

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-O-16459-RAP
)	
RAYMUNDO PACELLO, JR.,)	
)	DECISION
)	
Member No. 207694,)	
)	
A Member of the State Bar.)	
_____)	

Introduction¹

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charges **RAYMUNDO PACELLO, JR.**, (respondent) with eight counts of misconduct in one client matter. The charges include not performing with competence; moral turpitude; commingling personal funds in his client trust account; appearing for a party without authority; seeking an agreement not to file a State Bar complaint; not rendering an appropriate accounting of client funds; not paying client funds promptly; and not releasing a client's file.

Respondent is found culpable on six of the counts. After considering the facts and the law, the court recommends, among other things, that respondent be suspended for three years, stayed, and that he be placed on probation for three years on conditions, including actual

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.

suspension for two years and until he complies with standard 1.2(c)(1), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.²

The State Bar was represented by Anthony J. Garcia. Albert W. Arena represented respondent.

Significant Procedural History

The State Bar filed the notice of disciplinary charges against respondent on October 29, 2013, to which he filed a response on December 3, 2013.

Trial in this matter was held on May 14-15, 2014. The matter was submitted for decision on May 15, 2014.

Findings of Fact

Respondent was admitted to the practice of law in California on June 9, 2000, and has been a member of the State Bar of California since that date.

Case Number 12-O-16459 – The Edwards Matter

Facts

On August 6, 2010, James Parziale hired respondent as an independent contractor to work on personal injury cases in Parziale's office. Respondent's compensation was \$5,000 per month and 20% of attorney fees earned on the cases respondent was assigned to work by Parziale.

On June 17, 2011, Esther Edwards hired Parziale's law firm to represent her in a personal injury matter where the at-fault defendant was represented by Allstate Insurance.

Parziale's law firm accepted Edwards' personal injury matter on a contingent fee basis and assigned the matter to respondent under Parziale's supervision.

Respondent informed Parziale in February 2012 that he was leaving the firm.

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

On March 1, 2012, Parziale sent respondent an email confirming his understanding of their previous day's conversation about respondent's leaving the law firm. He listed the cases, including Edwards', that respondent would continue to work on as an associate with Parziale's law firm after respondent's departure. Parziale agreed to pay the costs in the Edwards matter. Respondent received the email and testified that, although he did not agree with its contents, he did not answer it.

On March 23, 2012, Parziale sent a letter to Anthony Moreno, a claims representative for Allstate Insurance assigned to the Edwards matter, informing him that he had an attorney's lien on the Edwards matter for costs and legal services. Parziale notified Allstate of his lien in order to protect his fee because respondent had told him that he would be substituting Parziale out in some of the cases.

In April 2012, respondent left Parziale's law firm and Edwards agreed to have respondent represent her in the personal injury matter.

On May 14, 2012, respondent sent Allstate a letter stating that he represented Edwards in the personal injury matter.

On June 20, 2012, Edwards' case settled for \$250,000. On June 28, 2012, respondent sent Moreno an executed release of all claims.

On July 5, 2012, Allstate prepared a \$250,000 settlement check made payable to Esther Edwards, Raymond Pacello and the Law Office of James Parziale. Although the mailing address on the check was that of Parziale's law office, it was not mailed there. Instead, it ended in respondent's possession.

On July 3, 2012, Parziale became aware that the Edwards matter had settled. On July 5, 2012, he sent respondent an email informing him of the basis of his lien in the Edwards matter.

After leaving Parziale's employment, respondent opened a law office in his San Diego loft residence. At the time, he had two employees. At about the same time respondent received the settlement check in the Edwards matter from Allstate, respondent hired Vanessa Albert as an assistant.

According to Albert, sometime in mid-July 2012, respondent approached her in his office/loft and asked her to find a document containing Parziale's signature. Albert did so and recalls practicing writing Parziale's signature in a notebook. Albert testified that she does not recall writing Parziale's name on the back of Edwards' settlement check but admits that the signature is her handwriting. Although Albert cannot recall respondent ordering her to sign Parziale's name on the check, she can think of no other reason for her to have done so.³

The court finds that Albert's testimony is not credible. The only reliable conclusion from it is that she signed Parziale's name to the Edwards settlement check.

The State Bar has charged respondent with committing an act of moral turpitude for his alleged actions that led to Albert's endorsing Parziale's name on the settlement check. Although there is circumstantial evidence that respondent may have done so, without more, there is not clear and convincing evidence of such misconduct.

Respondent denies ordering Albert to sign Parziale's name to the Edwards settlement check and does not recall asking Albert to find a document with Parziale's signature.

³ Albert's testimony regarding the endorsement of the settlement check differs from her statement to a law enforcement investigator on December 17, 2012. Under a grant of immunity, Albert at first told the investigator that she could not recall any conversation about the check or if it was her handwriting. After being shown a copy of the check and told she would have to supply a handwriting exemplar, Albert told the investigator that the signature of Parziale on the settlement check was her handwriting but that she did not recall signing it.

In this matter, Albert testified during direct examination that respondent told her to write Parziale's signature on the Edwards settlement check. During cross-examination, she could not recall respondent ordering her to sign Parziale's name to the Edwards settlement check and assumed that respondent must have told her to sign the check or she would not have done so. Based on Albert's conflicting statements and testimony in this matter, the court is unable to determine whether respondent ordered Albert to sign Parziale's name on the Edwards settlement check or if respondent told Albert to locate a document containing Parziale's signature.

Respondent testified that after receiving the Edwards settlement check from Allstate he asked an unknown female employee, or maybe Alberts, to arrange to have Parziale endorse the check. Respondent stated that the unknown employee worked for him for a short period of time and he does not recall her name. Respondent also stated that, when he deposited Edwards' settlement check, it was his impression that Parziale had endorsed it. Respondent claims no knowledge concerning who signed Parziale's name on the settlement check before it was deposited.

The court finds that respondent's self-serving testimony that he assigned an unknown employee to arrange for Parziale's endorsement of Edwards settlement check lacks credibility.

Respondent signed Edwards' name on the back of the settlement check without her authorization or permission to do so. Edwards was unaware that he had received the settlement check. Respondent's testimony that he had implied authorization pursuant to his retainer with Edwards and by oral authorization from Edwards to sign her name to the back of the settlement check lacks candor and is without merit. There is nothing in his retainer agreement with Edwards that authorizes respondent to sign her name on any document and she never gave respondent oral permission, implied or otherwise, authorizing him to do so. An attorney acts with moral turpitude when he endorses a client's signature to a check and deposits it without the client's consent. The authority to endorse negotiable instruments payable to the client must be expressly granted. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 790, 793-795.)

On July 16, 2012, respondent opened a client trust account at US Bank and deposited Edwards' \$250,000.00 settlement check.

The next day, July 17, 2012, after learning that respondent possessed Edwards' settlement check, Parziale sent respondent a letter about his lien in the Edwards matter and suggested he obtain two separate checks from Allstate, one for the client and one made payable

to both respondent and Parziale for attorney's fees. The letter also informed respondent that Parziale would not sign the settlement check as issued. Respondent received the letter and was put on notice that Parziale was not going to sign the settlement check. Respondent did nothing to ascertain if Parziale's endorsement of the settlement check was genuine.

Respondent also did not contact Parziale to inform him that he had already signed the settlement check. According to respondent, he did not respond to Parziale because Parziale was not entitled to any fee or only a minimal amount.

Parziale was out of the country in early August 2012 when he was notified by an office associate that respondent had deposited the Edwards settlement draft. On August 22, 2012, Parziale sent respondent a letter informing him that Parziale had not signed the Edwards settlement check but that his signature was forged. Parziale demanded immediate payment of his attorney lien in the amount of \$55,555.55 plus costs of \$701.98.

Although respondent received Parziale's August 22, 2012, letter, he took no steps to investigate the forgery allegation. Respondent avers that he did not believe Parziale's allegation to be meritorious and that the onus was not on respondent to do a serious investigation. He further asserts that an investigation would not lead anywhere since Parziale was not due any fees.

Parziale also notified US Bank, where respondent's CTA was located, about the forged signature on the Edwards' settlement check. The bank froze respondent's CTA. Respondent was able to have US Bank re-open his account the day after he learned the account was frozen.

On August 24, 2012, Parziale sent respondent another letter informing him that his signature was forged on the Edwards settlement check and asking for immediate payment of his attorney's lien. Respondent received the letter.

Parziale also filed complaints against respondent with law enforcement and the State Bar about this matter.

On August 29, 2012, respondent sent Parziale a check for \$701.98 for costs in the Edwards matter. Parziale received and cashed it.

In September and October 2012, respondent and Parziale considered mediating the fee dispute in the Edwards matter. To that end, on October 9, 2012, Parziale sent respondent a letter informing him that Jon Brenner, the suggested mediator, called him regarding the proposed mediation and stated that respondent had changed his mind and would not mediate the fee dispute unless Parziale withdrew the State Bar complaint against respondent. Parziale informed respondent that he would not withdraw the State Bar complaint but would still participate in the suggested mediation.

The State Bar argues that Parziale's October 9, 2012, letter to respondent is evidence that respondent sought to have Parziale withdraw a State Bar complaint filed against respondent but did not call Brennan to testify as to any conversation he may have had with respondent concerning a possible mediation and the withdrawal of a State Bar complaint filed against him. Accordingly, the court finds that there is not clear and convincing evidence that respondent sought to have Parziale withdraw his State Bar complaint against respondent about the Edwards settlement matter.

Also in October 2012, Parziale submitted a forgery claim concerning the Edwards settlement check to the issuing bank, Bank of America.

On October 26, 2012, US Bank again froze the funds in respondent's CTA.

Between late July and October 26, 2012, respondent's CTA was open and respondent could have paid Edwards her share of the settlement funds and negotiated the medical liens on her behalf. Respondent did not. Respondent testified that he could not finalize the settlement amounts until he finalized Louis Edwards' uninsured motorist loss of consortium claim against Edwards' insurance carrier. This assertion, however, is not credible as the uninsured motorist

claim was not payable from the same funds as Edwards' liability claim. Moreover, other than respondent's testimony, there is no evidence that respondent took any steps to advance Louis Edwards' uninsured motorist claim. Before US Bank froze respondent's CTA for a second time, and respondent ignored Parziale's attorney lien in excess of \$55,000, respondent had withdrawn and distributed to himself approximately \$53,000 in attorney's fees in the Edwards matter.

On October 16, 2012, respondent, on behalf of, among others, Esther Edwards, Louis Edwards, and himself, filed a four-count civil claim against, among others, Parziale and his secretary/receptionist Patricia Brunetti. (*Edwards v. Parziale*, San Diego Superior Court case no. 37-2012-00083577-CU-BT-CTI ("the civil action").) He did so without the knowledge, authorization, or permission of Esther or Louis Edwards. He never notified Esther and Louis Edwards that he filed the civil action. Both Esther and Louis Edwards testified that they never spoke with respondent about any lawsuit against Parziale and were distressed to later learn that respondent had filed a lawsuit against Parziale on their behalf.

Respondent's testimony that he had Esther and Louis Edwards' implied permission to file the civil action against Parziale and Brunetti to protect the Edwards' interests is without merit. The civil action relates almost entirely to events involving respondent and the attorney fees. Respondent could not adequately explain why he named Brunetti in the civil action. Respondent testified that he thinks he may have dismissed Brunetti from the suit. The record, however, reflects otherwise.

On October 25, 2012, attorney James Brown sent respondent a letter informing him that Parziale had asked him to represent him but that Brown would like to attempt to settle the dispute as professionals.

On the same day, respondent sent Brown an email in response to his letter stating, in part, that “Then, the gloves come off” and, later in the email, states . . . “but the gladiator is primed for a battle to the death and metaphorically, I care not how much blood I need shed in the “forum”.”

No settlement or mediation conference was ever held.

On November 8, 2012, Edwards sent respondent a letter asking for an update on the status of her funds and expressing concerns that her credit was being impacted by his failure to pay her medical liens. Edwards also requested invoices for all bills paid out. Respondent was also told to stop working on Louis Edwards’ uninsured motorist claim. Respondent received the letter.

Respondent testified that after receiving the settlement check he was attempting to negotiate the medical liens in Edwards’ matter. Respondent did not produce any evidence at trial in this matter to substantiate his claim.

Esther and Louis Edwards made numerous telephone calls to respondent’s office concerning the status of the funds beginning in July 2012 and until they terminated him. Respondent failed to inform them of the status of their funds.

Esther Edwards was contacted by Margarita McDaniels, an attorney who worked with respondent, and was informed that he was spending some of the money from the Edwards settlement. Edwards had not yet received any funds from the settlement. Concerned by the information, Edwards called Parziale, who referred her to attorney John Tremblatt. On November 16, 2012, she retained him in the matter involving the Allstate check.

On November 16, 2012, Tremblatt sent respondent a letter and signed authorizations informing him that Edwards had retained him in her personal injury matter and asking for the file and an accounting of the disbursement of any settlement proceeds. Tremblatt testified that he believed it was necessary to obtain the file and accounting of the funds from respondent as

quickly as possible because the Edwards settlement check had been deposited in respondent's CTA in July 2012 and Edwards had not received any funds or an accounting from respondent.

After receiving the November 16, 2012, letter from Tremblatt, respondent and Tremblatt spoke by telephone on November 20, 2012, concerning the Edwards matter.

On November 21, 2012, Tremblatt sent a letter to respondent reaffirming that he represented Esther and Joe (Louis) Edwards in all matters stemming from the personal injury matter. Tremblatt requested information concerning the bank action freezing respondent's CTA funds and informed him that an associate would pick up the Edwards file after the holiday on November 26, 2012. Respondent received the letter.

On November 26, 2012, an associate in Tremblatt's office went to respondent's office to pick up the Edwards file but was turned away without it. On that same date, Tremblatt sent respondent a letter about his failure to turn over the Edwards client file or produce an accounting of funds held on their behalf. Respondent received the letter.

On November 27, 2012, Tremblatt sent respondent a letter regarding his refusal to turn over the Edwards file. Tremblatt also informed respondent that he had discovered the San Diego civil action and that the Edwards had executed a substitution of attorney regarding that action. He also requested the files, materials, funds and an accounting in the civil action.

In attempt to retrieve the Edwards client file, Tremblatt filed an ex-parte application with the court. On December 5, 2012, the night before the scheduled ex-parte hearing, respondent produced the Edwards client file. He did not produce an accounting.

On January 8, 2013, Tremblatt, on behalf of Esther and Louis Edwards, filed a request for dismissal in the San Diego civil case.

On April 11, 2013, Tremblatt sent a letter to respondent demanding, among other things, an accounting of Edward funds held in his CTA. Respondent received the letter.

On April 16, 2013, Tremblatt sent another letter to respondent demanding an accounting of Edwards funds held in his CTA. Respondent received the letter.

On May 30, 2013, Tremblatt sent another letter to respondent demanding an accounting of Edwards' funds held in his CTA. Respondent received the letter.

Sometime later, US Bank released the freeze on respondent's CTA. The Edwards' settlement funds were turned over to Tremblatt. Tremblatt negotiated and paid the medical liens from the settlement funds. After paying Edwards her funds and the medical liens, the balance of the funds dedicated for attorney fees remaining in trust were split evenly between Parziale and Tremblatt. The evidence does not indicate when the freeze on the CTA funds was released or when the funds were turned over to Tremblatt.

After examining all the trust account records and client file records in the Edwards matter, Tremblatt was able to put together an accounting and provide a copy to the Edwards.

Respondent never provided an accounting to the Edwards.

From August through October 2012, respondent did not promptly remove funds that respondent had earned as fees from his client trust account at US Bank and, during the same period, issued checks from those funds from his CTA for payment of personal expenses as follows:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
08/13/12	0000 ⁴	Wilow Tia Ann Perys	\$1,000.00
08/15/12	0000	Janine Menhennet	373.00
08/15/12	0000	7 th Avenue Cleaners	102.97
08/15/12	0000	Adrian Rove	97.50
09/20/12	0000	Stephanie Kelley	91.22
10/15/12	0004	Clerk of the Court	435.00
10/15/12	0006	Clerk of the Court	435.00

⁴ The first four listed checks do not have printed check numbers on their face and the bank records refer to them as check numbers 0000.

Conclusions

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

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

The court finds that there is clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by not attempting to reduce or pay Edwards' medical liens between July and November 2012.

Count Two - (§ 6106 [Moral Turpitude])

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

The court finds that there is clear and convincing evidence that respondent committed an act involving dishonesty, moral turpitude, or corruption, in willful violation of section 6106, by signing Edwards' name on the settlement check without her authority or permission. There is not clear and convincing evidence that respondent or someone at his direction signed Parziale's name on the settlement check intentionally or by gross negligence.

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

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

The court finds that there is clear and convincing evidence that respondent failed to maintain client funds in a trust account, in willful violation of rule 4-100(A), by not promptly removing from his client trust account funds he had earned as fees and issuing checks for personal expenses from the trust account.

Count Four – (§ 6104 [Appearing Without Authority])

Section 6104 states, “Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension.”

The court finds that there is clear and convincing evidence that respondent appeared for a party without authority, in willful violation of section 6104, by filing a civil action against Parziale on Edwards’ behalf without her knowledge and consent.

Count Five – (§ 6090.5, subd. (a)(2) [Agreeing/Seeking Agreement to Withdraw a State Bar Complaint or Not Cooperate with State Bar])

Section 6090.5, subdivision (a)(2), prohibits an attorney, whether as a party or as an attorney for a party, from agreeing or seeking agreement, in a civil matter, that the plaintiff will withdraw a disciplinary complaint or will not cooperate with the investigation or prosecution conducted by the State Bar.

There is not clear and convincing evidence that respondent sought an agreement to withdraw a State Bar complaint in violation of section 6090.(a)(2).

Count Six – (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

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.

There is clear and convincing evidence that respondent never rendered an appropriate accounting of client funds to a client, in willful violation of rule 4-100(B)(3).

Count Seven – (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.

There is not clear and convincing evidence that respondent failed to pay client funds promptly in willful violation of rule 4-100(B)(4) between November 2012 and September 2013 because respondent's client trust account funds were frozen commencing on October 26, 2012 and there is no indication of when the freeze was lifted and the funds released..

Count Eight - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

There is clear and convincing evidence that respondent failed to release a client file after his termination in willful violation of section rule 3-700(D)(1).

Aggravation

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.5.)

Multiple Acts (Std. 1.5(b).)

Respondent is culpable of multiple acts of misconduct.

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).)

Respondent failed to respond to Edwards' numerous requests for an update on the status of her settlement funds. Respondent also failed to inform the Edwards that he had filed a civil lawsuit against Parziale and Brunetti on their behalf in willful violation of section 6068, subdivision (m).

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h).)

As previously noted, respondent displayed a lack of candor while testifying at trial in this matter.

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

Respondent's misconduct caused Edwards undue stress as she feared her credit would be harmed for failing to timely pay her medical liens. She also had to retain other counsel to finalize the settlement of her personal injury case and obtain her share of the funds.

Respondent's misconduct caused Brunetti undue stress and fear due to being unnecessarily named by respondent as a defendant in a civil lawsuit and possibly being exposed to liability.

The administration of justice was burdened by respondent's unauthorized litigation on Edwards' behalf and by the ex parte proceeding to obtain her client file from him after he knew that she retained other counsel.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent displayed indifference toward the major allegations in the matter, continually blaming Parziale for being greedy and alleging that, if Parziale's signature on the settlement check was forged, it was of no importance. In addition, respondent's testimony concerning his signing Edwards' name to the settlement check displayed a total lack of concern for his ethical and professional responsibilities.

Mitigation

The respondent has proved by clear and convincing evidence the following factors in mitigation. (Std. 1.6.)

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

Respondent had no prior record of discipline in about 12 years of practice when the misconduct commenced. However, respondent's misconduct is serious and he entitled to only minimal mitigation.

Good Faith (Std. 1.6(b).)

Respondent argues that his action were taken in a good faith effort to protect the rights of clients; however, the court cannot agree as respondent's actions in reality were attempts to serve his own interests rather than his client's. This belief further bolsters the court's findings in aggravation of lack of candor and indifference. Accordingly, no mitigation credit is afforded for this factor.

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

Respondent entered into a trial stipulation as to facts in this matter. However, the stipulated facts were easily provable. When balanced with respondent's lack of candor and credibility while testifying at trial, respondent is entitled to minimal, if any, mitigation for this factor.

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.)

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior

record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.2(a) and (b), 2.5(c), 2.7 and 2.15 apply in this matter, allowing a range of disciplinary recommendations from reproof to disbarment. The most severe sanction is prescribed by standard 2.2(a) which suggests three months' actual suspension for commingling or failing to promptly pay out entrusted funds.

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; std. 1.1.) 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; std. 1.1.)

This case involved culpability of violating sections 6104 and 6106 and rules 4-100(A) and 4-100(B)(3), 3-110(A) and 3-700(D)(1) (one count each). In aggravation, the court considered multiple acts of misconduct, uncharged misconduct (not communicating), lack of candor, indifference and harm. Mitigating circumstances included no prior discipline and cooperation (both factors receiving minimal weight).

The State Bar recommends two years' actual suspension, among other things. Respondent recommends six months' actual suspension.

The court found instructive *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 in which an attorney was disbarred for misconduct in several client matters, including signing or causing a client's name to be signed on a forbearance agreement; not rendering an accounting; making misrepresentations to the court and clients as to the status of their cases; taking money under false pretenses; retaining unearned fees; writing checks against

insufficient funds; and not cooperating with the State Bar. He engaged in a pattern of misconduct over a 10-year period and caused significant harm to clients and to the administration of justice. Most importantly, he demonstrated a lack of remorse and insight into his misconduct, which made him an ongoing danger to the public. In light of the lengthy pattern of misconduct, no mitigating weight was afforded the absence of a prior disciplinary record. Nominal mitigating weight was given to his good character. Modest mitigating weight was given his community and pro bono service as there was no evidence of it offered other than that respondent's own testimony. *Reiss* is distinguishable from the present case in that it presents greater misconduct and aggravation, including a high degree of dishonesty coupled with a 10-year pattern of misconduct and a lack of insight. Respondent herein merits less discipline than *Reiss*.

Respondent's misconduct herein is serious and includes moral turpitude for forging his client's name on a settlement check. The court found respondent to lack candor during these proceedings and is very concerned about his lack of remorse and insight about his misconduct. Despite respondent's dozen years of blemish-free practice before this matter arose, but given the foregoing concerns, the court believes that public protection requires a lengthy suspension with a readmission process and close supervision of his trust account and office procedures, among other things, if he is relieved from actual suspension by this court. Accordingly, the court so recommends.

Recommendations

It is recommended that respondent **RAYMUNDO PACELLO, JR.**, State Bar Number 207694, be suspended from the practice of law in California for three years that execution of that

period of suspension be stayed, and that respondent be placed on probation⁵ for a period of three years subject to the following conditions:

1. Respondent Raymundo Pacello, Jr., is suspended from the practice of law for a minimum of two years of probation, and respondent will remain suspended until he provides 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.
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. Respondent must comply with the following reporting requirements:
 - a. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation certifying that:

⁵ 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.)

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

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

- 7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent’s probation conditions.
- 8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar’s Ethics School and of the State Bar’s Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
- 9. No earlier than 90 days and no later than 30 days prior to filing a petition with the State Bar Court seeking relief from actual suspension pursuant to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1), respondent must develop a law office management/organization plan which must be approved by respondent’s probation monitor, or, if no monitor is assigned, by the Office of Probation. This plan must include procedures for sending periodic reports to clients, documentation of telephone messages received and sent, file maintenance, meeting deadlines, withdrawing as attorney, whether of record or not, when clients cannot be contacted or located, and training and supervision of support personnel.
- 10. No earlier than one year prior to filing a petition with the State Bar Court seeking relief from actual suspension pursuant to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1), respondent must join the Law Practice Management and Technology section of the State Bar of California and pay the dues and costs of enrollment for one year. Respondent must provide satisfactory proof of section membership to the office of Probation with respondent’s first required quarterly report.

11. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multi-State 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, or during the period of respondent's suspension, whichever is longer 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: July 7, 2014

RICHARD A. PLATEL
Judge of the State Bar Court