

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 13-O-13180-LMA
)	(14-O-01287; 14-O-01288)
NWABUEZE CHUKWUEDOZ EZEIFE,)	
)	DECISION AND ORDER OF
Member No. 165472,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent Nwabueze Chukwuedoz Ezeife is charged with four acts of misconduct. The charged misconduct includes depositing personal funds into his client trust account, issuing checks from that account with insufficient funds, and failing to timely file quarterly reports in two separate disciplinary probation matters.

The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. Based on the nature and extent of culpability, as well as the limited mitigation and extensive aggravation stemming from respondent's lengthy record of prior discipline, the court recommends that respondent be disbarred.

Significant Procedural History

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 8, 2014. On April 14,

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.

2014, respondent sought to resign from the State Bar of California by filing a resignation request form. On April 28, 2014, respondent filed a response to the NDC.

On May 12, 2014, this court filed an order abating the present proceedings pending the Supreme Court of California's consideration of respondent's resignation request. On September 18, 2014, the Review Department issued a recommendation that the Supreme Court of California (Supreme Court) decline to accept respondent's resignation. Following the Review Department's recommendation, this court issued an order taking the present matter out of abated status on October 20, 2014. On February 18, 2015, the Supreme Court issued an order denying respondent's resignation.

On January 28, 2015, the State Bar filed a motion to amend the NDC. On February 19, 2015, respondent filed an answer to the proposed amended NDC. On February 23, 2015, this court issued an order granting the motion to amend the NDC. Pursuant to this order, the State Bar properly filed and served the amended NDC on February 25, 2015.²

On April 1, 2015, the parties filed a stipulation as to facts and the admission of documents. Trial was held that same day. The State Bar was represented by Senior Trial Counsel Sherrie McLetchie. Respondent represented himself. The court took this matter under submission for decision on April 1, 2015.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on June 15, 1993, and has been a member of the State Bar of California since that time.

² After filing the amended NDC, respondent did not refile his answer; however, this court accepts respondent's February 19, 2015 answer to the proposed amended NDC as his answer to the amended NDC.

Case No. 13-O-13180 – The Client Trust Account Matter

Facts

Beginning on August 21, 2010, and continuing to date, respondent was ineligible to practice law in the State of California. By November 27, 2012, respondent should not have been utilizing a client trust account (CTA) for any purposes. (Stipulation, p. 2.)

On April 7 and 8, 2011, respondent, as conditions of a prior discipline, completed the State Bar ethics and client trust accounting schools. Accordingly, respondent, as of at least April 8, 2011, knew the ethical responsibilities relating to his CTA.

In November 2012, respondent was admitted to the Environmental Law LL.M. program at Golden Gate University.

Beginning on November 27, 2012, and continuing through January 13, 2013, respondent deposited his own funds into his CTA at Bank of America, as follows:

<u>Date of Deposit</u>	<u>Amt. Deposited</u>	<u>Form of Deposit</u>
11/27/12	\$120	Cash
12/10/12	\$300	Wire Transfer
12/21/12	\$500	Check
01/23/13	\$150	Cash
01/25/13	\$3,549.75	Direct Deposit
01/31/13	\$8,014	Direct Deposit

The deposits into respondent's CTA made on January 25 and 31, 2013, in the amounts of \$3,549.75 and \$8,014, respectively, were student aid funds from Golden Gate University.

On January 22 and 23, 2013, respondent issued checks and withdrew cash from his CTA, as follows:

<u>Check No.</u>	<u>Check Date</u>	<u>Check Amt.</u>	<u>Returned/Paid</u>
1424	01/23/13	\$180	Paid
1425	01/22/13	\$80	Paid
N/A (Cash)	01/23/13	\$40	Paid

At the time respondent removed these funds, he knew or should have known that there were insufficient funds in his CTA to pay the checks and cover the cash withdrawal. CTA check

nos. 1424 and 1425, in the amounts of \$180 and \$80, respectively, were for respondent's personal expenses.

In December 2013, respondent earned his LL.M. degree in Environmental Law and is now a candidate for Doctor of Juridical Science at Golden Gate University.

Conclusions

Count One – Rule 4-100(A) [Depositing Personal Funds in CTA]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm may be deposited therein or otherwise commingled therewith, except for limited exceptions. By depositing the aforementioned personal funds into his CTA, respondent deposited non-client funds into his CTA for his own personal benefit, in willful violation of rule 4-100(A).

Count Two – Section 6106 [Moral Turpitude – NSF Transactions]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The intentional or grossly negligent issuance of NSF checks constitutes an act of moral turpitude. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876.) Respondent had been ineligible to practice law for two years prior to issuing the aforementioned NSF checks. At the time those checks were issued, respondent should have known there were insufficient funds in his CTA to cover them. By issuing checks drawn upon his CTA when he was grossly negligent in not knowing there were insufficient funds, respondent committed acts involving moral turpitude, in willful violation of section 6106.

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Case No. 14-O-01287 – Disciplinary Probation Matter #1

Facts

On March 10, 2011, respondent signed a stipulation in State Bar Court case no. 08-O-14845 in which he agreed to receive a three-year suspension, stayed, with a four-year probation and a one-year actual suspension. By signing the stipulation, respondent promised to comply with the probation conditions set forth in the stipulation. The State Bar Court issued an order approving this stipulation on March 29, 2011.

On July 27, 2011, the Supreme Court issued an order, in case no. S193232 (State Bar Court case no. 08-O-14845), suspending respondent from the practice of law for three years, stayed, and placing respondent on probation for a period of four years subject to a one-year actual suspension and compliance “with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on March 29, 2011.” On August 8, 2011, the Office of Probation of the State Bar of California (Office of Probation) sent respondent a letter attaching a copy of the Supreme Court’s July 27, 2011 order. In this letter, the Office of Probation set forth the terms of respondent’s probation, including filing quarterly reports. Respondent received this letter and was aware of its contents. The Supreme Court Order became effective on August 26, 2011, and remained in full force at all times thereafter.

On October 9, 2012, respondent mailed his quarterly report due October 10, 2012, to the Office of Probation. The Office of Probation received and filed it on October 12, 2012.

On July 8, 2013, respondent timely submitted his July 2013 quarterly report to the Office of Probation. The Office of Probation, however, refused to file this quarterly report because respondent misdated the signature line of the quarterly report. Specifically, the Office of

Probation stated that the quarterly report could not be filed because it was dated “July 6, 2013,” and postmarked “July 5, 2013.”

On October 8, 2013, respondent mailed his quarterly report due October 10, 2013. The Office of Probation received and filed it on October 11, 2013.

On January 21, 2014, respondent filed late his quarterly report due January 10, 2014.

On October 9, 2014, respondent mailed to Office of Probation his quarterly report due October 10, 2014. The Office of Probation received and filed it on October 14, 2014.³

On January 23, 2015, respondent filed late his quarterly report due January 10, 2015.

Conclusions

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By not timely submitting quarterly reports due January 10, 2014 and January 10, 2015, respondent failed to comply with conditions attached to his disciplinary probation, in willful violation of section 6068, subdivision (k).

The State Bar also alleged that respondent failed to timely submit quarterly reports due October 10, 2012; July 10, 2013; October 10, 2013; and October 10, 2014. These allegations were not supported by clear and convincing evidence. Respondent’s probation conditions required that he “submit” the quarterly reports to the Office of Probation by the 10th day of each of the requisite months. The probation conditions did not specifically require that the Office of Probation “receive” or “file” those reports during the same time period. Charging probation violations for quarterly reports mailed or “submitted” in a timely fashion, but, for whatever reason, not received on or before the 10th day of the month neither fosters the goals of public protection nor preserves public confidence in the profession. Instead, such allegations make the State Bar appear demanding and petty.

³ The court takes judicial notice of the fact that October 11, 2014, was a Saturday and October 13, 2014, was a State Bar holiday.

Further, the State Bar's allegations do not cast the Office of Probation in a good light. It is not appropriate for the Office of Probation to reject a timely-received quarterly report simply because the signature line was misdated by one or two days. Minor mistakes will happen, and both the State Bar and Office of Probation should exercise some degree of flexibility and common sense.

Case No. 14-O-01288 – Disciplinary Probation Matter #2

Facts

On February 21, 2012, respondent signed a stipulation in State Bar Court case no. 11-O-13878 in which he agreed to receive a four-year suspension, stayed, with a four-year probation and a three-year actual suspension. By signing the stipulation, respondent promised to comply with the probation conditions set forth in the stipulation. The State Bar Court issued an order approving this stipulation on March 2, 2012.

On August 29, 2012, the Supreme Court issued an order, in case no. S201897 (State Bar Court case no. 11-O-13878), suspending respondent from the practice of law for four years, stayed, and placing respondent on probation for a period of four years subject to an actual suspension of a minimum of three years and until proof of rehabilitation, fitness to practice, and learning and ability in the general law. Respondent was also ordered to comply “with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on March 2, 2012.” On September 27, 2012, the Office of Probation sent respondent a letter attaching a copy of the Supreme Court's August 29, 2012 order. In the letter, the Office of Probation set forth the terms of respondent's probation, including filing quarterly reports. Respondent received this letter and was aware of its contents. The Supreme Court Order became effective on September 29, 2012, and remained in full force at all times thereafter.

On June 18, 2013, respondent filed late his quarterly reports for the due dates of January 10, 2013, and April 10, 2013.

On October 8, 2013, respondent mailed his quarterly report due October 10, 2013. The Office of Probation received and filed it on October 11, 2013.

On October 9, 2014, respondent mailed his quarterly report due October 10, 2014. The Office of Probation received and filed it on October 14, 2014.

On January 23, 2015, respondent filed late his quarterly report due January 10, 2015.

Conclusions

By not timely submitting quarterly reports due January 10, 2013; April 10, 2013; and January 10, 2015, respondent failed to comply with conditions attached to his disciplinary probation, in willful violation of section 6068, subdivision (k).⁴

Mitigation⁵

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

Respondent entered into a stipulation of facts and admission of documents. Respondent's candor and cooperation with the State Bar warrant some consideration in mitigation.

Respondent's Graduate Studies

Respondent has recently achieved several accomplishments while studying as a graduate law student, including earning writing awards and preparing a dissertation. While the court applauds respondent's accomplishments as a graduate law student, advanced educational achievements do not represent a recognized basis for mitigation. Accordingly, the court is

⁴ For the same reasons noted above, the allegations that respondent failed to timely submit his October 2013 and October 2014 quarterly reports were not established by clear and convincing evidence.

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

supportive of and encouraged by respondent's recent scholastic achievements, but only assigns nominal weight in mitigation for his graduate law studies and achievements.

Aggravation

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

Respondent has been previously disciplined on four occasions. As illustrated below, some of respondent's prior discipline matters involved misconduct similar to the present misconduct. The court assigns substantial weight to respondent's prior record of discipline.

On December 5, 2003, the Supreme Court issued order no. S119251 (State Bar Court case nos. 00-O-12263, et al.) suspending respondent from the practice of law for two years, stayed, with three years' probation, including a six-month actual suspension and until restitution and completion of the State Bar's ethics and client trust accounting schools. In this matter, respondent was found culpable of failing to maintain client funds in trust (four counts), misappropriation of client funds (four counts), misrepresentation to the State Bar, commingling personal funds in his client trust account, issuing at least 50 NSF checks, failing to account, failing to release a client file, failing to perform legal services with competence, improper withdrawal from employment, failing to respond to client inquiries, aiding the unauthorized practice of law, failing to maintain respect due to the court, and failing to obey a court order. In aggravation, respondent significantly harmed the administration of justice and committed a pattern of misconduct involving NSF checks. In mitigation, respondent cooperated with the State Bar by entering into an extensive factual stipulation, and demonstrated community service and limited good character.⁶

On July 22, 2010, the Supreme Court issued order no. S182846 (State Bar Court case nos. 06-O-12413, et al.) suspending respondent from the practice of law for one year, stayed,

⁶ Although respondent had no prior record of discipline, he had only been practicing for three years when his misconduct commenced.

with two years' probation, including a nine-month period of actual suspension. In this matter, respondent stipulated to failing to perform legal services with competence (three counts), disobeying court orders (two counts), entering into an agreement with a client to withdraw a disciplinary complaint, litigating an unwarranted claim, and failing to comply with all laws. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct. In mitigation, respondent demonstrated community service and cooperated with the State Bar by entering into a stipulation.

As noted above, the Supreme Court, on July 27, 2011, issued order no. S193232 (State Bar Court case no. 08-O-14845) suspending respondent from the practice of law for three years, stayed, with four years' probation, including a one-year period of actual suspension. In this matter, respondent stipulated to commingling personal funds in his trust account (two counts) and failing to maintain client funds in trust. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct. In mitigation, respondent demonstrated remorse, cooperated with the State Bar by entering into a stipulation, and did not cause client harm.

As noted above, the Supreme Court, on August 29, 2012, issued order no. S201897 (State Bar Court case no. 11-O-13878) suspending respondent from the practice of law for four years, stayed, with four years' probation, including a three-year minimum period of actual suspension and until proof of rehabilitation, fitness to practice, and learning and ability in the general law. In this matter, respondent stipulated to appearing in court and holding himself out as entitled to practice law when he knew he was not entitled. In aggravation, respondent had a prior record of discipline. In mitigation, he cooperated with the State Bar, demonstrated good character, and was experiencing severe financial stress and family problems at the time of the misconduct.

Multiple Acts (Std. 1.5(b).)

Respondent is culpable of multiple acts of misconduct, including depositing personal funds in his CTA, issuing NSF checks, and failing to comply with probation conditions.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2; 2.7; and 2.10.) The most severe sanction is found at standard 2.7 which provides that disbarment or actual suspension is appropriate for an act of moral turpitude.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current suspension: (1) actual suspension was ordered in any

one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

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

The State Bar recommended that respondent be disbarred from the practice of law. Respondent, on the other hand, argued for discipline short of disbarment.

The Supreme Court and Review Department have not historically applied standard 1.8(b) in a rigid fashion.⁷ Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts are more inclined to find disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

⁷ Standard 1.8(b) was previously identified as standard 1.7(b). Standard 1.8(b) is more limited than former standard 1.7(b), but is applicable here.

The present matter represents respondent's fifth discipline. Moreover, the present matter demonstrates respondent's unwillingness or inability to learn from his prior discipline, as the present discipline reflects a repetition of offenses for which respondent has been previously disciplined. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 111.) This marks the third time respondent has been found culpable of commingling personal funds in his client trust account. Four previous stints of disciplinary probation, including ethics school and client trust accounting school, were unable to prevent the present misconduct. Clearly, respondent cannot conform his conduct to the ethical duties required of an attorney.

Having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent **Nwabueze Chukwuedoz Ezeife**, State Bar Number 165472, 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.

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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: June _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court