

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: **13-O-10277-RAH**
)
CHRISTOPHER A. RADLINSKI,) **DECISION**
)
Member No. 82563,)
)
A Member of the State Bar.)

Introduction¹

Respondent Christopher A. Radlinski was the successor trustee of his mother's trust after her death. Her death in December 2011, followed the death of his father, who had worked for the University of California (the UC). Both respondent's father and, after his death, respondent's mother, were entitled to receive retirement benefits from the UC. From February through November 2012, his mother's retirement survivor/widow benefits continued to be automatically deposited into her account. Without carefully determining the source of these funds, respondent withdrew cash from his mother's account and placed it in a safe in the family home. When the UC determined that his mother had died, it demanded repayment of \$8,337.66, after State Bar proceedings had commenced. This amount was repaid by respondent approximately ten months later. Respondent is charged with moral turpitude for retaining and not timely repaying the \$8,337.66 overpayment of funds that had been deposited into his mother's account.

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

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on September 5, 2013.

Respondent filed his Answer to the NDC on October 4, 2013.

The parties executed a Stipulation as to Facts, Conclusions of Law and Admission of Documents, which they filed with the court on February 26, 2014.

A one-day trial was held on February 26, 2014. The State Bar was represented by Deputy Trial Counsel Diane J. Meyers, and respondent represented himself. This matter was submitted for decision on February 26, 2014, after the completion of trial.

The following findings of fact are based on the February 26, 2014 stipulation, respondent's response to the NDC, and the evidence presented at trial.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar of California at all times since that date. Effective February 22, 2013, respondent's membership records address with the State Bar of California was and still is 45831 Corte Carmello, Temecula, CA 92592.

James Radlinski's Death

On July 19, 1996, respondent's father, James Radlinski ("James"), died. Prior to James's death, he received monthly benefit payments from the University of California as an employee of the University of California. James had always told respondent that the retirement benefits he received from the UC would terminate on his death and would not be payable to anyone in the family. James was incorrect. Upon his death, the provisions of his retirement plan required the UC to continue to pay monthly benefits to respondent's mother, Carolyn Radlinski ("Carolyn"), as James's survivor/widow. The payments were made via direct deposits into a bank account at

US Bank, bearing an account number ending in “0500,” which account was held in Carolyn’s name only (the “US Bank account”).

Respondent’s Role after James’s Death

Respondent was always very close to his mother. According to respondent, he and his mother had a special relationship not shared by his siblings, Bruce Radlinski, Marc Radlinski, Candace Robertson, and Lynn Shrader. The relationship between respondent and his mother became even closer after the death of his father. Carolyn relied on respondent for all aspects of her day-to-day life. Respondent’s siblings were far less helpful with their mother. In fact, Carolyn told Marc Radlinski to leave the family home because, according to respondent’s uncontroverted testimony, Marc took her money without permission.

Respondent assisted Carolyn with all of her bills and bank accounts. While respondent was not a signatory on the US Bank account, he had an ATM card associated with that account. While Carolyn was able to do so, she wrote all of the checks for her bills from the US Bank account with respondent’s help. Later, as Carolyn aged, she was unable to write the checks, so respondent took cash out of her account, using the ATM card. Respondent paid Carolyn’s bills using either his personal checking account or cash.

Upon Carolyn’s death, respondent was told by representatives of US Bank that he was the beneficiary of the US Bank account. This was consistent with respondent’s understanding that the US Bank account was not a listed asset of the family trust. Respondent kept the excess cash not used in a safe in the family home.

Carolyn Radlinski’s Death

On December 30, 2011, Carolyn died. Carolyn was survived by respondent and his siblings, Bruce Radlinski, Marc Radlinski, Candace Robertson, and Lynn Shrader (collectively, “the siblings”). On December 15, 2011, prior to Carolyn’s death, the balance in the US account

was \$722.80. At the time of Carolyn's death, she was the trustor and trustee of the Carolyn M. Radlinski Family Trust (the "trust"), which was created on August 3, 2007. When Carolyn died, respondent, who had no special training in probate or trust administration, became the successor trustee of the trust. The US Bank account, which was not a trust asset, was not immediately closed.

The siblings spoke with the funeral home when making arrangements for Carolyn's burial. The representatives of the funeral home assured respondent that it would handle the notification of all the agencies making payments to Carolyn. The funeral home, however, only notified the Social Security Administration and the Veterans Administration; it did not notify the UC.

Shortly after Carolyn's death, Marc Radlinski ("Marc") changed the delivery address for all mail addressed to the family home, rerouting it to his own address. Marc did not tell respondent that he had changed the delivery address for all mail addressed to the family home and had rerouted it to his own address. When mail stopped arriving at the house, respondent contacted the post office. The representative at the post office advised respondent that there was a forwarding order in place. This did not surprise respondent, since the family had always had a post office box near Fallbrook, California. That post office box had been used by James and Carolyn when they traveled. Respondent, therefore, assumed that Marc had rerouted the mail to that post office box. Since the mail actually had been rerouted to Marc's address, respondent did not see any of the mail; nor did respondent notice the fact that mail was not being forwarded to the post office box.

Family Problems

After Carolyn's death, the siblings began to quarrel. Part of the problem arose because, shortly before Carolyn's death, some of respondent's siblings, without telling respondent, had

made arrangements to change portions of the trust. Respondent's siblings also left respondent and his wife to the task of cleaning out the family home. This placed a burden on respondent at a time that he was working through the grieving process. In addition, someone had cleared out the financial records from the house before respondent could secure them. Finally, some of the siblings blamed respondent for Carolyn's death, accusing him of not closely monitoring their mother. The accusations caused respondent to feel guilt and experience stress. As a result, respondent became depressed. Respondent's depression was further exacerbated by his own health problems relating to Crohn's Disease, a chronic, debilitating disease from which he suffered, and by a surgery his wife underwent.

Despite these family problems, respondent continued to pay his mother's bills without asking for reimbursement from his siblings.

The Continuing UC Deposits

From February 1 through November 1, 2012, the UC paid a total of \$8,337.66 in monthly survivor/widow benefits to Carolyn via direct deposits into the US Bank account as follows: six deposits of \$827.15 per month for the period of January through June, 2012, and four deposits of \$843.69 per month for the period of July through October, 2012. Every month, a notice of automatic deposit was sent to Carolyn's address, providing notification of the UC deposit. These notices, however, were forwarded to Marc, as a result of the forwarding order he had placed with the U.S. Postal Service. While respondent had access to the US Bank account by way of a debit card and access code, he did not carefully check the account. He was aware that money continued to be deposited; but, he did not make an effort to verify the source of those funds.

Respondent recalled that when James had been diagnosed with terminal cancer, he advised his wife, Carolyn, that the UC annuity payments, which he was receiving, would terminate upon his death. After his death, however, the UC continued to pay the annuity benefits

in full to Carolyn. Respondent, therefore, was not surprised that the UC continued to pay the annuity benefits after Carolyn's death. Having received no notice from the UC, and having been assured by the funeral home that it would notify all the agencies making payments to Carolyn of her death, respondent assumed that the UC benefits were continuing after Carolyn's death, as they had after James's death. Respondent, however, did not take steps to verify his assumption. For the first eleven months of 2012, respondent acted with indifference to the possibility that neither he nor his siblings were entitled to the funds that were being deposited into the US Bank account.

In December 2012, Marc received a letter from the UC, dated November 27, 2012, in which the UC requested reimbursement for the overpayment of University of California Retirement Plan (UCRP) benefits deposited in Carolyn's account after her death. Marc, thereafter, notified respondent about the UC's November 27, 2012 demand letter for reimbursement. Respondent asked Marc to send him the documents supporting Marc's assertion that respondent was improperly receiving the UC payments. Marc, however, refused to cooperate by sending respondent either the contact information for the author of the letter or the supporting documentation.

Later in December 2012, respondent was able to determine the contact information for the UC and called a UC employee, Jackylyn Wong, informing her that he wanted to clear up the issue of the overpayment of benefits and to return the funds to the UC. Apparently, respondent also managed to correct the address used by the UC. Additionally, respondent sent an email to what he had been advised was the appropriate UC department to contact, regarding the US Bank account funds. Respondent was notified in a written reply that the UC would be contacting him within five business days after January 2, 2013. Respondent, however, did not hear back from

the UC until, finally, it sent him a letter, dated April 1, 2013, in which it set forth the details of the overpayments and requested the return of those overpayments, totaling \$8,337.66.

Respondent received the April 1, 2013 letter. Unfortunately, at that point, respondent put the issue of the UC payments “on the back burner,” because of the other issues arising out of his mother’s death and the concomitant family problems that he was facing.

As noted above, respondent testified that he had saved the funds taken out of the US Bank account in envelopes, which he placed in a safe in the family home, and later, at his home. He had not spent or used the funds, and had approximately \$9,000 in the safe.²

The amount of \$8,337.66 was repaid to the UC on or about February 24, 2014.

The court finds respondent’s testimony, including his explanation that he was essentially overwhelmed by family problems and health issues, to be credible.³

Conclusions

Count One - (§ 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.

Although the term “moral turpitude” defies precise definition, it has been described “as an act of baseness, vileness or depravity in the private and social duties which man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”(Citation.)” (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 830.) In broad terms, acts of moral turpitude are those done contrary to honesty and good morals and are a cause for discipline whether or not they are committed in the

² As respondent had no attorney-client relationship with the UC, he did not have a duty to maintain the \$8,337.66 at issue in a client trust account or to keep the UC funds segregated from his own funds.

³ Respondent testified in a forthright manner during trial. In addition, the State Bar presented little or no evidence to contradict respondent’s testimony.

practice of law. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.) Although an evil intent is not necessary for a finding of moral turpitude, some level of guilty knowledge or at least gross negligence is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

Gross negligence, however, requires clear and convincing proof of conduct that is outside the norm or which cannot be reasonably defined as simple negligence, i.e., a lack of due care. Gross negligence involves “serious and inexcusable lapses” in conduct, not mere negligent oversights or mistakes caused by a failure to exercise reasonable care. The latter is just negligence, and does not support a finding of moral turpitude. (See *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.)

The State Bar seeks a finding of moral turpitude, contending that in 2012, “respondent withdrew for [his] own purposes from a U.S. Bank account approximately \$8,337 in widow survivor benefits to which the University of California was entitled, but which were erroneously paid to Respondent’s deceased mother following her death on or about December 30, 2011, when Respondent knew that the funds did not belong to [him]” (The September 5, 2011 NDC, p. 2, ¶ 2.)

The evidence presented at trial, fails to support several of the State Bar’s contentions.

The allegation that respondent used the funds, which he withdrew from the US Bank account in 2012, for his own purposes is unsupported by clear and convincing evidence. The US Bank account needed to be closed after Carolyn’s demise, as the account existed only in her name. No clear and convincing evidence was introduced which shows that when respondent withdrew the funds from the US Bank account, he used them for his own purposes. Nor was clear and convincing evidence presented that rebuts respondent’s testimony that he used the funds he placed in safekeeping to reimburse the UC.

As noted above, when respondent was informed in December 2012, by his brother, Marc, that the UC claimed that it had erroneously deposited funds into the US Bank account, respondent made attempts to contact the UC, which he succeeded in doing, despite his brother's lack of cooperation. Not only did respondent phone the UC, but, he sent an email to a UC department which, he had been informed, would be handling the matter. Respondent said that he wanted to clear up the issue of overpayments, which was not unreasonable in light of the confusion that had existed regarding whether Carolyn was entitled to survivor benefits based upon the annuity benefits that James had been receiving prior to his death. Respondent wanted clarification as to whether there were any continuing survivor benefits to which he or his siblings were entitled. Finally, no clear and convincing evidence was introduced to show that respondent ever disputed the UC's April 1, 2013 letter, which stated that the UC was entitled to be reimbursed for the overpayment of \$8,337, which had been deposited into the US Bank account.

On the other hand, the evidence does show by clear and convincing evidence that respondent failed to take any steps from January to December 2012, to ascertain the rightful owner of the funds being deposited into the US Bank account. The evidence also shows that when respondent was notified by the UC in April 2013 that the funds had been erroneously deposited into the US Bank and that he was not entitled to those funds, he failed to return the funds to the UC for an additional 10 months.

Respondent's long and inordinate delay in returning \$8,337 to its right owner evidences "serious and inexcusable lapses" in conduct, which breach the social duties one owes to another. To take no steps for almost 12 months to ascertain the identity of the source of funds being deposited on a monthly basis into a bank account over which one has control and to take no steps to determine who is rightfully entitled to those funds evidences a breach of one's social duties. And, when one, thereafter, learns that he is not entitled to funds and is also provided with

evidence showing the identity of the rightful owner of said funds, to delay returning the money to that rightful owner for almost another year involves conduct that is clearly “outside the norm” and contrary to the accepted notions of right and duty owed to another. The court, therefore, concludes that respondent’s failure to take any steps to ascertain the source of the deposits into the US Bank account for approximately 11 months and his subsequent delay in returning the \$8,337.66 to the UC, upon learning the UC was the rightful owner of the funds, involve serious and inexcusable lapses in conduct, which clearly rise to the level of gross negligence

While the court understands the many difficulties and problems respondent was facing after his mother’s death in December 2011, his failure to take any steps from January 2012 until December 2012, to ascertain whether he was entitled to receive the funds being deposited into the US Bank account and his subsequent 10 month delay in returning those funds, even after receiving the April 1, 2013 letter from the UC, which verified that the funds had indeed been deposited into the US Bank account in error, establishes by clear and convincing evidence that respondent’s conduct was grossly negligent.

In sum, the court finds that the record clearly establishes that respondent willfully violated section 6106 because he engaged in an act of moral turpitude by failing in the duty that he owes to society to not inordinately delay returning that which belongs to another and to which he is not entitled.

The court, however, notes that no clear and convincing evidence was presented at trial in the instant matter to show that respondent’s motivation for the delay was corrupt or venal.

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Aggravation⁴

Prior Record of Discipline (Std. 1.5(a).)

Respondent has a record of two prior records disciplines.

On December 15, 1994, the California Supreme Court filed an order, effective January 14, 1995, in case No. S042566 (State Bar Court case Nos. 92-O-10099; 92-O-17637 Cons.) (“*Radlinski I*”) that suspended respondent for one year from the practice of law, stayed the execution of that period of suspension, and placed him on probation for two years with conditions, including a 30-day actual suspension. Respondent had stipulated to failing to promptly return client funds in his possession. He also stipulated to failing to withdraw from employment when he was required to do so in violation of the State Bar Act and to holding himself out as entitled to practice law and practicing law, while he was not so entitled. Respondent’s misconduct in *Radlinski I* commenced in 1989 and ended in 1992. Mitigating factors included no prior record of discipline and medical issues. Aggravating factors included lack of candor to clients.

On September 19, 2013, the California Supreme Court filed an order in case No. S211925 (State Bar Court case No. 12-O-11702) (“*Radlinski II*”), effective October 19, 2013, that suspended respondent from the practice of law for one year, stayed the execution of that period of suspension, and placed him on probation for two years with conditions, including a 60-day suspension from the practice of law. This discipline resulted from respondent charging an illegal fee in a bankruptcy case and failing to promptly return unused advanced fees upon termination of his employment. In mitigation, respondent: (1) demonstrated recognition of wrongdoing; (2) was afforded limited weight for character references from three individuals; and

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(3) was afforded limited mitigation for family, marital, and health difficulties. Aggravating factors included a prior record of discipline, multiple acts of misconduct, and engaging in similar misconduct to that found in his prior discipline.

The misconduct in *Radlinski II*, regarding charging and collecting an illegal fee, took place in February 2011, prior to the occurrence of the misconduct at issue in the current disciplinary matter (*Radlinski III*). It was not until March 2012, however, that the clients in *Radlinski II* requested that respondent return that illegal fee and other related fees and costs which they had paid to him. In March 2012, respondent did provide an accounting of the services rendered. But, respondent did not comply with the request for return of the illegal fee and other fees and costs until January 31, 2013. Thus, respondent's failure to timely comply with the request to return client funds occurred during the same period of time as the found misconduct in the instant matter. While the second prior discipline is an aggravating factor, the aggravating effect of such misconduct is reduced, since it overlaps in time with the misconduct in the current disciplinary matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

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

The court does not find indifference to be a factor in aggravation, since respondent's delay in reimbursing the \$8,337 overpayment was found to be the basis for the culpability finding in Count One, above. To use those same facts, i.e., respondent's delay, to support a finding in aggravation would be duplicative.

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Mitigation

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

Respondent testified as to the extreme depression he experienced in the aftermath of his mother's death and as a result of the acrimonious interactions among the siblings relating to settling her estate. This is a factor meriting some mitigation.

As respondent has already received mitigating credit *in Radlinski II* for his health problems and those of his wife, no further mitigating credit for those factors is warranted in the current matter.

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

Respondent entered into a detailed stipulation, which although entered belatedly, nonetheless, saved the court a substantial amount of trial time. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547,567 Although many of the facts to which respondent stipulated were easily provable, paragraphs 12, 13, 18, and 19 of the Stipulation clearly assisted the State Bar's prosecution of the case. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [factual stipulation covering background facts, although not difficult to prove, were nevertheless, extensive, relevant and assisted the State Bar's prosecution of the case and should be considered in mitigation].) Respondent also stipulated to telephonic testimony of the State Bar's witness from the UC. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 156 [respondent's cooperation with the State Bar in allowing State Bar witness to testify by telephone at disciplinary hearing constituted mitigating circumstance].) The Stipulation entered by respondent saved the court, the State Bar and its witness significant time and resources in the trial of this case, and therefore warrants consideration as a factor in mitigation.

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

Respondent presented some evidence of good character. However, there was no evidence that those witnesses were aware of his misconduct. As such, they are entitled to no 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.)

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

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends 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. Here, respondent's misconduct did not relate to the practice of law.⁵

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(B) states, in pertinent part, if a member has two or more prior records of discipline, disbarment is appropriate unless the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. Thus, in the instant matter, as

⁵Although the State Bar concedes that respondent's misconduct in the instant matter does not relate to the practice of law, it contends that the misconduct caused significant harm to the UC and the public. However, the evidence presented at trial did not show by clear and convincing evidence that respondent's delay in paying funds "significantly" harmed the UC. The State Bar speculates in its Closing Brief in this matter about how the UC might have invested the funds and profited if respondent had returned the funds sooner to the UC. However, such speculation is not clear and convincing evidence of "significant harm."

the present misconduct occurred in the same time period as the misconduct in respondent's second discipline, under Standard 1.8(b) disbarment would not be "appropriate."

The standards, however, are guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards. [Citation.]" (Id. at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar argued that respondent be disbarred from the practice of law in California. Respondent, on the other hand, contended that there should be no finding of culpability and, in the alternative, if he is found culpable, no additional discipline should be imposed, since the misconduct involved in the current disciplinary matter overlapped with the misconduct in his second prior discipline, *Radlinski II*.

In determining the appropriate level of discipline to recommend, the court takes into consideration the timing of respondent's prior discipline. Although the present case marks respondent's third discipline, the court gives diminished weight to the discipline imposed in *Radlinski II* due to the fact that the present misconduct overlapped with the misconduct in *Radlinski II*. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171; std. 1.8(b).) The court, therefore, considers the totality of the findings in respondent's present and prior disciplines to determine what the discipline would have been, if all the charged misconduct in *Radlinski II* and the current matter had been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

The overlapping misconduct found in the prior matter involved one client matter; no clients are involved in the current matter. The prior matter and the current matter, combined, involved three counts of misconduct, spanning from January 2012 through February 2014.

Additionally, the prior matter involved charging and collecting an illegal fee and failure to promptly return client funds. In the current matter, respondent has been found culpable of committing moral turpitude as a result of gross negligence. As noted, the current matter does not involve significant harm to the victim of the misconduct and did not relate to respondent's practice of law. In the current matter, respondent was given some mitigating credit for candor and cooperation and some limited mitigating credit for his emotional difficulties.

While the court has found no case law directly on point with the instant matter, it finds guidance in *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126 and *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679. In *Lantz*, the attorney was found culpable of misappropriation through gross neglect, withholding an illegal fee, failing to perform services competently, failing to return unearned fees, and failing to render an appropriate accounting in four client matters. In mitigation the court found evidence of good character and pro bono work. The attorney was accorded only limited weight for his lack of prior discipline. The court also granted mitigating credit for unintentional misappropriation of funds as opposed to intentional dishonesty. In aggravation the court found multiple acts of misconduct, significant harm to clients, bad faith and overreaching, indifference to rectification or atonement for his misconduct, and lack of candor in his testimony. It was recommended that Lantz be suspended for a period of two years, stayed, and that he be placed on probation for two years with conditions, including that he be actually suspended for the first year of his probation and until he makes restitution of \$8,000 to one client.

In *Brazil*, the attorney, while serving as the principal officer of a mortgage banking company, and not acting in the role of an attorney, misapplied over \$1,000,000 loaned to that company by an investor to fund specific transactions. Instead, Brazil used the funds to reduce the debt of his company. Additionally, Brazil forged the signature and seal of a notary public on

six documents and gave the investor five documents purporting to show that he or his company had an interest in certain property, when no such interest existed. As a result of his conduct, Brazil pled nolo contendere to two counts of grand theft and one count of forgery and was, thereafter, convicted of forgery and grand theft.

The Review Department of the State Bar Court (review department), taking into consideration all relevant facts including the protection of the public, preserving integrity of and confidence in the legal profession and the maintenance of high professional standards, concluded that Brazil's conduct, even though it did not occur while he was practicing law merited disbarment.

Although the misconduct in *Lantz* and the criminal conduct involved in *Brazil* is certainly more egregious than the misconduct in the present matter, and respondent has not been convicted of any criminal act, the court finds that respondent's failure to timely verify the source of the funds that were continuing to be deposited into the US Bank account, and his significant delay in returning the funds to the UC once he ascertained that UC was the rightful owner of the funds is, to some extent, analogous to theft. While respondent's misconduct did not occur within the practice of law, his holding funds belonging and requiring return to another is the type of conduct in which attorneys are frequently engaged. (See *In the Matter of Brazil, supra*, 2 Cal. State Bar Ct. Rptr. at p. 687.) Moreover, respondent's experience as an attorney should have prompted him to verify the source of the funds and to return those funds in a timely fashion. (See *Id.* at p. 690.) Although respondent was suffering extreme depression in the aftermath of his mother's death and due to the acrimonious interactions among the siblings relating to her estate, members of the bar are expected to cope with such problems without engaging in misconduct. (See *In the Matter of Brazil, supra*, 2 Cal. State Bar Ct. Rptr. at p. 690.) In addition to respondent's conduct in this matter, the court is troubled by the fact that this is the third time

that respondent has failed to promptly return funds in his possession to the rightful recipient. Therefore, the court finds that significant discipline is warranted in the present matter.

However, as discussed earlier, disbarment is not warranted in this matter. The misconduct in *Radlinski I* resulted in only a 30-day actual suspension. The misconduct found in *Radlinski II* and the current matter combined involved one client and a matter that does not involve a client or the practice of law. Respondent's misconduct involves fewer clients and is far less serious and less extensive than that of the misconduct found in *Lantz* and *Brazil*. In addition, respondent has reimbursed the \$8,337 to the UC, while the attorney in *Lantz* had yet to make restitution. Nonetheless, respondent's conduct is serious. Accordingly, the court finds that a one year actual suspension and until he made restitution of the interest on the principal amount of \$8,337.66 would have been appropriate discipline had both *Radlinski II* and the current matter been brought in one case.

In view of respondent's misconduct, the case law, the aggravating and mitigating evidence, and the sixty days' actual suspension in his second prior disciplinary matter, the court concludes that placing respondent on an additional actual suspension of 10 months in the current matter would be appropriate to protect the public and to preserve public confidence in the profession.

Recommendations

It is recommended that respondent Christopher A. Radlinski, State Bar Number 82563, 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 probation⁶ for a period of two years subject to the following conditions:

⁶ 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.)

1. Respondent Christopher A. Radlinski is suspended from the practice of law for a minimum of the first 10 months of probation, and respondent will remain suspended until the following conditions are satisfied:
 - i. Respondent Christopher A. Radlinski must makes restitution to the University of California for interest on the amount of \$8,337.66 for the period from April 1, 2013 until February 24, 2014, at the rate of 10 percent interest per year (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the University of California, in accordance with Business and Professions Code section 6140.5) and provides satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
 - ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(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 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. 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.
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. It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as respondent was ordered by the Supreme Court to do so in its order, filed on September 19, 2013, in case No. S211925.

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 not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was recently ordered to do so on September 19, 2013, by the Supreme Court in case No. S211925.

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: June _____, 2014

RICHARD A. HONN
Judge of the State Bar Court