

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **12-O-13746-RAH**
) (12-O-13899;
THEODORE SHIN LEE,) 12-O-15391;
) 12-O-16440)
Member No. 191848,)
) **DECISION**
A Member of the State Bar.)
_____)

Introduction¹

In this thirty-two count matter, respondent has been charged with extensive misconduct primarily arising out of his mismanagement of his client trust account. As noted below, most of the counts (counts six through thirty-two) stem from respondent's misunderstanding of his duty to hold funds received in settlement (and not distribute such funds) until the settlement check cleared. As a result of this fundamental mistake, he faces several counts of moral turpitude and related misconduct. But it is important to note that in these counts, there was no theft of client funds. All of the clients' funds were restored when the eventual deposit cleared. As such, despite the large number of cases in this matter, the court recommends discipline short of disbarment.

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 Notice of Disciplinary Charges (NDC) in this matter was filed on June 4, 2013. The parties entered into an extensive Stipulation as to Facts and Admission of Documents which resolved issues of culpability. Trial occurred on October 21, 2013, and the matter was submitted for decision that same day.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 5, 1997, and has been a member of the State Bar of California at all times since that date.

Background Facts

In 2007, respondent entered into an agreement with Walker Advertising, the company that manages Los Defensores. Through this organization, attorneys purchase a number of “accounts” which determines the number of referrals they receive in a rotating referral system. Respondent had twelve accounts with this organization, generating about five to eight claims per month per account. To handle the approximately sixty to one hundred clients per month, respondent had to hire staff. At the highest point, respondent’s staffing reached eleven employees. Respondent’s partner and mentor, John Ye (Ye), assisted him in this process. After the initial year working in this system, respondent generated income over \$100,000. However, he was working about twelve hours a day, much harder than he had ever worked. During this time, respondent failed to carefully watch the financial accounting in his firm, leading to many of the problems he faces in this matter.

Also underlying much of respondent’s misconduct was a fundamental misunderstanding of his obligations as to his client trust account at Wilshire State Bank (CTA). His firm had a practice of depositing client funds into his CTA and then immediately disbursing those funds to

those entitled to a distribution. This often resulted in the disbursements clearing before the client's settlement check, causing the bank to report a notice of Non-Sufficient Funds (NSF).

Respondent was unaware that this method of handling his CTA violated his duties, and during this time period, respondent was distracted from his responsibilities in managing his CTA by serious marital difficulties. Respondent has completely revised the method of handling his CTA and now complies with his duties and, specifically, does not disburse funds until the source of those funds has cleared the bank.

Further, respondent has changed the way he does business in other ways to avoid such problems in the future. As such, he handles all aspects of his mail, personally going to the mail room of his building to obtain all the mail so that it cannot be lost or misdirected in transit to his suite. He does not delegate the duty to manage his accounts to anyone, except to an accountant who reviews the books on a regular basis. It should be noted that the misconduct referred to in counts six through thirty-two was all a result of this lack of understanding of his obligations. For these matters, the clients were never harmed, since all of the clients' settlement checks were paid and the funds to the accounts restored well before the State Bar became involved.

Finally, respondent has reduced the number of "accounts" he has with his advertising company to three, and his employees to only four. Ye no longer works with respondent. This reduced case load allows him to personally attend to all client needs as well as his accounting issues.

Case No. 12-O-13746 – The Marin Campos Matter

Facts

On February 22, 2010, Marin Campos (Campos) hired respondent to represent him in connection with a personal injury matter arising from an automobile accident that occurred on December 11, 2009 (the accident). On April 23, 2010, Campos's insurance carrier, Mercury

Insurance (Mercury), issued a med pay check in the amount of \$1,549.25, payable to Campos, and mailed it to respondent's office. Respondent's office received the settlement check. On August 4, 2010, respondent endorsed Campos's signature and deposited the check or caused the check to be deposited into a bank account at Hanmi Bank.² The account at Hanmi Bank was not a designated trust account.

Respondent failed to notify Campos that he had received the med pay check. Respondent knew of Campos's medical providers, including Presbyterian Intercommunity Hospital (PIH) and CARE Ambulance, yet failed to contact them regarding medical bills incurred by Campos as a result of the accident. Respondent failed to promptly use the \$1,549.25 med pay amount to pay any portion of medical bills incurred by Campos as a result of the accident.

On September 30, 2010, respondent agreed, on behalf of Campos, to accept \$4,000 from Anchor General Insurance Company (Anchor) in full settlement of Campos's injury claim arising from the accident, pursuant to Anchor's insurance policy held by another individual involved in the accident. However, it was not until November 23, 2010, that respondent deposited the settlement draft from Anchor into his CTA.

On October 1, 2010, Mercury agreed to accept a total of \$929.55 as reimbursement for its \$1,549.25 med pay payment to Campos. Respondent paid the \$929.55 settlement amount.

On October 29, 2010, PIH turned over its bill for Campos's unpaid medical expenses to a debt collection agency, Progressive Management Systems (Progressive). Thereafter, CARE

² Respondent stipulated to this fact, however, the court remains unclear regarding several of the details surrounding this transaction. For instance, respondent did not have an account at Hanmi Bank. And the owner of the account into which the funds were deposited was "Chang Sung Inc.," a name unfamiliar to respondent. Further, respondent has no recollection of whether he or someone else in his office endorsed and deposited the check. He acknowledges, however, that he is responsible for such conduct.

turned over its bill for Campos's unpaid emergency ambulance services to an attorney for debt collection.

On November 2, 2010, respondent wrote two checks to PIH (for \$1,246.00) and to CARE (for \$971.25.) These checks were sent to the payees by respondent, but never cashed. As a result of not receiving these checks, PIH and CARE continued their efforts at collection.³

On November 2, 2010, Wells Fargo notified Campos that his credit report showed a debt of approximately \$2,000. Thereafter, Campos contacted respondent's office by phone, and respondent's assistant assured Campos that respondent had paid Campos's medical bills.

On December 14, 2010, respondent—as previously agreed—issued a reimbursement check from his CTA to Mercury in the amount of \$929.55 in satisfaction of the med pay payment. On December 28, 2010, Mercury deposited the \$929.55 check. Respondent used the balance of \$619.70 from the med pay check for his own use and benefit.⁴

On March 8, 2011, Progressive requested that respondent provide a signed authorization from Campos in order to allow respondent to discuss Campos's account with them. Respondent received the letter but failed to respond. On October 5, 2011, Progressive sent respondent a second letter stating that respondent had failed to return Progressive's phone calls, and informing respondent that Progressive would contact Campos directly regarding the overdue balance on Campos's account. Respondent received the letter but failed to respond. On February 2, 2012, Progressive sent respondent a third letter requesting that he provide a signed authorization from Campos in order to allow respondent to discuss Campos's account with them.

In February 2012, Campos met with respondent and obtained copies of the checks respondent claimed to have sent to PIH and CARE dated November 2, 2010. At that meeting,

³ It is unclear from the record why PIH and CARE did not receive these checks.

⁴ While respondent stipulated to this fact, there was no clear evidence that the \$1,549.25 was ever deposited in an account owned or controlled by respondent.

respondent assured Campos that he had paid the PIH and CARE bills. At the time respondent made this statement to Campos, respondent was grossly negligent in not knowing that the bills had not actually been paid and that PIH and CARE had turned their unpaid bills over to debt collection agencies.

In March 2012, Campos's daughter, Aracely Campos (Aracely), notified respondent that Campos was still receiving debt collection calls regarding the medical bills. Respondent assured Aracely that Campos's medical bills had been addressed and resolved. On March 23, 2012, Progressive sent respondent a letter confirming Progressive's agreement to accept payment on the amount owed by Campos, and stating that payment should be received no later than April 20, 2012.

On April 11, 2012, Aracely again contacted respondent to inform him that Campos was still receiving debt collection calls regarding the medical bills. Respondent once again assured Aracely that Campos's medical bills had been taken care of.

On September 13, 2012, respondent paid \$4,573.15 to Progressive in full satisfaction of the amount owed on Campos's account, paying with his American Express card. On September 14, 2012, Progressive sent Campos a notice advising that it had received payment and would withdraw its listing regarding Campos's medical debt from Experian and TransUnion credit reporting agencies.

On September 25, 2012, respondent paid from his CTA \$1,239.20 to CARE in satisfaction of the amount owed on Campos's account.

To date, respondent has failed to provide Campos with an accounting for the \$1,549.25 med pay funds received by respondent on behalf of Campos.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to contact Campos's medical providers upon receipt of the \$1,549.25 med pay check from Mercury and negotiate resolution of these obligations, failing to verify that payments purportedly sent to PIH and CARE in November 2010 to settle Campos's medical bills had been received and deposited, failing to pay Campos's PIH bill at any time before September 13, 2012, and failing to pay Campos's CARE bill at any time before September 25, 2012, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

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

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 may be deposited therein or otherwise commingled therewith, except for limited exceptions. By failing to deposit the \$1,549.25 med pay check from Mercury into his CTA, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Three - (Rule 4-100(B)(1) [Notification to Client of Receipt of Client Property])

Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds, securities, or other properties. By failing to notify Campos at any time that he received the \$1,549.25 med pay check from Mercury, respondent failed to notify a client promptly of the receipt of the client's funds, in willful violation of rule 4-100(B)(1).

Count Four - (Rule 4-100(B)(3) [Failure to Account])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide Campos with an accounting for the \$1,549.25 med pay funds received by respondent on behalf of Campos, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count Five - (§ 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. "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.) While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

As stipulated by respondent, he kept the \$619.70 balance from Mercury insurance and used it for his own use and benefit. The court's understanding of this situation is muddled by the fact that respondent does not have an account at Hanmi Bank and does not know the owner of the account in which the check was deposited. Regardless, respondent stipulated to receiving and causing the deposit of Mercury's check. Therefore, respondent was, at a minimum, grossly negligent in the subsequent \$619.70 misappropriation.⁵

⁵ When Mercury agreed to take a reduced reimbursement amount, the remaining balance should have been turned over to the client.

By retaining the balance of \$619.70 from the \$1,549.25 med pay from Mercury and using it for his own purposes, respondent misappropriated Campos's med pay funds through gross negligence, in willful violation of section 6106.⁶

Case Nos. 12-O-13899; 12-O-15391; & 12-O-16440 – The NSF Check Matters

Facts

Between March 2011 and April 2012, respondent repeatedly issued checks drawn upon his CTA against insufficient funds, including:

<u>Check Number</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Date Presented</u>	<u>Account Balance</u>
1855	3/18/11	\$2,300	4/6/11	- \$1,249.33
3294	10/3/11	\$1,200	11/18/11	- \$7,240.17
3362	10/17/11	\$1,000	11/18/11	- \$7,240.17
3397	10/27/11	\$1,500	11/18/11	- \$7,240.17
3403	10/31/11	\$1,000	11/18/11	- \$7,240.17
3456	11/11/11	\$1,000	11/18/11	- \$7,240.17
3468	11/14/11	\$2,000	11/18/11	- \$7,240.17
4237	4/19/12	\$1,500	5/4/12	- \$719.84
4233	4/30/12	\$650	5/4/12	- \$719.84

Respondent issued these checks when he knew or was grossly negligent in not knowing that there were insufficient funds in his CTA to pay them.

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⁶ The court acknowledges that respondent ultimately paid Campos's medical providers over \$5,800. As such, the court declines to recommend that respondent pay additional restitution to Campos.

Between June 11 and June 29, 2012, respondent repeatedly issued checks drawn upon his CTA against insufficient funds, including:

<u>Check Number</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Date Presented</u>	<u>Account Balance</u>
4356	6/11/12	\$1,500	7/6/12	- \$3,452.56
4365	6/26/12	\$175	7/6/12	- \$3,452.56
4367	6/26/12	\$175	7/6/12	- \$3,452.56
4392	6/27/12	\$1,000	7/6/12	- \$3,452.56
4403	6/29/12	\$1,000	7/6/12	- \$3,452.56

Respondent issued these checks when he was grossly negligent in not knowing that there were insufficient funds in his CTA to pay them.

Between June 25 and August 14, 2012, respondent repeatedly issued checks drawn upon his CTA against insufficient funds, including:

<u>Check Number</u>	<u>Date Issued</u>	<u>Check Amount</u>	<u>Date Presented</u>	<u>Account Balance</u>
4385	6/25/12	\$550	7/13/12	- \$533.08
4517	8/6/12	\$1,200	8/14/12	- \$2,150.03
4542	8/14/12	\$7,500	8/14/12	- \$2,150.03

Respondent issued these checks when he was grossly negligent in not knowing that there were insufficient funds in his CTA to pay them.

Conclusions

Count Six - (§ 6106 [Moral Turpitude])

By repeatedly issuing checks drawn upon his CTA when he was grossly negligent in not knowing that there were insufficient funds, respondent committed acts involving moral turpitude, in willful violation of section 6106.

Case No. 12-O-13899 – The Landaverde, Lopez, Ramirez, Patricia Hernandez, Hurtado, Rodriguez, Leon Hernandez, Salgado, & Yun Trust Account Matters

Facts

Cecilia Landaverde

On March 18, 2011, respondent deposited a settlement check into his CTA in the amount of \$7,000 on behalf of his client, Cecilia Landaverde (Landaverde). That same day, respondent issued two checks from his CTA totaling \$4,050 to or on behalf of Landaverde. Also that same day, respondent issued a check from his CTA in the amount of \$2,950, payable to himself from the settlement funds as his legal fees.

On April 6, 2011, and after two of the three checks respondent issued out of his CTA to or on behalf of Landaverde, had been negotiated, he should have maintained \$2,300 of the settlement proceeds to cover the remaining outstanding check. On April 5, 2011, the balance in respondent's client trust account fell to \$1,072.67. Respondent with gross negligence misappropriated \$1,227.33 in settlement funds that he was required to maintain in his CTA on behalf of Landaverde.

Maria Del Carmen Lopez

On October 4, 2011, respondent deposited a settlement check into his CTA in the amount of \$8,500, on behalf of his client, Maria Del Carmen Lopez (Lopez). However, the day before depositing the settlement draft, and with no other funds in his CTA from Lopez, on October 3, 2011, respondent issued four checks from his CTA totaling \$5,050 to or on behalf of Lopez. Also on October 3, 2011, respondent issued a check from his CTA in the amount of \$3,450 payable to himself from the anticipated settlement funds as his legal fees.

By November 18, 2011, three of the four checks respondent had issued out of his CTA to or on behalf of Lopez, had been negotiated, and as of that date, he should have maintained \$1,200 of the settlement proceeds to cover the remaining outstanding check.

On November 17, 2011, the balance in respondent's CTA fell to \$591.83. Thus, respondent failed to maintain a total of at least \$608.17 (\$1,200 - \$591.83) in his CTA on behalf of Lopez.

Respondent with gross negligence misappropriated at least \$608.17 in settlement funds that he was required to maintain in his CTA on behalf of Lopez.

Roger Ramirez

On October 13, 2011, respondent deposited a settlement check into his CTA in the amount of \$3,000 on behalf of his client, Roger Ramirez (Ramirez). On October 27, 2011, respondent issued two checks from his CTA totaling \$4,000 to or on behalf of Ramirez. By November 18, 2011, one of the two checks respondent had issued from his CTA had been negotiated and, as of that date, he should have maintained \$1,500 of the settlement proceeds to cover the remaining outstanding check. By November 18, 2011, the balance in his CTA had fallen below zero (-\$7,240.17).

Respondent with gross negligence misappropriated at least \$1,500 in settlement funds that he was required to maintain in his CTA on behalf of Ramirez.

Patricia Hernandez

On October 18, 2011, respondent deposited a settlement check into his CTA in the amount of \$3,000, on behalf of Patricia Hernandez (Hernandez). On October 17, 2011, respondent issued two checks from his CTA totaling \$1,800, to or on behalf of Hernandez. On October 17, 2011, respondent issued a check from his CTA payable to himself in the amount of \$1,200 from the settlement funds as his legal fees. By November 18, 2011, two of the three

checks respondent had issued out of his CTA, including the check made payable to respondent, had been negotiated and, as of that date, he should have maintained \$1,000 of the settlement proceeds to cover the remaining outstanding check. By November 18, 2011, the balance in his CTA had fallen below zero (-\$7,240.17). Thus, respondent failed to maintain a total of at least \$1,000 in his CTA on behalf of Hernandez.

Respondent with gross negligence misappropriated at least \$1,000 in settlement funds that he was required to maintain in his CTA on behalf of Hernandez.

Jazmin Hurtado

On October 31, 2011, respondent deposited a settlement check into his CTA in the amount of \$15,000, on behalf of his client, Jazmin Hurtado (Hurtado). On October 31, 2011, respondent issued six checks from his CTA totaling \$8,602.05 to or on behalf of Hurtado. On October 31, 2011, respondent issued a check from his CTA in the amount of \$6,397.95, payable to himself from the settlement funds as his legal fees. By November 18, 2011, four of the six checks issued out of his CTA to or on behalf of Hurtado had been negotiated, and, as of that date, respondent should have maintained \$1,000 of the settlement proceeds to cover one of the remaining outstanding checks. However, by November 18, 2011, the balance in his CTA fell below zero (-\$7,240.17).

Respondent with gross negligence misappropriated approximately \$1,000 in settlement funds that he was required to maintain in his CTA on behalf of Hurtado.

Luis Rodriguez

On November 14, 2011, respondent deposited a settlement check into his CTA in the amount of \$3,140, on behalf of Luis Rodriguez (Rodriguez). On November 10, 2011, respondent issued four checks from his CTA totaling \$1,890, to or on behalf of Rodriguez. On November 10, 2011, respondent issued a check from his CTA in the amount of \$1,250, payable

to himself from the settlement funds for legal fees. By November 18, 2011, two of the four checks issued out of his CTA to or on behalf of Rodriguez, had been negotiated and as of that date, respondent should have maintained \$1,000 of the settlement proceeds to cover one of the remaining two checks. However, on November 18, 2011, the balance in his CTA fell below zero (-\$7,240.17).

Respondent with gross negligence misappropriated at least \$1,000 in settlement funds that he was required to maintain in his CTA on behalf of Rodriguez.

Leon Hernandez

On November 14, 2011, respondent deposited a settlement check into his CTA in the amount of \$6,500, on behalf of his client, Leon Hernandez (Leon).⁷ On November 14, 2011, respondent issued two checks totaling \$3,700 from his CTA, to or on behalf of Leon. On November 14, 2011, respondent issued a check from his CTA payable to himself in the amount of \$2,800 from the settlement funds as his legal fees. By on November 18, 2011, neither of the checks issued to or on behalf of Leon out of his CTA had been negotiated and as of that date, respondent should have maintained \$2,000 of the settlement proceeds to cover the check made payable to Leon. However, on November 18, 2011, the balance in his CTA fell below zero (-\$7,240.17).

Respondent with gross negligence misappropriated at least \$2,000 in settlement funds that he was required to maintain in his CTA on behalf of Leon.

Doris Salgado

On April 19, 2012, respondent deposited a settlement check into his CTA in the amount of \$5,100 on behalf of his client, Doris Salgado (Salgado), and immediately issued disbursement

⁷ The court identifies this client by his first name because he shares the same last name as one of the earlier identified clients.

checks against this money. On April 19, 2012, respondent issued two checks from his CTA, totaling \$3,000, to or on behalf of Salgado. On April 19, 2012, respondent issued a check from his CTA in the amount of \$2,100, payable to himself from the settlement funds as his legal fees.

By May 4, 2012, one of the two checks respondent had issued from his CTA to or on behalf of Salgado, had been negotiated and as of that date, he should have maintained \$1,500 of the settlement proceeds to cover the remaining outstanding check. By May 4, 2012, the balance in his CTA fell below zero (-\$719.84).

Respondent with gross negligence misappropriated at least \$1,500 in settlement funds that he was required to maintain in his CTA on behalf of Salgado.

Young Suk Yun

On May 1, 2012, respondent deposited a settlement check into his CTA in the amount of \$4,700, on behalf of Young Suk Yun (Yun). Prior to depositing the settlement draft, respondent wrote disbursement checks against the settlement money. On April 30, 2012, respondent issued two checks from his CTA, totaling \$3,900, to or on behalf of Yun. By May 4, 2012, one of the two checks respondent had issued out of his CTA to or on behalf of Yun, had been negotiated and, as of that date, he should have maintained \$650 of the settlement proceeds to cover the remaining check. By May 4, 2012, the balance in his CTA fell below zero (-\$719.84).

Respondent with gross negligence misappropriated at least \$650 in settlement funds that he was required to maintain in his CTA on behalf of Yun.

Conclusions

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

By failing to maintain at least \$1,227.33 (\$2,300 - \$1,072.67) on behalf of Landaverde in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client

and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

Count Eight - (§ 6106 [Moral Turpitude])

By misappropriating \$1,227.33 of Landaverde’s settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$608.17 on behalf of Lopez in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

Count Ten - (§ 6106 [Moral Turpitude])

By misappropriating at least \$608.17 of Lopez’s settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,500 on behalf of Ramirez in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

Count Twelve - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,500 of Ramirez’s settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,000 on behalf of Hernandez in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Fourteen - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,000 of Hernandez's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,000 on behalf of Hurtado in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Sixteen - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,000 of Hurtado's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,000 on behalf of Rodriguez in the client trust account, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Eighteen - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,000 of Rodriguez's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$2,000 on behalf of Leon in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Twenty - (§ 6106 [Moral Turpitude])

By misappropriating at least \$2,000 of Leon's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,500 on behalf of Salgado in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Twenty-Two - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,500 of Salgado's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$650 on behalf of Yun in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Twenty-Four - (§ 6106 [Moral Turpitude])

By misappropriating at least \$650 of Yun's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through gross negligence, in willful violation of section 6106.

Case No. 12-O-15391 – The Ventura & Santiago Trust Account Matters

Facts

Tatiana Herrera Ventura

On June 11, 2012, respondent deposited a settlement check into his CTA in the amount of \$8,500, on behalf of his client, Tatiana Herrera Ventura (Ventura). On June 11, 2012, respondent issued two checks from his CTA totaling \$4,000, to or on behalf of Ventura. On June 11, 2012, respondent issued a check from his CTA in the amount of \$4,500, payable to the Law Offices of Theodore S. Lee, from the settlement funds as his legal fees.

By July 6, 2012, neither of the two checks respondent had issued out of his CTA to or on behalf of Ventura, had been negotiated and as of that date, he should have maintained \$4,000 of the settlement proceeds to cover these outstanding checks. By July 6, 2012, the balance in respondent's client trust account fell below zero (-\$3,452.56). Thus, respondent failed to maintain a total of at least \$4,000 in his CTA on behalf of Ventura.

Respondent dishonestly or with gross negligence misappropriated at least \$4,000 in settlement funds that he was required to maintain in his CTA on behalf of Ventura.

Jose Santiago

On June 25, 2012, respondent deposited a settlement check into his CTA in the amount of \$4,500, on behalf of his client, Jose Santiago (Santiago). On June 27, 2012, respondent issued two checks from his CTA totaling \$2,500, to or on behalf of Santiago. On June 27, 2012, respondent issued a check from his CTA in the amount of \$2,000, payable to his law office, from the settlement funds as his legal fees.

By July 6, 2012, one of the two checks respondent had issued from his CTA to or on behalf of Santiago, had been negotiated and as of that date, he should have maintained \$1,000 of the settlement proceeds to cover the remaining outstanding check. By July 6, 2012, the balance in his CTA fell below zero (-\$3,452.56).

Respondent with gross negligence misappropriated at least \$1,000 in settlement funds that he was required to maintain in his CTA on behalf of Santiago.

Conclusions

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

By failing to maintain at least \$4,000 on behalf of Ventura in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Twenty-Six - (§ 6106 [Moral Turpitude])

By misappropriating at least \$4,000 of Ventura's settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through his gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$1,000 on behalf of Santiago in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

Count Twenty-Eight - (§ 6106 [Moral Turpitude])

By misappropriating at least \$1,000 of Santiago’s settlement funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through his gross negligence, in willful violation of section 6106.

Case No. 12-O-16440 – The Gonzalez & Chuvac Trust Account Matters

Facts

Adolfo Gonzalez

On June 25, 2012, respondent deposited a settlement check into his CTA in the amount of \$2,400, on behalf of his client, Adolfo Gonzalez (Gonzalez). On June 25, 2012, respondent issued three checks totaling \$1,350 to or on behalf of Gonzalez. On June 25, 2012, respondent issued a check from his CTA in the amount of \$1,050 payable to himself from the settlement funds as his legal fees.

By July 11, 2012, one of the three checks respondent had issued from his CTA to or on behalf of Gonzalez, had been negotiated and as of that date, he should have maintained \$650 of the settlement proceeds to cover the remaining two outstanding checks. By July 11, 2012, the balance in his CTA fell to \$17.92. Thus, respondent failed to maintain a total of at least \$632.08 (\$650 – \$17.92) in his CTA on behalf of Gonzalez.

Respondent with gross negligence misappropriated at least \$632.08 in client funds that he was required to maintain in his CTA on behalf of Gonzalez.

Mario Chuvac

On August 2, 2012, respondent deposited a settlement check into his CTA in the amount of \$5,500, on behalf of his client, Mario Chuvac (Chuvac). On August 2, 2012, respondent issued three checks from his CTA totaling \$2,450 to or on behalf of Chuvac. On August 2, 2012, respondent issued a check from his CTA in the amount of \$3,350 payable to himself from the settlement proceeds as his legal fees. By August 14, 2012, one of the three checks respondent issued out of his CTA to or on behalf of Chuvac, had been negotiated and as of that date, respondent should have maintained \$2,200 of the settlement proceeds to cover the remaining two outstanding checks. By August 14, 2012, the balance in his CTA fell below zero (-\$2,150.03).

Respondent with gross negligence misappropriated at least \$2,200 in client funds that he was required to maintain in his CTA on behalf of Chuvac as of on or about August 14, 2012.

Conclusions

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

By failing to maintain at least \$632.08 on behalf of Gonzalez in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Thirty - (§ 6106 [Moral Turpitude])

By misappropriating at least \$632.08 of Gonzalez's funds, respondent committed an act involving moral turpitude, dishonesty, or corruption through his gross negligence, in willful violation of section 6106.

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

By failing to maintain at least \$2,200 on behalf of Chuvac in his CTA as of on or about August 14, 2012, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

Count Thirty-Two - (§ 6106 [Moral Turpitude])

By misappropriating at least \$2,200 of Chuvac’s funds as of August 14, 2012, respondent committed an act involving moral turpitude, dishonesty, or corruption through his gross negligence.

Aggravation⁸

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent committed multiple acts of misconduct. This is an aggravating factor. Tempering this aggravating factor is that many, if not all, of these instances of misconduct resulted from the same distractions from respondent’s practice, as set forth in the mitigation section, below.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent’s client, Campos, suffered harm to his credit as a result of respondent’s misconduct. This is an aggravating factor.

Mitigation

No Prior Record (Std. 1.6(a).)

Respondent has no prior record since being admitted in 1997. Although the present misconduct is serious, respondent’s 12-plus years of discipline-free practice prior to the first

⁸ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

incident of misconduct warrant significant consideration in mitigation. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 [mitigation acknowledged for absence of prior record of discipline in twelve years of practice despite willful misappropriation of over \$29,000]; *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over ten years of practice before first act of misconduct given significant weight].)

Extreme Emotional/Physical Difficulties (Std. 1.6(d).)

Respondent's grandmother passed away in February 2009, causing his father to descend into a deep depression. As a result, respondent's father was placed in a mental health facility and could not attend to the family business, a dry cleaning company located in Santa Cruz, California. Respondent's mother could not handle the business alone, requiring respondent to fly or drive to Santa Cruz every week from Southern California. Eventually, the business was sold, his parents were moved to Southern California, and, by the end of 2011, his father had fully recovered. Although clearly stressful, these family problems preceded most of the misconduct and are entitled to nominal credit in mitigation.

Respondent and his wife had problems in their marriage caused, in part, by an inability to conceive a child. When his wife finally became pregnant in November 2010, she unfortunately miscarried, and the marital problems were exacerbated. Eventually, after serious disagreements, respondent and his wife temporarily separated. They have since reconciled, and at trial, were expecting a child in November 2013. These marital problems caused respondent to be distracted from his duties as a lawyer and his obligations with respect to his client trust account.

Respondent is entitled to significant mitigation for these problems, since they directly coincided with the period of time of the misconduct, and were a substantial distraction to respondent.

Further, the court is confident that respondent has made sufficient modifications to his method of practice to assure that similar issues will not recur.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent cooperated fully with the State Bar in its investigation and by entering into an extensive stipulation. This permitted a 32-count NDC to be tried in a single day, saving the court valuable trial time. The victims referred to in counts six through thirty-two were restored all of the amounts reflected in the NSF notices when the settlement checks cleared the bank, well before any of the charges were brought by the State Bar.

Good Character (Std. 1.6(f).)

Respondent presented two character declarations, one from his uncle, an attorney, who has known him all his life, and a second from respondent's former partner and mentor, Ye. Both were made aware of the charges, but spoke highly of respondent and his characteristics of honesty and integrity. However, since these declarations do not represent a wide range of references in the legal and general communities, they are not entitled to weight in mitigation. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [respondent not entitled to mitigation for good character based on testimony of two witnesses].)

Remorse/Recognition of Wrongdoing (Std. 1.6(g).)

Respondent has recognized the errors he made in the way he handled his trust account. He has gone to Client Trust Accounting School and has modified the procedures in his office to properly handle his trust account. He now appreciates the trust imposed on him in holding his clients' funds, and has hired a Certified Public Accountant to reconcile his books. He is entitled to mitigation for these acts.

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. 1.1.)

Standard 1.7 provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances.

Standard 2.1(b) provides that disbarment or actual suspension is appropriate for misappropriation involving gross negligence.

Standard 2.2(a) states that a member's culpability of a violation of rule 4-100 for commingling or failing to promptly pay out entrusted funds warrants actual suspension of three months.

Standard 2.5(c) provides that a member's culpability of willfully failing to perform legal services or properly communicate in a single client matter warrants a reproof.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In considering the appropriate level of discipline, the court also looks to the case law for guidance. The term "willful misappropriation" covers a broad range of conduct varying significantly in the degree of culpability. An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar* (*supra*) 52 Cal.3d 28, 38.)

Disbarment would rarely, if ever, be the appropriate discipline in cases involving a single act of negligent misappropriation, absent deception or other aggravating factors. (*Ibid.*) And less discipline has been imposed in cases where the attorney lacked evil intent, and his or her circumstances indicated the “misconduct was aberrational and hence unlikely to recur.” (*Ibid.*)

The State Bar recommended that respondent be disbarred. Respondent, on the other hand, argued for a six-month period of actual suspension. The court found some guidance in *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708.

In *Robins*, the attorney stipulated to culpability on six counts of grossly negligent misappropriation totaling over \$20,000. The parties also stipulated to two additional counts of failing to competently perform legal services and failing to return a client file. Similar to the present case, none of the attorney’s misappropriations were for his personal use. Instead, the attorney often paid his clients a few days before the settlement check cleared. And other times the attorney made substantial advances to his clients out of his trust account before the settlement check even came in. The attorney remained oblivious to the problems with his trust account in part because all his checks were honored through his bank’s overdraft protection. In aggravation, the attorney committed an eight-year pattern of misconduct, he was grossly negligent in accounting for client funds, and he significantly harmed a client who was sued by a collection agency. In mitigation, the attorney: (1) had no prior record of discipline; (2) was experiencing extreme physical disabilities during a portion of the misconduct; (3) was candid and cooperative; (4) performed extensive pro bono legal services; (5) worked diligently to improve his law office management practices; and (6) had a spiritual awakening and demonstrated sincere remorse.⁹ The Review Department recommended, among other things, that the attorney be suspended for a period of one year.

⁹ The attorney’s payment of belated restitution was not given consideration in mitigation.

The present case has many similarities to *Robins*. Most notably, respondent's misappropriations stemmed from gross negligence and were not motivated by personal gain. And like the attorney in *Robins*, respondent has made a substantial showing in mitigation, including the emotional difficulties he was suffering from at the time of the misconduct, his candor and cooperation with the State Bar, his demonstrated remorse, and his lack of a prior record of discipline. While the present matter involved six more client matters than *Robins*, this factor is counterbalanced by the fact that the present case spanned a much shorter timeframe than the eight years reflected in *Robins*. And although the present case included significantly more findings in culpability, it involved less total misappropriation than *Robins* (\$18,937.28 vs. over \$20,000)

The court appreciates the steps respondent has taken to correct the problems leading to the underlying misconduct and finds it unlikely that respondent will slip down this path again. Consequently, the court finds appropriate a level of discipline on par with *Robins*.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that he be placed on probation for three years, including a one-year period of actual suspension.

Recommendations

Accordingly, it is recommended that respondent **Theodore Shin Lee**, State Bar Number 191848, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three years subject to the following conditions:

1. Respondent Theodore Shin Lee is suspended from the practice of law for the first year of probation.
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 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.
4. 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.
5. 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.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. 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 Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)¹⁰

At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

¹⁰ The court does not recommend Client Trust Accounting School because, as noted above, respondent has recently attended on his own volition.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the 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.¹¹

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: February _____, 2014

RICHARD A. HONN
Judge of the State Bar Court

¹¹ Respondent is required to file a rule 9.20 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* (1998) 44 Cal.3d 337, 341.)