

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case Nos.: **12-O-15089-RAH; 12-O-17147**  
) (Cons.)  
**REGINALD PEREZ MASON,** )  
)  
**Member No. 243934,** ) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
A Member of the State Bar. ) **ENROLLMENT**  
)

---

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

In this contested disciplinary proceeding, respondent Reginald Perez Mason is charged with nine counts of professional misconduct in two client matters. The charged misconduct includes: (1) failing to maintain client funds in a trust account; (2) committing acts of moral turpitude by misappropriation (\$74,000); (3) failing to notify client of receipt of funds; (4) making misrepresentations to clients; and (5) failing to pay client funds promptly.

This court finds by clear and convincing evidence that respondent is culpable of most of the alleged misconduct. Based on the serious nature and extent of culpability, as well as his mitigating and aggravating factors, this court recommends that respondent be disbarred from the practice of law.

**Significant Procedural History**

---

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

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on April 26, 2013 (case No. 12-O-15089). A second NDC was filed on May 15, 2013 (case No. 12-O-17147). Respondent filed his responses to the two NDCs on June 7, 2013.

On June 28, 2013, the two matters were consolidated.

A stipulation as to undisputed facts was filed on January 23, 2014. After the court granted several continuances due to conflicts of schedule, trial finally commenced on January 21, 2014. A seven-day trial was held on January 21-23; February 24 and 25; and April 10 and 18, 2014. The State Bar was represented by Deputy Trial Counsel Anand Kumar. Attorney Edward O. Lear represented respondent. On April 21, 2014, 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 August 17, 2006, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 12-O-15089 – The Hastings Matter**

##### **Facts**

In 2009, a dispute arose between Juan Hastings (Hastings) and his roommate at the time, Anthony Norris (Norris), over ownership of their apartment. Hastings retained respondent on February 27, 2009, by entering into a retainer agreement for a partition lawsuit and calling for a flat fee of no more than \$15,000. The agreement further provided that if the fees were less than that amount, the client would have to pay only the actual amount of the fees so incurred, calculated at the rate of \$300 per hour.

On March 20, 2009, respondent filed the complaint on Hastings's behalf in the matter entitled *Juan Hastings v. Anthony Norris*, Los Angeles County Superior Court, case number

BC410137 (the partition action). During the ownership dispute between Hastings and Norris, in or about 2009, a fire occurred at the apartment causing damage.

By a complaint in intervention served July 2, 2009, in the partition action, Charles Martin, in his capacity as Administrator of the Estate of Vivian A. Tullis, sought to recover a judgment in the amount of \$61,288.25 from the first funds recovered in the partition action (the intervention cross-action). In addition, Charles Martin sought damages for fraud. The record is unclear as to whether the intervention cross-action was ever filed.

To resolve a lawsuit regarding the building damage caused by the fire, on June 18, 2010, Nationwide Insurance Company, the insurance carrier, issued a settlement check for \$141,568.74 to the Los Angeles County Superior Court (Court) to disburse between Hastings and Norris as co-owners. On June 28, 2010, Nationwide filed an interpleader complaint in the matter entitled *Nationwide Insurance Co. v. Antonio Norris et al.*, Los Angeles County Superior Court, case number BC440635, against Norris and Hastings to determine who should receive the settlement funds being held by the Court (the interpleader action). Respondent represented Hastings in the three matters: the partition action, the intervention cross-action and the interpleader action.

On or about June 29, 2010, the Court deposited the settlement check in anticipation of disbursing the funds appropriately between the parties. Hastings and respondent were aware of this resolution, and discussed it in August 2010. In an email sent on August 9, 2010, respondent reminded Hastings that he had been working on three cases for him.<sup>2</sup> He also stated in the email that this would result in an increase in costs and fees beyond that which was contemplated in the

---

<sup>2</sup> Respondent was referring to the partition action, the interpleader action, and the cross-action for intervention and for fraud brought by Charles Martin. The State Bar questions the *bona fides* of this email. However, since Hastings did not testify, we are left with the uncontradicted testimony of respondent that this email was accurate, and was, in fact, sent. Any reasonable doubts must be resolved in the respondent's favor. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 438; *Young v. State Bar* (1990 ) 50 Cal.3d 1204, 1216.)

original retainer agreement. Respondent further warned that "...this matter needs to be resolved sooner rather than later before all the money is eaten up in legal fees."

On October 27, 2010, the insurance carrier's counsel requested that the partition action and the interpleader action be deemed related cases. On or about November 23, 2010, Hastings's case against Norris settled and both parties agreed to accept equal portions of the Nationwide settlement funds. On December 2, 2010, the Court formally granted the request and ordered both cases to be considered related.

Respondent also assisted Hastings with another lawsuit involving Hastings's brother, Leonard Conner. In October and November 2010, Hastings contacted respondent and asked that he consider representing Conner in a medical malpractice case. Conner had asked other attorneys to represent him, but each had declined. Respondent quoted a minimum fee of \$50,000 to represent Conner because of the high risk nature of the litigation. Hastings agreed to assist his brother and expressly allowed respondent to take the funds out of the settlement check from the partition action. Respondent prepared the case, gathered medical evidence, and met with Conner, for a total of 30-40 hours. After respondent spent about 135 hours on the Conner matter, a dispute arose between Hastings and respondent regarding the Conner malpractice litigation, and Hastings discontinued funding his brother's case.

### **Funds Deposited**

On January 10, 2011, the Court ordered the disbursement of the funds pursuant to the settlement terms by payment of \$69,284.37 to each party, with an additional payment of \$3,000 payable to the insurance carrier to recover costs. Respondent received a check for \$69,284.37, payable to respondent and Hastings. Respondent advised Hastings that these funds were received and provided Hastings with a copy of the Amended Order for Disbursement of Deposited Funds. These funds were deposited on January 25, 2011, to respondent's trust

account, Wells Fargo Bank account number xxxxx2879 (respondent's CTA). The balance in respondent's CTA immediately before this deposit was \$5.68.<sup>3</sup>

### **Respondent's Withdrawals from CTA**

Over the next few months, respondent withdrew a large portion of the \$69,284.37 deposited. The only deposits made between January 25 and February 17, 2011, were a \$10,000 deposit referring to "Virgil R. Everege" and a \$4,500 deposit with no identification on February 16, 2011. On February 17, 2011, the balance in respondent's CTA fell to \$153.05.

Many of these withdrawals during this period were made in a Wells Fargo Bank branch in round numbered increments. In other cases, checks were drawn, payable to payees unrelated to the Hastings matter. Aside from the unidentified withdrawals made in a branch/store, checks paid out to payees unrelated to the Hastings matter during this period totaled \$25,740, as follows:

<i>Date</i>	<i>Check No.</i>	<i>Amount</i>	<i>Payee</i>
January 18, 2011	1209	\$ 1,500	Donna Dill (Ruby Fry Trust)
January 21, 2011	1205	\$20,000	Leroy Matthews
February 10, 2011		\$ 4,000	Joy Everly Estate Distribution
January - February 2011		<u>\$ 240</u>	Unrelated payees
<i>Total Amount of Unrelated Withdrawals</i>		<i>\$25,740</i>	

### **Hastings's Lawsuit Against Respondent**

On September 21, 2011, Hastings filed a lawsuit against respondent alleging fraud, breach of fiduciary duty, breach of contract, professional negligence, breach of oral contract, and unjust enrichment. He was represented by attorney Justin H. Sanders. Hastings demanded

---

<sup>3</sup> The CTA records indicate that there was a negative balance before this deposit; however, the entry causing that negative balance was an item identified as "J Hastings Fees." Further, the \$69,287.37 deposit was identified as a "Deposit to Correct Backdate." The record did not clarify the meanings of these terms. Further, the State Bar does not contend that the balance was negative. As such, because of the terms' ambiguity and the State Bar's position, the court finds that the balance immediately before the January 25 deposit was not negative, but was \$5.68.

\$80,000 in damages. The parties entered into settlement discussions, and respondent agreed to pay installment payments. Respondent paid Hastings the settlement funds in full by October 22, 2012.

### **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) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

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

In counts one and two, the State Bar claims that respondent both failed to maintain funds in his CTA and misappropriated those funds. It bases these allegations on a theory that any amount over the \$15,000 fixed fee set forth in the retainer agreement for the partition action that was withdrawn from the CTA was taken improperly. As such, the State Bar concludes that respondent misappropriated \$54,284.37. This theory rests, however, on the assumption that respondent did not earn any fees in any of the other cases where he represented Hastings or Hastings's brother, Conner.

The unrebutted testimony at trial was that respondent did substantially more than represent Hastings in the partition action. As noted above, Hastings agreed to hire respondent in his two other litigation matters pending, plus his brother's medical malpractice action, and he spent a great deal of time in these other cases.

Nevertheless, even accounting for the time respondent testified he spent on Hastings's three litigation matters and on the Conner matter, the record still reflects inappropriate transfers

of Hastings's funds to matters unrelated to either the Hastings or the Conner matters. As noted above, between January 25 and February 17, 2011, a total of \$25,740 was distributed to Leroy Matthews; Donna Dill, regarding the Ruby Fry Trust; the Joy Everly Estate; and others – all of whom were unrelated to Hastings or Conner, or their litigation.

Therefore, the record reflects that respondent failed to maintain \$25,740 of Hastings's funds in the CTA in willful violation of rule 4-100(A) and had thus misappropriated \$25,740 of those funds in willful violation of section 6106.

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

***Count Four - (§ 6106 [Moral Turpitude - Misrepresentation])***

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.

Counts three and four are based on the premise that respondent did not advise his client that he had received the settlement funds in the partition action, and in fact, concealed the receipt of these funds from the client. Based on innuendo and hearsay, the State Bar reveals its tenuous proof by presenting only the hearsay testimony of Justin Sanders, Hastings's attorney, and its arguments in its closing brief that "Respondent's actions *strongly suggest* that Respondent did not timely notify Hastings of the receipt of the settlement funds and concealed the status of the funds"; and that because of the small amount in his CTA, respondent had a "*clear motive*" for not informing Hastings. Finally, the State Bar claims that respondent's entry into a settlement agreement with Hastings to resolve their dispute by repayment of the settlement funds plus an additional \$30,000 was "*in essence*," an agreement to keep Hastings from reporting respondent to the State Bar. (Italics added.) The State Bar concludes that "[a]ll of these facts demonstrate that Respondent did not timely inform Hastings that he had received Hastings' settlement funds

and that he concealed the receipt of the funds and misrepresented the status of the funds to Hastings.”

Hearsay evidence is normally admissible, but over timely objection, it will not be sufficient in itself to sustain a finding without corroborating evidence. (Rule 5.104(D) of the Rules of Procedure of the State Bar.) Much of what the State Bar relies on is the hearsay testimony of attorney Sanders as to what was told to him by Hastings. No hearsay objections were made to seek to preclude this testimony. Rather, objections as to attorney-client privilege were made by respondent. Many of these were overruled because Hastings waived the privilege by participating in conversations with respondent and Sanders. Despite the lack of timely hearsay objection, however, the court finds the testimony of respondent more reliable than that of Hastings, through his derivative spokesperson, Sanders. The court makes this finding based on the communications between Hastings and respondent regarding the payment and the fact that Hastings received the Amended Order for Disbursement of Deposited Funds.

Based on the foregoing, the court finds that there was insufficient clear and convincing evidence of respondent’s failure to notify his client of receipt of the funds and his alleged misrepresentation to his client by failing to inform Hastings as to his receipt of the funds. As such, counts three and four are dismissed with prejudice.

***Count Five - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])***

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney’s possession which the client is entitled to receive.

In part, the allegations in count five assume that respondent had an obligation to pay \$54,284.37 to Hastings because, it is alleged, these were client funds. As noted above, however, this fails to consider the work performed by respondent on behalf of Hastings or Conner on cases

other than the partition action. In fact, he spent about 135 hours on the Conner matter and represented Hastings in the intervention cross-action and interpleader actions. Nevertheless, the court has found that respondent failed to maintain \$25,740 of Hastings's money, and did not repay those funds until well after the date they were required to be paid.<sup>4</sup> As such, the State Bar has proven by clear and convincing evidence that respondent failed to promptly pay or deliver these funds, in willful violation of rule 4-100(B)(4).

### **Case No. 12-O-17147 – The Dean Matter**

#### **Facts**

On October 27, 2007, Hazel Dean was appointed by the Los Angeles County Superior Court as the administrator of the estate in the matter entitled *Estate of Elizabeth Hargis*, Los Angeles County Superior Court, case number BP 106078 (the “estate”). Dean hired respondent to represent her as administrator of the estate. Dean agreed that respondent would be entitled to collect \$9,200 as his legal fees when the probate closed.

On November 28, 2008, Dean hand-delivered to respondent a cashier's check in the amount of \$48,500 representing funds belonging to the estate to be held in trust with the understanding that respondent would disburse the funds to the appropriate creditors of the estate to pay off various fees and expenses incurred by the estate. These expenses included an outstanding Medi-Cal bill, credit card bills, the administrator's fee, and a mortgage payoff for real property owned by the estate located in Los Angeles (the estate home).

On December 4, 2008, respondent deposited the \$48,500 cashier's check in respondent's CTA. Immediately before that deposit, the balance in the CTA was \$35.53.

---

<sup>4</sup> The exact date that the \$25,740 was paid is unclear from the record. Respondent began making periodic payments to Hastings, and had paid more than \$54,000 under a settlement agreement by October 22, 2012.

On December 8, 2008, without Dean's knowledge or consent, respondent unilaterally made an electronic wire transfer of \$9,200 from his CTA for his legal fees.<sup>5</sup> Between December 8, 2008, and January 1, 2009, respondent issued several checks and made several electronic wire transfers drawn from the estate funds in his CTA. None of the checks or wire transfers concerned the fees and expenses of the estate. On December 30, 2008, before any disbursements of the estate's funds to the creditors of the estate, to Dean, or to anyone else on behalf of the estate, the balance of respondent's CTA fell to \$21.78. Respondent failed to maintain \$48,478.22 of the estate's funds in respondent's CTA as requested by Dean and earmarked for the creditors of the estate.

#### **Dean's Purchase of the Estate Home**

During the course of the probate of the estate, Dean sought to purchase the interest in the estate home owned by her brother, Eural Lauderdale. However, Dean and Lauderdale were not initially able to reach an agreement on its sale. Later, however, on August 3, 2012, Dean and Lauderdale entered into a settlement agreement which stated that Dean would pay Lauderdale \$77,000 and Lauderdale would deed his interest in the estate home to Dean. The agreement called for an initial payment by Dean to be made into an escrow. In accordance with the settlement agreement, on August 22, 2012, Dean delivered a cashier's check in the amount of \$20,000 to Palm West Escrow (PWE).

On August 23, 2012, Dean requested that respondent deliver the estate's funds remaining after payment of estate expenses to PWE. As of August 23, 2012, the estate's funds in respondent's CTA should have been at least \$17,347, which respondent was to contribute to

---

<sup>5</sup> This was an inappropriate transfer, not only because it was made unilaterally by respondent without notice to his client, but also because the fees in this probate matter had not yet been adjudicated as payable by the probate judge.

escrow to allow the purchase and sale of the estate home between Dean and Lauderdale to be completed. However, between August 23 and September 20, 2012, the balance in respondent's CTA was \$10.82.

On September 12, 2012, Dean delivered two cashier's checks in the amounts of \$23,367.09 and \$18,528.11 to PWE. Accordingly, by September 12, 2012, Dean had delivered \$61,895.20 to PWE for the close of escrow on the estate home. Later that day, an escrow officer for PWE emailed respondent asking about the status of the remaining escrow funds and whether the funds would be delivered before September 21, 2012. Respondent received the email and sent a response email later that same day to the PWE escrow officer and Dean stating, "Got it. Yes."

Several emails were exchanged among PWE, respondent and Dean or her attorney, Joel Pipes. In each email, respondent was questioned as to when he was going to forward the \$17,347 he was to be holding. The email correspondence became increasingly urgent, when the October 1, 2012 deadline for closing escrow was approaching and no money had been received from respondent. In each email, respondent provided an excuse as to why he had not paid the funds into escrow. On October 1, 2012, Dean sent respondent a fifth email asking about the status of the escrow balance. Respondent received the email and responded by email the same day stating that he had spoken to Lauderdale's counsel on September 30, 2012, regarding extending the closing date and stating that there was a "simple misunderstanding as to the close date." In fact, this was not true. Respondent knew the proper closing date and simply did not have the funds to meet that deadline. On October 1, 2012, the balance in respondent's CTA was \$25.82.

Finally, on October 4, 2012, respondent made an electronic wire transfer of \$17,200 to PWE from his CTA. Dean paid PWE the remaining \$147. By making this payment, respondent has fully reimbursed the estate of all funds.

### **Conclusions**

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

Respondent stipulated that he had failed to maintain client funds in a trust account at all times. Therefore, by failing to maintain \$48,478.22 of the estate's funds in respondent's CTA on the estate's behalf, respondent failed to maintain the balance of funds, in willful violation of rule 4-100(A).

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

Respondent stipulated that by gross negligence he had caused Dean's funds to be misappropriated. Therefore, respondent, with gross negligence, misappropriated \$48,478.22 of the estate's funds that he was to hold in trust until paid to the estate's creditors, and as such, respondent committed an act involving moral turpitude by gross negligence, in willful violation of section 6106.

#### ***Count Three - (§ 6106 [Moral Turpitude - Misrepresentation])***

By repeatedly concealing from Dean the fact that he did not maintain the funds in his CTA and by misrepresenting the reasons that he was not able to timely deliver the \$17,347 to the escrow company, respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

#### ***Count Four - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])***

By failing to deliver the estate balance of \$17,347 to PWE until October 4, 2012, after his client requested that he do so on August 23, 2012, respondent failed to pay promptly a client's funds, in willful violation of rule 4-100(B)(4).

## **Aggravation<sup>6</sup>**

### **Multiple Acts of Wrongdoing (Std. 1.5(b).)**

Respondent's multiple acts of misconduct are an aggravating factor. He failed to maintain client funds in the CTA, misappropriated client funds, failed to pay client funds promptly, and committed acts of moral turpitude by concealment.

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

Respondent's misappropriation - \$74,218, from Hastings (\$25,740) and Dean (\$48,478) - caused significant harm to the clients. His failure to promptly pay Hastings his share of the settlement funds until more than a year later harmed Hastings. Moreover, his delayed payment of over \$17,000 to PWE resulting in the delay of the close of escrow also harmed Dean.

## **Mitigation**

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

Standard 1.6(a) provides that absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious, may be considered as mitigating factor.

Respondent was admitted in 2006 and his misconduct began in 2008. His lack of a prior record in two years of practice is clearly not a mitigating factor. And his present wrongdoing is extremely serious.

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

At the time of the misconduct, respondent was suffering from severe emotional difficulties. Respondent had just completed a civil trial in June 2008 in which he was ordered to pay a \$1.1 million judgment. While he was able to appeal and overturn this judgment, the appeal

---

<sup>6</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, effective January 1, 2014.

process occurred over a three-year period, during the time of some of the instant misconduct. Between 2008 and 2011, he became extremely depressed and was suicidal. He credibly testified that he was in a “continual fog” as a result of the judgment. He began drinking and as a result, began having marital problems. As a result, his depression continued beyond the Court of Appeal opinion, while he worked on resolving his marital issues and his drinking problem.

Respondent received treatment for his condition during this period from a psychiatrist at the VA hospital in Long Beach and he voluntarily attended several Lawyer Assistance Program meetings offered through the State Bar. He also relied on his strong religious background to seek strength to recover from his emotional difficulties.

Respondent's emotional and personal difficulties are given some weight in mitigation.

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

Respondent cooperated with the State Bar by stipulating to facts and in stipulating to culpability for failing to maintain the funds and misappropriation by gross negligence in the Dean matter. This saved valuable trial time and benefited the State Bar and the court.

**Good Character (Std. 1.6(f).)**

Respondent presented three witnesses and one declarant who attested to his good character. Among those testifying positively on his behalf was Judge Carla Garrett. Judge Garrett was a former Deputy Trial Counsel for the State Bar. She came to know him from his representation of her ex-husband in some real estate matters. She was aware of the misconduct and felt that he should receive discipline. She also stated that he no longer suffered from a dependence on alcohol and that he had become much more active in his church. Her background is particularly valuable in evaluating his good character, since she has extensive experience in the attorney discipline system.

In addition, others spoke of his good character. Leonard Conner still retains respondent and is satisfied that he is a good attorney who is honest and hard-working. He unequivocally endorses respondent and supports him in this proceeding. Because of his connection to Hastings, Conner has extensive knowledge about the alleged misconduct in at least one of the matters in this case. Despite that knowledge, Conner spoke very highly of respondent's good character.

Pastor Artis Glass, Jr., is the pastor of the Leap of Faith Community Church in Inglewood, California. He has been in the ministry for over 18 years. He often refers respondent to parishioners and considers respondent a person of excellent moral character. He was aware of respondent's drinking problem and had ministered to him during that period. He agreed that he was in a "fog" during this time in his life, but sees that he has emerged as an honest person who exhibits true remorse. He believes that his misuse of funds was not intentional but by gross negligence. He feels that now, respondent is not a threat to the public, and he still refers clients to respondent.

All of the witnesses were aware of the charges facing respondent, and were aware that he had admitted to at least some of the more serious charges. Their testimony is entitled to minimum weight in mitigation. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.)

In 2009, respondent became active in Feed the Children by encouraging those of his clients who could afford to do so to make a contribution to the organization. He also volunteered in the Mesereau Free Legal Clinic and the Mesereau-Epharim-Villaraigosa Free Legal Clinic at Brookins CME Church. Respondent's community service is given some weight in mitigation.

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

Respondent expressed sincere remorse during the trial of this action, and has repaid all sums misappropriated. He claimed that he has since improved his office management practice

by setting in place new procedures and policies. Although he did not take prompt objective steps to demonstrate spontaneous remorse, his recognition of wrongdoing is accorded some weight in mitigation.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertan* (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.)

Standard 1.7(a) provides that, when 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.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious

harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, the standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.1(a), 2.2(a), 2.2(b), and 2.7 apply in this matter.

Standard 2.1(a) provides that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Standard 2.2(a) provides that actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.

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

Finally, standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

The State Bar urges that respondent be disbarred from the practice of law for misappropriation under standard 2.1(a).

Respondent agrees that a period of actual suspension is appropriate but not disbarment, citing *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 and *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113 in support of his arguments.

However, respondent's misconduct is far more serious than that of the attorneys in *Bouyer* or *Bleecker*. *Bleecker* provides guidance where misappropriation was of a relatively small amount for a relatively brief time, arising out of the attorney's misuse of his trust account as an operating account and the offense did not involve intentional dishonesty. The attorney who had just begun practicing law was actually suspended for 60 days with a two-year stayed suspension and two years' probation for commingling, misappropriation, and using his trust account to avoid a tax levy. His misconduct occurred more than five months and mitigation included no client harm, change of business practices, and no prior or a subsequent record of discipline.

In *In the Matter of Bouyer, supra*, 1 Cal. State Bar Ct. Rptr. 404, the attorney was actually suspended for six months and until he completed restitution. His misconduct primarily consisted of gross negligence in handling trust funds in four matters. The attorney was in practice for six years prior to the commencement of misconduct, the misconduct lasted approximately one year and he made restitution voluntarily to clients before State Bar proceedings were brought. Most importantly, he was already in the process of implementing better office management procedures when the misconduct was discovered.

Here, respondent's misconduct occurred over a course of almost four years from December 2008 through October 2012. Unlike *Bleecker*, he had misappropriated a large sum – more than \$74,000 – and his misconduct involved dishonesty and significant client harm. And unlike *Bouyer*, his misappropriation was not due to office mismanagement. In the *Hastings* matter, respondent purposely distributed client funds to third parties, unrelated to *Hastings*. And in the *Dean* matter, he concealed from his client that he did not have the entrusted client funds to pay the escrow company.

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

An attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Consequently, respondent had flagrantly breached his fiduciary duties by violating rules 4-100(A) and 4-100(B)(4) and section 6106.

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 misappropriation of client funds is a grievous breach of an attorney’s ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. Therefore, in all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

In *Grim v. State Bar, supra*, 53 Cal.3d 21, the attorney misappropriated over \$5,500 of client funds and did not return the funds to the client until after almost three years later and after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing. The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties which arose out of a business venture were neither unforeseeable nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court therefore did not

find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors. He was disbarred.

Moreover, under standard 2.1(a), lesser discipline than disbarment is not warranted because the amount misappropriated is not insignificantly small and the most compelling mitigating circumstances do not clearly predominate. After considering the evidence, the standards, other relevant law, and above all, his misappropriation of over \$74,000, the court concludes that respondent's disbarment is appropriate to protect the public and preserve public confidence in the legal profession. Accordingly, the court so recommends.

### **Recommendations**

It is recommended that respondent Reginald Perez Mason, State Bar number 243934, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

### **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.

### **Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be

effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August \_\_\_\_\_, 2014

---

RICHARD A. HONN  
Judge of the State Bar Court