

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case Nos.: **12-O-13997-PEM (12-O-15609)**
)
STEVEN DANIEL ZAVODNICK,) **DECISION**
)
Member No. 135419,)
)
A Member of the State Bar.)

Introduction¹

In this disciplinary proceeding, respondent Steven Zavodnick is charged with seven counts of misconduct in one client matter. The charged acts of misconduct include: (1) failure to maintain client funds in a trust account; (2) failure to deposit client funds in a trust account (3 counts); (3) committing an act of moral turpitude; (4) failure to competently perform legal services; and (5) failure to refund unearned fees. The court finds, by clear and convincing evidence, that respondent is culpable of three counts of misconduct. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, in conjunction with meeting the goals of attorney discipline, the court recommends, among other things, that respondent be actually suspended from the practice of law for a minimum of two years and remain suspended until he makes specified restitution and until he satisfactorily proves to the State Bar Court his rehabilitation, present fitness and learning and legal ability under the

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.

Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

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 February 26, 2013; on April 5, 2013, respondent filed his response. On December 12, 2013, the State Bar filed a First Amended NDC (the amended NDC).² On December 26, 2013, respondent filed his response to the amended NDC. On March 17, 2014, respondent filed his “Motion in Limine to Enforce the Settlement Agreement.” The court referred the matter to the settlement judge in this proceeding. The motion was denied.

A three-day trial was held on June 24, 25, and 26, 2014. The State Bar was represented by Senior Trial Counsels Suzan J. Anderson and Esther J. Rogers. Attorney Merri A. Baldwin represented respondent. On June 26, 2014, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 10, 1988, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-13997 – The Eckford Matter

Facts

Marjorie Eckford (Eckford) lived with Kevin Carney (Carney) from 1985 until 2006, as an unmarried couple. They had three children together. In 1992, Eckford and Carney purchased a family home, which they owned as tenants in common. Both contributed equally to the

² Prior to the formal filing of the December 12, 2013, the court had granted the State Bar’s motion to amend the NDC.

mortgage on the home. After 2006, Carney's business began to fail and, thereafter, he filed for bankruptcy.

Eckford became concerned that the family home in which she and the three children lived would be lost to Carney's creditors in the bankruptcy matter and that her children would not inherit the house as had been planned. Therefore, she sought legal representation to find a means by which her interest in the house could be preserved for the children.

On May 7, 2010, Eckford retained respondent for an estate planning matter. Eckford testified that respondent never provided her with a fee agreement and she neither received nor signed a fee agreement. But, respondent did inform her that his fee was \$500 per hour. Respondent, on the other hand, testified that while it was his practice to always have a retainer agreement, including in the Eckford matter, he has been unable to locate the fee agreement that he and Eckford entered. On the same date that Eckford retained respondent, she paid him a retainer fee of \$10,000, which respondent deposited into his client trust account (CTA).

Eckford's chief purpose for engaging the services of respondent was to protect her share of the family home from Carney's creditors, so that it could be kept for her children. Respondent believed that the primary purpose of his employment was asset protection. And, to achieve that end, respondent believed that it was his responsibility to determine what Carney had in the way of assets.

Although the parties may have had different understandings regarding what was expected of respondent in terms of specific tasks and different understandings regarding what respondent actually did or did not do in relation to the matter for which he was retained, based on the evidence admitted at trial, it is clear that both parties knew that Eckford's goal in hiring respondent was to find a way to protect the family home from seizure. Additionally, the

evidence is clear and convincing that no written fee agreement was entered into by the parties in relation to respondent's fees or the services he was to render on behalf of Eckford.

On July 14, 2010, respondent received a check in the amount of \$4,750 from Eckford, which was to be used to pay for a forensic accounting. Eckford testified that based on the information provided by respondent, she assumed that he would be hiring a forensic accountant. Respondent, however, testified that he did the accounting; but, he denied that he had informed Eckford that he would be hiring a forensic accountant in her matter.

On July 15, 2010, respondent deposited the \$4,750 for the forensic accounting into account number XXXXXXXX3685 at First Republic Bank on behalf of the Eckford. That account was respondent's CTA. On July 15, 2010, the balance in respondent's CTA was \$1,520. (Exhibit 18, p. 2.)

On August 12, 2010, respondent received another check from Eckford in the amount of \$4,500 as part of the fees for the forensic accounting. Respondent, who did not deposit the \$4,500 check into his CTA, contends that because the \$4,500 was owed to him as part of the fee for the forensic accounting that he had done, he was not required to deposit the \$4,500 check into his CTA. According to respondent the accounting, which he performed, included examining Carney's franchise agreements and real estate investments. As noted, it was Eckford's understanding that the money she was providing was to be used to pay the costs of a "forensic accountant" to do the forensic accounting. She did not understand that respondent was the person, who would be carrying out that accounting.

On October 3, 2010, respondent again received a check from Eckford. The check was in the amount of \$3,390, which according to respondent was to pay for services performed by respondent relating to the forensic accounting. Respondent testified that the \$3,390 was used to pay a Kinko's charge which he had incurred while performing legal services for Eckford.

During the time respondent was representing Eckford, she did not receive any billing statements or invoices informing her how the money she was paying respondent was being used. It was not until April 2011, months after respondent's services were terminated that respondent provided Eckford for the first time with a "Summary Invoice of Professional Services." That invoice was dated December 23, 2010.

Respondent maintains that he did not provide Eckford with billing statements or invoices because his assignments were "task driven" matters and that only after a task was completed was she entitled to an invoice. However, respondent did not provide any accounting as to the services he had performed, despite numerous requests by Eckford, until after his services were terminated and Eckford retained an attorney to help her in her dealings with respondent.

Prior to October 22, 2010, respondent had advised Eckford that after having completed his research, he determined that the proper way to protect the home from Carney's creditors was to create a trust. He also informed her that he needed \$6,000 to hire another attorney to prepare the trust and/or advise him regarding the trust. On October 22, 2010, Eckford paid respondent \$6,000 to cover the cost of hiring an attorney to prepare or aid in the preparation of the trust.³

³ The court finds that Eckford's testimony and recollections, regarding respondent having informed her that he was not an expert in trust matters, to be credible. She testified that respondent requested \$6,000 to retain an attorney other than himself to aid in preparing the trust and/or to advise him regarding the preparation of the Eckford trust. Eckford wrote a memo in which she stated that respondent had informed her that he had no expertise in trust preparation and was requesting \$6,000 to have someone help him complete the trust. (Exh. 3, p. 2.) Eckford's statements are corroborated by the fact that respondent felt the need to review trust law before drafting a trust document (Exh. 15). Although respondent now denies that he was inexperienced in the area of drafting trusts or that he had stated that he needed another lawyer to help him with the trust preparation, the court finds that denial totally lacking credibility. Respondent admitted in a letter, which he sent to a State Bar investigator, that he had informed Eckford that given her "unusual family circumstances and issues," he had stated that he "might need to consult with another attorney on some of the unknowns. . .in order to prepare this particular Family Trust." (Exh. 10, p. 2.) That statement demonstrates an awareness by respondent that the trust issues in Eckford's matter were not straightforward and that he was unable to handle them without the aid of an attorney with trust expertise. Moreover, most telling is the fact that respondent produced a trust that was woefully inadequate and failed to meet his

Respondent, however, did not deposit the \$6,000 in his CTA. In October and November 2010, respondent had at most \$20.02 in his CTA. (Exhibit 18, page 3.)

At the end of November 2010, Eckford's sister passed away in Scotland. Eckford, therefore, went to Scotland for two weeks. When she returned, Eckford phoned respondent at least twenty times; but, respondent did not return any of her calls. By March of 2011, Eckford was completely frustrated with respondent's lack of communication. She, therefore, sought legal advice from attorney Steven Swenson (Swenson). Swenson told Eckford that as she was unable to contact respondent, she should terminate his services.

On March 30, 2011, Eckford wrote a letter to respondent in which she informed him that she was terminating his services. In her letter, Eckford further instructed respondent to provide her with a complete copy of her file and an accounting of all services rendered by him. Additionally, she directed respondent to return the unused portion of fees that she had paid to him. (Exhibit 6.) Swenson also sent respondent a letter on March 30, 2011, informing respondent that Eckford had hired him to assist in the termination of respondent's services and the recovery of any unused fees paid to respondent. (Exh. 7.) Both Swenson and Eckford informed respondent in their letters to him that if the parties were unable to reach a resolution regarding the "unused" fees, Eckford would, among other remedies, file a complaint with the State Bar.

In April 2011, respondent met with Eckford and Swenson. As noted, it was during that meeting that respondent, for the first time, provided Eckford with an invoice and offered a return

client's needs. That inadequate trust document further corroborates the statement attributed to respondent and which he now denies having made, i.e., that he was inexperienced in drafting trusts and needed help. As noted, this court finds Eckford's statement that respondent requested that she provide him with \$6,000 to hire another attorney to help in drafting the trust to be credible.

of the fees, which he indicated were owing to her. That check that respondent provided was for \$1,400. At some point, thereafter, Eckford cashed that check.

At their April 2011 meeting, respondent also provided Eckford with a “joint” trust, which he had prepared. The trust document was entitled the “Carney-Eckford Family Trust.” (Exh. 5.) Eckford, however, clearly had not hired respondent to prepare a joint trust with Carney. She hired respondent because she feared that Carney’s assets might be seized and wanted respondent to find a way to protect her interest in the family home. Preparing a joint trust with the very person, i.e. Carney, whose assets were the subject of a bankruptcy proceeding and possible seizure by creditors could only put Eckford’s share in the family home at greater risk. To entwine Eckford’s interest in the family home with Carney’s could in fact undermine Eckford’s goal of preserving her interest in the family home. Instead of ensuring that Eckford’s interest in the home and her assets were discrete and maintained separately from Carney’s, respondent created a trust that did the opposite. The trust document that respondent prepared achieved, if anything, the opposite of Eckford’s stated goal in hiring respondent.

On June 22, 2011, Swenson and Eckford met with attorney Deborah Radin (Radin). Radin, a certified specialist in Estate Planning and Trust & Probate Law, advised Swenson and Eckford that the “joint trust,” which respondent had prepared, undermined the goal of protecting Eckford’s interest in the family home and preserving the home for the children. The “joint” trust prepared by respondent was the antithesis of what was needed. Simply put, as Radin testified, the trust prepared by respondent was confusing, made no sense under the circumstances, and failed to meet Eckford’s needs and goals. The court finds Radin’s assessment of the legal services provided to Eckford by respondent to be accurate. Respondent’s services were of no value to Eckford.

After meeting with Radin, Swenson sent a letter to respondent in which he requested that respondent reimburse Eckford at least \$19,000 of the fees she had paid to him.⁴ However, at the time of the request Eckford incorrectly believed that she only had paid respondent \$24,400. She later discovered and respondent agrees that Eckford had failed to include in her earlier calculation the fact that she had paid respondent an additional \$4,750 in July of 2010. (Exh. 18, p. 2; Exh. 19, page 2.) In sum, Eckford made the following payments to respondent for legal fees and costs:

<u>Date</u>	<u>Amount</u>	<u>Purpose</u>
May 7, 2010	\$10,000	Retainer
July 14, 2010	\$ 4,750	Costs for forensic accounting
August 12, 2010	\$ 4,500	Costs for forensic accounting
October 3, 2010	\$ 3,390	Pulling title paperwork & preparation and service of subpoena of IRA Records for forensic accounting
October 10, 2010	<u>\$ 6,000</u>	Advanced costs to hire attorney to prepare trust
TOTAL PAID TO RESPONDENT BY ECKFORD = \$28,640		

Thus, Eckford paid respondent a total of \$28,640 for legal services and costs.

In 2012, as respondent and Eckford could not agree as to the fees, if any, to which respondent was entitled and the amount of unearned fees, which respondent owed to Eckford, the parties participated in fee arbitration before the Santa Clara County Bar Association. As a result of the arbitration, respondent was ordered to pay \$13,400 to Eckford. In September 2013, respondent paid Eckford \$13,400 pursuant to the arbitration award. (Exhibit 20.) Additionally, as noted, *ante*, in April 2011, during a meeting with Eckford and Swenson, respondent gave

⁴ In his letter to respondent, Swenson requested a written response from respondent. Respondent did not provide a written response.

Eckford a check in the amount of \$1,400 for unearned fees. Thereafter, Eckford cashed the \$1,400 check. Thus, to date, respondent has reimbursed a total of \$14,800 to Eckford.

Conclusions

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

Count Two – (§ 6106 [Moral Turpitude-Misappropriation])

Rule 4-100(A) requires 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, except for limited exceptions.

It is alleged in the Amended NDC that the \$4,750 check that respondent received from his client, Eckford, was an “advanced cost” for the purpose of hiring a forensic accountant; and, therefore, respondent had a duty to maintain the \$4,750 in his CTA for the benefit of the client.

It is the burden of the State Bar to establish a charge of unprofessional conduct by convincing proof and to a reasonable certainty. All reasonable doubts must be resolved in favor of the attorney. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 438.)

Here, the record has failed to establish by convincing proof and to a reasonable certainty that the \$4,750 was an advanced cost received for the purpose of hiring a forensic accountant. In her testimony Eckford stated that she “assumed” that respondent would be hiring a forensic accountant and that respondent would not be the one doing the accounting. Respondent, on the other hand, testified that he had only indicated that a forensic accounting needed to be done and that he, thereafter, performed that accounting.

As the evidence is not clear and convincing that the \$4,750 was an advanced cost to be used to pay for a forensic “accountant,” and, resolving all reasonable doubts in respondent’s favor, the court does not find that respondent was required to deposit the \$4,750 into his CTA.

Accordingly, the court concludes that the State Bar did not prove by clear and convincing evidence that respondent violated rule 4-100(A), and, consequently, does not find that respondent misappropriated the \$4,750 in violation of section 6106.

Therefore, Counts One and Two are dismissed with prejudice.

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

In Count Three, the Amended NDC charges that on or about August 12, 2010, respondent received another check from Eckford, this time in the amount of \$4,500, to be used as an advanced cost to pay a forensic accountant; and, respondent failed to deposit and maintain the \$4,500 into his CTA for the benefit of the client in violation of rule 4-100(A).

The court finds that the State Bar failed to prove the allegations in Count Three for the same reasons as it found the allegations in Count One to be insufficient to support a finding of culpability. The evidence offered by the State Bar does not demonstrate clearly and convincingly that the funds were earmarked as a cost to hire an outside forensic accountant. As noted, Eckford admitted that she merely “assumed” that was the case.

As in Count One, the court does not find by clear and convincing evidence that the \$4,500 was an advanced cost to be used to pay for a forensic “accountant.” As such, respondent was not required to deposit the \$4,500 into his CTA. Rather, the court finds that respondent was entitled to receive the funds as payment for his services in performing the forensic accounting.

Accordingly, the court concludes that the State Bar did not prove by clear and convincing evidence that respondent violated rule 4-100(A). Count Three, therefore, is dismissed with prejudice.

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

The Amended NDC alleges that on October 3, 2010, respondent received a \$3,390 check from Eckford as an advanced cost to pay for a “forensic accountant” and to subpoena records.

Respondent did not deposit the \$3,390 into his CTA. Respondent, however, testified that he had not told the client that he would hire a forensic accountant, but, rather, informed her that a forensic accounting was needed. Respondent also testified that he performed the forensic accounting, incurring a \$3,390 Kinko's charge.

As in Counts One and Three, and for the same reasons as set forth in those counts, the court concludes that the evidence does not clearly and convincingly show that the \$3,390 paid by Eckford were to be used as an advanced cost .

Accordingly, for lack of clear and convincing evidence Count Four is dismissed with prejudice.

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

The Amended NDC alleges that on October 22, 2010, respondent received a check in the amount of \$6,000 from Eckford as an advanced cost to hire an attorney to prepare a trust and failed to deposit the \$6,000 advanced cost into his CTA for the benefit of the client.

Eckford credibly testified that respondent informed her that he was not an expert in trust preparation and had requested an additional \$6,000 to pay the costs of an attorney, other than himself, to help him complete the trust. (Exh. 3; see also, Footnote Three, *ante*.) Among other things, respondent's denial that he had informed Eckford that he needed the aid of an attorney with trust expertise is undercut by his May 24, 2012 letter in which he admitted to having told Eckford that he might needed to consult with a trust expert. (Exh. 10, p. 2.) That admission taken in conjunction with the additional evidence, discussed in Footnote Three, *ante*, lends credence to Eckford's statement that respondent had requested an advance of \$6,000 to cover the cost of hiring an attorney with trust expertise. The court finds respondent's denial that he requested Eckford to provide him with \$6,000 to cover the cost of hiring an attorney with trust

expertise to be incredible. The evidence is clear and convincing that respondent did request that Eckford advance \$6,000 to cover the cost of hiring a trust attorney to help him.

As such, the court further finds that the \$6,000 check that Eckford sent to respondent was intended to pay the costs of an attorney with trust expertise. Respondent, however, did not deposit the \$6,000 into his CTA.

By failing to deposit the \$6,000 advanced cost into his CTA on Eckford's behalf, respondent failed to deposit funds received for the benefit of a client into a bank account labeled, "Trust Account," "Client Funds Account," or words of similar import, in willful violation of rule 4-100(A).

Count Six - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

On May 7, 2010, Eckford retained respondent for the primary purpose of protecting her interest in the family home, which she held as a tenant in common with Carney. As found, *ante*, both respondent and Eckford understood and knew that Eckford's goal in hiring respondent was to find a way to prevent her interest in the family home from seizure by Carney's creditors – especially considering that Carney was having serious financial problems and had filed for bankruptcy. Thus, it was of paramount importance, that Eckford's assets and interest in the family home be maintained separately from Carney's assets. Respondent was supposed to prepare a trust that separated her interests/assets from Carney's.

Prior to October 22, 2010, respondent advised Eckford that after having completed his research, he determined that the proper way to protect the home was to create a trust. On March 30, 2011, Eckford, who had never been shown the forensic accounting, never been shown a trust, and never been provided with an invoice by respondent regarding any services performed, wrote

a letter to respondent terminating his services and requesting the return of unearned fees. In an April 2011 meeting, respondent, met with Eckford, and her new attorney Swenson, pursuant to a demand by Swenson. At that meeting, respondent, for the first time, produced a trust document entitled the “Carney-Eckford Family Trust.” Thus, respondent produced a backdated trust⁵ 11 months after being retained and after his employment was terminated, which trust, by its very name, achieved the antithesis of what it was intended to do.

Accordingly, this court has found, the trust prepared by respondent did not meet Eckford’s needs and the services he rendered were of no value to the client. Radin, a certified trust attorney, testified in this proceeding that the joint trust with Carney undermined Eckford’s stated goal of protecting her interest in the family home and keeping that interest out of the reach of Carney’s creditors. The joint trust prepared by respondent made no sense in terms of Eckford’s objective of protecting her assets from seizure by Carney’s creditors. A joint trust with Carney, if anything, was the antithesis of what was needed to achieve Eckford’s goals. Thus the trust and respondent’s services were of no value to Eckford.

By: (1) failing to do any work that furthered Eckford’s goal of protecting her interest in the family home from Carney’s creditors; (2) creating a trust that undermined the purpose for which he was retained; and (3) preparing a totally inadequate trust in terms of the client’s needs, respondent recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

⁵ Although Eckford was not shown the trust until April 2011, after she had terminated respondent’s services on March 30, 2011, the trust document was dated January 24, 2011. Similarly, at the April 2011 meeting, respondent presented Eckford with an invoice for the first time. It was dated December 23, 2010.

Count Seven - (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 received a total of \$28,640 in fees to be used to protect Eckford's interest in the family home from seizure by Carney's creditors. Respondent determined that the proper way to protect the home was to create a trust. However, the trust respondent prepared and the services performed were of no value to the client. As found, the services respondent rendered did not further the goal of protecting the family home. In fact the trust prepared by respondent and provided to Eckford, only after respondent's services were terminated, accomplished, if anything, the opposite of what it was intended to do.

In April 2011, respondent reimbursed \$1,400 to Eckford as an unearned fee, after respondent had hired an attorney, who stated in a letter to respondent that Eckford was contemplating proceeding with an administrative action, i.e., filing a complaint with the State Bar. (Exh. 7.) Respondent, however, did not reimburse any other part of the \$28,640 in unearned fees until more than two years after Eckford terminated his employment. It was not until September 2013, that respondent returned the \$13,400 to Eckford as the result of an order of the arbitration before the Santa Clara County Bar Association. To date, respondent has reimbursed a total of \$14,800 of the \$28,640 in unearned fees that he received from Eckford. Respondent still has failed to pay the \$13,840 in unearned fees ($\$28,640 - \$14,800 = \$13,840$).

By failing to promptly refund Eckford's unearned fees, respondent willfully violated rule 3-700(D)(2).

Aggravation⁶

Multiple Acts (Std. 1.5(b).)

Respondent has been found culpable of multiple acts of wrongdoing, including failing to deposit client funds in a trust account, failing to competently perform legal services, and failing to return unearned fees.

Intentional Misconduct, Bad Faith, Concealment, Dishonesty, Overreaching or Other Uncharged Violations of the Business and Professions Code/Rules of Professional Conduct (Std. 1.5(d).)

Rule 4-200 provides in pertinent part that a member shall not enter into a fee agreement for or charge or collect an unconscionable fee.

Here, respondent testified that he prepared a retainer agreement, which he and Eckford entered. Respondent claims, however, that he does not know what happened to the agreement and he is unable to find it. He also states that the agreement established that the fees were “task based,” and he would not charge Eckford a flat fee or charge her on an hourly basis. However, he ultimately did charge her at the rate of \$500 per hour. (Exh. 15.)

Rule 4-200(B) further provides in pertinent part that unconscionability of a fee “shall be determined on the basis of all facts and circumstances existing at the time the agreement is entered. . . .Among the factors to be considered are. . . the following: (1) The amount of the fee in proportion to the value of the services performed. . . [and] (5) The amount involved and the results obtained.

Here respondent’s December 23, 2010 invoice indicates that respondent billed Eckford for 46 hours of services performed at the rate of \$500 per hour. But, as noted, *ante*, respondent failed to include in the December 2010 invoice, a charge of \$4,750 relating to the forensic

⁶ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

accounting. Contrary to the December 23, 2010 invoice, Eckford was actually charged a total of \$28,640 for respondent's services.

Although respondent charged Eckford \$28,640, the services that he provided were of no value. The amount of the fee in relation to the value of the services was totally disproportionate. And the \$28,640 charged was excessive, given that the only tangible result, a trust document produced for the first time after his services were terminated, achieved, if anything, the antithesis of the stated goal of protecting Eckford's interest in the family home from Carney's creditors.

Accordingly, the court finds that the fee charged by respondent was unconscionable. By charging an unconscionable fee, respondent committed an uncharged violation of rule 4-200, which is a significant aggravating factor.

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

Respondent caused significant harm to his client. Eckford is a single mother with three children. Respondent's services were terminated on or about March 30, 2011. Thus, it has been well over three years that Eckford has been deprived of the balance of unearned fees that respondent has not returned.

Additionally, Eckford had to hire and pay for the services of two lawyers other than respondent as a result of his failure to perform and his failure to return unearned fees. She had to hire and pay for Swenson's services to help her terminate respondent's services and aid in the recovery of unused fees paid to respondent. And, then she had to hire and pay a trust attorney, i.e., Radin, to prepare a trust that would accomplish the goals for which Eckford originally had retained respondent. Thus, Eckford had to pay attorney fees to an additional two attorneys as a result of respondent's misconduct.

Lack of Insight/ Indifference Toward Rectification (Std. 1.5(g).)

Although respondent has stated in his testimony that he is sorry for the “concern” that he caused his client, that apology is not persuasive. Respondent has not acknowledged that his failure to competently perform services and his continuing failure to return the unearned fees in their entirety has harmed and continues to harm Eckford. Nor does respondent appear to grasp that Eckford is entitled to a refund of all fees paid in their entirety, since he did not obtain the result for which he was retained and did not provide Eckford with any service of value. (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 268; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 323-324.)

Failure to Make Restitution (Std. 1.5(i).)

While respondent has paid \$14,800 to Eckford, he is not entitled to mitigation for having done so, as it was under the pressure of an impending disciplinary proceeding. Moreover, the fact that respondent has yet to make restitution for the remaining \$13,840, which he was paid by Eckford, warrants consideration in aggravation.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent has no prior record of discipline over many years of practice. Respondent had been admitted to practice law in California for almost 22 years before the first act of misconduct in this matter. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [attorney’s practice for more than 20 years with an unblemished record is highly significant mitigation].)

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

At the time of respondent’s misconduct, he was going through an extraordinarily contentious divorce and custody battle. He had not seen his daughter for 13 months, which he described as the worst thing that ever happened to him. He sought professional help to deal with

the divorce. He participated in therapy for a period of eight to twelve months on a bi-weekly basis during that period. His ex-wife, who was on her seventh attorney, had been picketing outside respondent's place of business, as well as outside of the place of business of one of his clients. Respondent testified that he is on the mend and has established a family life, which does not include his ex-wife.

Respondent's misconduct occurred during the time he was experiencing extreme emotional and personal difficulties. Respondent's emotional/persona difficulties are accorded some weight in mitigation.

Good Character (Std. 1. 6(f).)

Respondent presented four witnesses who attested to his good character. Two of the witnesses, Douglass Kass and Fernando Rios did not have contact with respondent in the last two to three years.

Another, witness, John Vartanian(Vartanian), the chief attorney and director of Child Support Services in Santa Clara County, has known respondent since early 2010, as a result of the contentious child support matter regarding respondent's children. Vartanian remembers that, among other things, respondent's then wife was picketing outside respondent's house and was threatening to picket the workplace of one of respondent's clients. According to Vartanian, respondent's wife used visitation as a "tool," which caused respondent great anguish. Vartanian has found respondent to be straightforward and true to his word.

Edward McDonald (McDonald), an attorney for the last 29 years, is a friend of respondent. He describes respondent as a man of honesty and integrity, and an inspirational role model. McDonald was surprised at the charges filed against respondent, which charges he reviewed. He still considers respondent to be honest and trustworthy.

As noted, Fernando Rios (Rios), a retired electrician, has had no contact with respondent for the last two to three years. He has reviewed the charges against respondent and is surprised by them. He testified that the charges do not seem at all like respondent.

Douglas Kass (Kass), like Rios, has not been in touch with respondent for two years. Kass, a businessman, is aware of the charges against respondent. Kass testified that respondent has never given Kass a reason to distrust him. Kass finds that respondent's conduct, as described in the charges, is inconsistent with the person Kass knows respondent to be.

The testimony of respondent's character witnesses is entitled to only minimum weight in mitigation. As noted, two of the four witnesses have not been in contact with respondent in the last two to three years. [Testimony by three character witnesses was not entitled to significant weight in mitigation since it was not found to be an extraordinary demonstration of good character attested to by a wide range of references. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153,171.)]

Respondent testified on his own behalf regarding his pro bono activities, community and church activities. Among, other things, respondent testified that he has served as a judge pro tem for the Santa Clara County Superior Court. He also stated that he takes pro bono cases and does about 10-15 hours per month of pro bono work. Respondent also attested to the fact that he started the "Peachtree Cancer Initiative" in Georgia, where his fiancée lives. The "Peachtree Cancer Initiative" will provide non-medical needs for individuals undergoing cancer treatment. Respondent is trying to volunteer there 20 to 30 hours a month. The court finds that respondent's community service and pro bono activities warrant some weight in mitigation.

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; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.7(a) provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7(b) provides, in pertinent part, if aggravating circumstances are found, they should be considered alone and in balance with any mitigating factors. Standard 1.7(c) provides, in pertinent part, if mitigating circumstances are found, they should be considered alone and in balance with any aggravating factors.

Standards 2.2(b), 2.5(b), and 2.15 apply in this matter.

Standard 2.2(b) provides that suspension or reproof is appropriate for violations of rule 4-100.

Standard 2.5(c) states: “Reproof is appropriate for failing to perform legal services or properly communicate in a single client matter”

And, the most severe sanction is found at standard 2.15, which provides that suspension not to exceed three years or reproof is appropriate for violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of violations of rule 4-100(A), rule 3-110(A), and rule 3-700(D)(2). In mitigation, respondent has been admitted to the practice of law for almost 22 years before the misconduct, presented evidence of emotional difficulties that he was experiencing at the time of the misconduct, and some minimal evidence of good character and participation in pro bono activities, as well as evidence of community service. In aggravation, the court found uncharged misconduct based on respondent charging his client an unconscionable fee, as well as evidence of multiple acts of misconduct, significant harm to the client, a lack of insight by respondent regarding his wrongdoing, and a failure to make restitution.

The State Bar urged that respondent be disbarred based on its assumption that respondent would be found culpable on all counts, including Count Two, which included the most serious allegation, i.e., misappropriation of client funds in the amount of \$4,730. Because respondent has not been found culpable of misappropriation, the State Bar's recommendation of disbarment is extreme and inappropriate.

Respondent, on the other hand, argued that a reproof would be appropriate. However, considering the serious nature of respondent's misconduct and balancing the aggravating and mitigating circumstances, the court finds respondent's disciplinary recommendation inadequate to meet the objectives of attorney discipline.

After reviewing the case law, the court notes the lack of supporting authorities directly on point.

Ultimately, 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.) The court, having considered the nature, seriousness, and extent of respondent's misconduct and after balancing the aggravating and mitigating circumstances, concludes that a

two-year actual suspension is proper and necessary for the protection of the public, the courts and the legal profession.

Recommendations

It is recommended that respondent Steven Daniel Zavodnick, State Bar Number 135419, 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 probation⁷ for a period of three years subject to the following conditions:

1. Respondent Steven Daniel Zavodnick is suspended from the practice of law for a minimum of the first two years of probation, and respondent will remain suspended until the following requirement(s) are satisfied:
 - A. Respondent must make restitution to Marjorie Eckford in the amount of \$13,840 plus 10 percent interest per year from April 1, 2011 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Marjorie Eckford, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;
 - B. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
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.

⁷ 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.)

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. 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.
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.)

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 Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his suspension 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 requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) 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: November _____, 2014

PAT E. McELROY
Judge of the State Bar Court