunset Oaks	\$940.00
4/25/2011	Electronic	Direct TV	\$206.91
4/26/2011	Electronic	Walmart	\$177.88
5/5/2011	Electronic	Holiday Quality	\$ 53.35
5/25/2011	1155	Metro PCS	\$ 50.00
5/25/2011	1152	Life Touch	\$ 44.00
5/27/2011	Electronic	Direct TV	\$347.94
6/3/2011	Electronic	Direct TV	\$347.94
6/13/2011	Electronic	Wells Fargo	\$1,178.22
6/24/2011	Electronic	Rocha's Auto	\$420.49
7/1/2011	Electronic	Wells Fargo	\$660.75

Respondent deposited his personal funds in cash into the CTA as follows:

Date	Amount
11/2/2010	\$500
11/8/2010	\$75
11/18/2010	\$40
11/29/2010	\$550
12/1/2010	\$110
12/29/2010	\$600
1/21/2011	\$65
4/1/2011	\$140
4/5/2011	\$200
4/8/2011	\$1,300
6/7/2011	\$25
7/12/2011	\$700

Respondent issued the following checks and electronic payments, drawn on the CTA, when he knew or reasonably should have known that there were insufficient funds to satisfy the debits when they were presented for payment, as follows:

Check Number	Payee	Amount	Dates(s) Presented for Payment
1112	Sunset Oaks	\$1,200.00	3/24/2011
Electronic	Unknown	\$616.51	3/30/2011
Counter Check	Holiday Quality	\$53.35	5/5/2011
Electronic	Direct TV	\$347.94	5/27/2011
			6/3/2011
1152	Life Touch	\$44.00	5/26/2011
1160	Hartnell et al.	\$115.00	6/1/2011
1161	Linda Fullerton	\$35.00	6/9/2011
Electronic	Wells Fargo	\$1,178.22	6/13/2011
			6/16/2011

On February 15, March 30, May 10, and June 1, 6, 7, 10, 13, 14, 17, and 20, 2011, the State Bar received notifications from respondent's bank that the bank had received checks and debits, drawn on respondent's trust account against insufficient funds.

On June 27, 2011, respondent attended his first Alcoholics Anonymous meeting and has remained sober since June 28, 2011.

On August 2 and 15, 2011, the State Bar sent respondent letters of inquiry asking for his written explanation for the NSF checks. Respondent received the letters shortly after they were sent but failed to respond or otherwise cooperate or participate in the State Bar's investigation of this matter until shortly before the commencement of this hearing.

Conclusions

Count One - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith.

“The rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit. Because [respondent] used the account while it was ... denominated a trust account, even if he [did not intend] ... to use for trust purposes, rule [4-100(A)] was violated. The rule leaves no room for inquiry into the depositor’s intent.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

Respondent stipulated to violating rule 4-100(A). Therefore, by depositing his personal funds into the account, failing to withdraw his personal funds from the account at the earliest possible time, using his trust account for personal purposes, and making payments from the account for his personal expenses unrelated to client matters, respondent’s personal use of the trust account and the commingling of his personal funds in the CTA were clear and convincing evidence of willful violations of rule 4-100(A).

Count Two - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

It is well settled that the “conduct of issuing numerous checks with insufficient funds ‘manifests an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.’” (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324, citing *Tomlinson v. State Bar* (1975) 13 Cal.3d 567, 577.)

By issuing eight insufficiently funded checks between March and June 2011 when he knew or should have known that there were insufficient funds in the CTA to cover the checks, respondent committed conduct involving dishonesty in willful violation of section 6106.

Count Three - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

Respondent stipulated to violating section 6068, subdivision (i). By failing to respond to the State Bar's August 2011 letters and failing to otherwise cooperate or participate in the investigations, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of section 6068, subdivision (i).

Case No. 10-O-11176 – The Crumpacker Matter

Facts

On May 10, 2010, Donald Crumpacker employed respondent to represent him in a spousal support matter. Crumpacker paid respondent \$1,500 in advance fees.

On July 28, 2010, Amanda Forde, respondent’s secretary, sent Crumpacker draft documents with a request that he return them. However, these documents were erroneously sent to the wrong address and Crumpacker never received them. The documents were only partially

filled out and were not ready to be filed. These documents were preliminary in nature and provided no value to Crumpacker.

On September 17, 2010, Crumpacker wrote respondent and requested a full refund of his \$1,500 in fees.

On September 20, 2010, respondent sent Crumpacker a letter advising Crumpacker of the prior mail (that had been sent to the wrong address) and advising that the draft pleadings had been resent.

Crumpacker wrote a second letter requesting a full refund on December 20, 2010.

As of the date respondent received the letter, respondent had not earned any significant portion of the fee and owed Crumpacker a full refund. He still owes Crumpacker the \$1,500.

Conclusion

Count Four - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent stipulated to violating rule 3-700(D)(2). By failing to refund \$1,500 to Crumpacker, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

Aggravation²

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has a prior record of discipline. By order filed June 6, 2011, respondent was suspended for one year, execution stayed, and placed on probation for three years on conditions, including 90 days' actual suspension and installment payments of restitution to clients. The

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

misconduct involved five client matters and trust account violations from 2007 through 2010, and included failing to maintain funds in the client trust account, failing to communicate with clients, failing to provide an accounting, failing to perform services, failing to return client file, improperly withdrawing from employment, and failing to promptly pay client funds. (Supreme Court case No. S191692; State Bar Court case Nos. 08-O-12889 et al.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's multiple acts of misconduct are an aggravating factor. He commingled his personal funds in the CTA from November 2012 through July 2011, failed to return unearned fees and failed to cooperate with the State Bar investigation.

Misconduct Surrounded/Followed by Bad Faith, Dishonesty, Concealment, Overreaching or Other Violations of State Bar Act/ Rules of Professional Conduct; If Trust Funds/Property Involved, Refusal/Inability to Account to Client/Other Person for Improper Conduct Toward Funds/Property (Std. 1.2(b)(iii).)

The State Bar alleged that respondent held himself out as entitled to practice law, an uncharged violation of section 6126, because his office's voicemail answered, "The Law Offices of Robert Logan," while he was suspended from the practice of law in August 2011.

Respondent explained that his secretary would come in to the office and check his voicemails and open mail. No legal work was done.

Arguably, his voicemail could have created a false impression that he was able to practice law at the time. But absent clear and convincing evidence, the court finds that respondent was negligent in failing to change the voicemail and that such negligence did not rise to the act of willfully holding oneself out as entitled to practice law. Thus, respondent did not violate section 6126.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent's failure to refund the unearned fees of \$1,500 harmed his elderly client, who was in his late 80's at the time.

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

In count three, respondent admitted to failing to cooperate with the State Bar's investigation of his trust account violations. But, in this proceeding, he cooperated with the State Bar by entering into an extensive stipulation, admitting his culpability and agreeing to the admissibility of certain documentary evidence. Thus, his cooperation is a mitigating factor.

Good Character (Std. 1.2(e)(vi).)

Respondent presented seven character witnesses, including his wife of 19 years and six people who knew him from Alcoholics Anonymous (AA). They testified to respondent's "wreckage from his past drinking life," commitment to sobriety, and efforts toward overcoming his addiction to alcohol. They testified to his commendable efforts of rehabilitation, including intensive, lengthy, and continuing participation in AA. He has been sober since June 2011, albeit not a lengthy period of time.

Although four of the witnesses who testified were aware of his misconduct, the other three who wrote letters of references did not indicate any familiarity with respondent's misconduct. Five of whom have only known him for about a year.

Therefore, where respondent's character evidence was not from a sufficiently wide range of references, did not demonstrate that each witness was aware of the full extent of respondent's misconduct, and did not address the State Bar's disciplinary concerns or discuss respondent's fitness for practice, the evidence was entitled to only limited weight in mitigation. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.)

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

The court finds respondent's remorse and recognition of wrongdoing as compelling mitigating evidence. He has recognized his misconduct, demonstrated full candor and

acknowledgment of responsibility for his wrongdoing, and been sober since June 28, 2011. He attributed his misconduct of commingling of his personal funds, mishandling of the CTA, and failure to return unearned fees to his significant drinking. He is now fully committed to sobriety and continuing participation in AA.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

The applicable standards provide a broad range of sanctions ranging from reproof to disbarment. (Stds. 1.6, 1.7(a), 2.2(b), 2.3, 2.6, and 2.10.)

Standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standard 1.7(a) provides that, when an attorney has one prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that violation of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

Finally, standard 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

The State Bar asks that respondent be actually suspended for one year and until he makes restitution to his client, citing *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871 in support of its recommendation.

Respondent urges a recommendation of no actual suspension, restitution payment and enrollment in the Lawyer Assistance Program (LAP). If respondent finds participation in the LAP helpful in his recovery process, he may voluntarily do so without a court order.

In *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, the Review Department actually suspended the attorney for six months with an 18-month stayed suspension and a three-year probation. He was culpable of using his two client trust accounts for personal business affairs for almost three years, issuing 28 NSF checks, and of abandoning two clients. Unlike respondent, the attorney eventually paid the payees. The Review Department noted that were the trust account violations the only matters before the court, they would have recommended a 90-day actual suspension. The attorney was in practice for only two years at the time of his misconduct.

Like *Doran*, respondent's misconduct also involved issuing insufficiently funded checks, using his CTA for his personal expenses, and abandoning one client. Unlike *Doran*, respondent has a prior record of discipline with similar trust account violations and is recovering from alcoholism, a significant factor in mitigation. Thus, under standard 1.7(a), the recommended level of discipline in this matter should be higher than that of *Doran*'s.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

In view of respondent's misconduct, the case law, the aggravating evidence, and the compelling mitigating factors that he was suffering from alcoholism at the time of the misconduct, that he has been sober since June 2011, and that he cooperated with the State Bar by stipulating to his culpability, the court concludes that placing respondent on an actual suspension for nine months would be appropriate to protect the public and to preserve public confidence in the profession.

Recommendations

It is recommended that respondent Robert Warren Logan, State Bar Number 198922, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation³ for a period of three years subject to the following conditions:

1. Respondent Robert Warren Logan is suspended from the practice of law for a minimum of nine months of probation, and respondent will remain suspended until the following requirement(s) are satisfied:
 - i. Respondent must make restitution to Donald Crumpacker in the amount of \$1,500 plus 10 percent interest per year from May 10, 2010 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Donald Crumpacker, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in

³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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

- ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement(s), he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Respondent must comply with the following reporting requirements:
 - a. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation certifying that:

- i. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a “Trust Account” or “Clients’ Funds Account”; and
 - ii. Respondent has complied with the “Trust Account Record Keeping Standards” as adopted by the Board of Governors (Board of Trustees) pursuant to rule 4-100(C) of the Rules of Professional Conduct.
- b. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

- 7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent’s probation conditions.
- 8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar’s Client Trust Accounting School and passage of the test given at the end of the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Client Trust Accounting School.⁴ (Rules Proc. of State Bar, rule 3201.)
- 9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Exam

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in S191692.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

⁴ It is not recommended that respondent attend Ethics School as he was previously ordered to do so in S191692.

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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.

Dated: April _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court