

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case No.: **13-TE-12119-PEM**
)
HAL ERWIN WRIGHT,) **DECISION ON APPLICATION FOR**
) **INACTIVE ENROLLMENT AND ORDER**
) **OF INVOLUNTARY INACTIVE**
) **ENROLLMENT**
)
A Member of the State Bar.)

Introduction¹

This matter is before the court on the verified application of the Office of Chief Trial Counsel of the State Bar of California (State Bar) seeking to involuntarily enroll respondent Hal Erwin Wright as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(2) and rule 5.226 of the Rules of Procedure of the State Bar of California. The State Bar's application addresses matters contained in the Notice of Disciplinary Charges (NDC) filed on April 23, 2013 in State Bar Court case nos. 12-O-13203 (13-O-16850) and is based upon declarations and exhibits which allege that respondent committed multiple acts involving moral turpitude and dishonesty, including misappropriation of funds, and that he has failed to promptly notify clients of the receipts of client funds and failed to perform competently with regard to the Isaacson matters (State Bar Court case no. 13-O-16850). It also is based on an

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.

investigation matter, case no. 13-O-11753, which is not yet the subject of formal charges² and a prior disciplinary recommendation that respondent be actually suspended for 18 months and until he makes specified restitution, among other things, that is presently pending before the Review Department. (*In the Matter of Hal Erwin Wright*, State Bar Court case nos. 10-O-10808 (11-O-11767); 12-O-13203 (Cons.))³

The State Bar is represented by Senior Trial Counsel Robin Brune. Though respondent requested it, he did not appear at the hearing on the matter.⁴

For the reasons, stated below the court finds that the State Bar has provided clear and convincing evidence that respondent engaged in misconduct which has caused significant harm to clients and the public, that there is a reasonable likelihood that the harm will recur or continue, and that there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary proceedings. Therefore, it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision(c)(1).

² As to the investigation matter, the application does not set forth alleged rule or statutory violations that would put respondent on notice of possible charges. This compromises due process. Accordingly, this decision and order are based only on the misconduct and charges alleged in the NDC in State Bar Court case nos. 12-O-16850 (13-O-11620).

³ The court will consider this already-adjudicated matter only for purposes of showing similarity and continuity of respondent's alleged misconduct in the present matter.

⁴ Respondent did not appear at the hearing although he had notice of it served by certified mail on May 2, 2013. Further, the State Bar's notices of intent to present oral testimony and to present additional evidence both reference the May 28 hearing date as does its motion to strike the NDC in case nos. 12-O-16850 (13-O-11620) and he was served with these documents. He also filed a response to the motion to strike. Moreover, on the date of the hearing, respondent sent an email to the court indicating that he was not going to appear because his counsel advised him not to and that he had apprised the State Bar by email on May 24, 2013.

Significant Procedural History

On April 22, 2013, the State Bar filed an application to have respondent involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(2).

On April 23, 2013, the State Bar filed the NDC in case nos. 12-O-16850 (13-O-11620) to which respondent filed a response on May 20, 2013. On May 28, 2013, the court granted the State Bar's motion to strike the response, or, in the alternative, order respondent to file a response consistent with rule 5.43(c)(1). Respondent was ordered to file a more definite response consistent with rule 5.43(c)(1).

Respondent was served with the application in the instant case on May 2, 2013, by certified mail at his official membership address, to which he filed a verified response on May 3, 2013.

On May 15 and 22, 2013, the State Bar filed notices of intent to present oral testimony pursuant to rule 5.230(c) and to present additional evidence, namely, the second declaration of Amanda Gormley.

Pursuant to the State Bar's and respondent's requests, a hearing on this matter was held by the court on May 28, 2013, during which the court admitted the State Bar's exhibits 1-7 into evidence and took the testimony of complaining witness Steve Isaacson. The case was submitted for decision that same date.

Jurisdiction

Respondent was admitted to the practice of law in California on April 7, 1992, and has been a member of the State Bar of California at all times since that date.

Findings of Fact and Conclusions of Law

Section 6007, subdivision (c) authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a substantial threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;⁵ and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

The court's findings of fact are based on clear and convincing evidence.

Evidence was submitted by declarations as well as by the testimony of one witness. (Rules Proc. of State Bar, rule 5.230(A).) The court finds these declarations and the witness to be generally credible.

A. Case No. 13-O-11620 – *The Isaacson Matters*

Facts

1. Big Idea Theater Matter

In September 2010, Steve Isaacson hired respondent to represent him in a personal injury matter arising from his June 5, 2010 fall at the Big Idea Theater in Sacramento, California. The parties did not execute a written fee agreement.

⁵ But where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

Because of his injuries, Isaacson underwent two knee surgeries and two back surgeries between August 2010 and October 2012.

In December 2011, respondent told Isaacson that he intended to file a medical malpractice suit on his behalf. On August 1, 2012, at respondent's request, Isaacson issued his check no. 6043 in the amount of \$390 payable to the Sacramento County Superior Court and gave it to respondent to pay the filing fee for his medical malpractice case. After receiving the check, respondent scratched out the payee, "Sac Superior Court," inserted "Hal Wright POA" and cashed it. He misappropriated the court filing fees for his own use and purposes. He never filed the medical malpractice suit. He misrepresented to Isaacson that he would do so, but this was a pretext for obtaining the \$390 check for filing fees.

From the beginning of his representation until January 2013, respondent represented to Isaacson that he was pursuing the personal injury case; had filed suit; and that litigation was proceeding forward. In September 2011, he sent Isaacson interrogatories purportedly propounded by the defense. In November 2012, respondent gave Isaacson \$3,000, which he said was a partial payment from the insurance company for lost wages.⁶ In reality, respondent settled Isaacson's claim against the Big Idea Theater with Northland Insurance Company on April 1, 2011 for \$40,000 without Isaacson's knowledge, consent or authority. On that same date, he signed, or caused to be signed the signatures of Isaacson and Jan, his wife, without their knowledge, consent or authority on the general release, and forwarded it to Northland. In so doing, he misrepresented to Northland that Isaacson and his wife knew and consented to the settlement.

After receiving the release, Northland issued two settlement checks: (1) Check no. 93600, dated April 5, 2011, issued to Steve and Jan Isaacson and their attorney, Hal E. Wright,

⁶ As will be discussed below, these funds were part of money obtained from a bequest to another client, a theater company of which Isaacson was vice president.

for \$5,000; and (2) Check no. 93601, dated April 5, 2011, issued to Steve and Jan Isaacson and their attorney, Hal E. Wright, for \$35,000.

Respondent signed, or caused to be signed without their knowledge, consent or authority, the signatures of Isaacson and his spouse on the back of each check. In so doing, he misrepresented to Northland that Isaacson and his wife had endorsed the checks. Respondent received the settlement funds and dishonestly spent them on matters unrelated to Isaacson. Isaacson credibly testified at the hearing that he did not sign the release and did not know about or agree to the settlement of his personal injury matter against Big Idea Theater.

Respondent sent Isaacson numerous misleading emails so Isaacson would believe that his case was moving forward, including the following:

- (1) On October 9, 2012: "Hi Steve, Still working on getting you some jingle";
- (2) On January 18, 2012: "It sickens me that you are still in pain and I'm trying my best with these "suits" but thinking outside the box/bun is not their forte. The case is actually in better shape now than it was 6 months ago. Everybody's in";
- (3) On January 12, 2013: "I spent a couple of hours on the phone with Cincinnati. I told them that we absolutely had to have some more in lost wages (easiest to quantify and, therefore, less to fight over) because you were hurting financially. Threw Insurance Code 760h at them (bad faith, hard to prove but it's there) and said if we have to go that route we will. I am supposed to hear first thing Monday and told them this time we want a wire."

When respondent sent these emails, he was no longer pursuing the case but, rather, had settled the case for \$40,000 and kept the settlement funds, all without Isaacson's knowledge or consent.

Isaacson did not learn about the settlement of his personal injury claim until his new counsel, Jason Ewing, retained in January 2013, told him and showed him the release and endorsed checks. The settlement was done before Isaacson had the two back surgeries. It does not cover his medical expenses and lost wages. According to Isaacson, Ewing estimates that the case was worth at least \$500,000 if not over \$1 million. The medical expenses are about

\$250,000 and Isaacson estimates his lost wages at about \$100,000. Isaacson fears that he may have lost all rights of recovery against Big Idea Theater and Northland.

In a conversation with Ewing, respondent admitted that he had settled Isaacson's claim for \$40,000 and kept the money and that he had forged the Isaacsons' signatures. He claimed to have needed the money for personal family problems that he was dealing with at the time. He made a similar admission to a State Bar investigator.

Respondent asked Ewing to refrain from notifying the State Bar or contacting the police and that he would "make things right" for Isaacson. He offered the proceeds of another case, purportedly \$200,000, that he was about to settle as a way of doing so. Respondent denies these allegations. Ewing and Isaacson have contacted the Davis, California police department and been in touch with investigators regarding the possibility of criminal action being brought against respondent.

2. Davis Musical Theater Company Matter

Isaacson hired respondent for a second matter in May 2012. In his capacity as board member and Vice President of the Davis Musical Theater Company (DMTC), Isaacson hired respondent to obtain the proceeds of a bequest to the DMTC from Evalynn "Bridget" F. Davis, (Bridget's Trust) and gave him related documents to do so. The parties did not execute a written fee agreement.

On October 1, 2012, respondent executed a document entitled "Beneficiary Waiver of Account and Consent to Final Distribution" in connection with the Bridget's Trust matter. On November 19, 2012, he received from Bridget's Trust check no. 1113 for \$15,500 as payment to DMTC but did not tell Isaacson that he received it. He did not notify his client promptly of the receipt of the client's funds.

Respondent endorsed or caused the check to be endorsed and dishonestly appropriated them to himself. Neither Isaacson nor DMTC ever received the \$15,500 from Bridget's Trust. Isaacson credibly testified at the hearing that respondent gave him \$3,000 of the \$15,500 in late 2012, but, at the time, did not tell him that he had received the Bridget Trust funds.⁷

Isaacson did not become aware that respondent had received the \$15,500 for DMTC until January 10, 2013. When he confronted respondent about these receipt of these funds, he said that he had deposited the funds in his bank account and that the IRS had levied on the account to satisfy tax liens.

In his response to the application herein, he characterized "the matter of the inheritance money" as "to be blunt, self-help for funds owed me."

Respondent admitted to a State Bar investigator that he had taken the \$15,500 because he needed it for a critical family situation. He also admitted that the IRS had not levied on the funds for past-due taxes and that he had lied to Isaacson and Ewing about that. Respondent indicated that he intended to pay the money back and that he was waiting for a settlement to be finalized soon after one of the counsel in the case returned from vacation in early April 2013. Respondent also admitted that his client in the case awaiting settlement was unaware about his recent disciplinary case and impending suspension and that he misappropriated Isaacson's funds.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

⁷ As was noted previously, respondent misrepresented to Isaacson that the \$3,000 payment represented partial payment for lost wages from the insurance carrier on his personal injury matter.

a. Section 6106 [Moral Turpitude/Misrepresentation/Misappropriation]: Section 6106 states, in part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for disbarment or suspension;

b. Rule 3-110(A) [Failure to Perform with Competence]: Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence; and

c. Rule 4-100(B)(1) [Notification to Client of Receipt of Client Property]: Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds, securities, or other properties.

B. Case No. 12-O-16850 – The Ramirez Matter

No evidence was submitted in support of this matter along with the application. Accordingly, the court cannot ascertain whether there is a reasonable probability that the State Bar will prevail regarding the charges alleged in the NDC.

C. Case No. 10-O-10808 – The Matter Pending in the Review Department

In case nos. 10-O-10808 (11-O-11767); 12-O-13203 (Cons.), filed March 28, 2013, the Hearing Department found that respondent failed to refund unearned fees (\$4,000 in one matter and \$1,410 in another matter) and concealed his failure to perform to both clients by misrepresenting to them the status of their pending cases, in one of the cases lying about the status for over two years. In the Brooks matter, respondent went so far as to fabricate tales of fictitious negotiations with the opposing side. The court also found that respondent was grossly negligent in reporting his MCLE requirements, rising to the level of moral turpitude. The misconduct took place between November 2007 and April 2011. In aggravation, the court found

a prior disciplinary record,⁸ multiple acts of misconduct and harm to clients.⁹ In mitigation, the court found emotional/physical difficulties, candor and cooperation and severe financial stress. This case is currently pending in the Review Department.¹⁰

Discussion

The evidence before the court establishes that respondent, in his capacity as an attorney, has committed numerous acts of misconduct in the aforementioned matters.

As mentioned above, section 6007, subdivision (c)(2) sets forth three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public. All of the following factors must be found:

1. The attorney has caused or is causing substantial harm to his clients or the public;
2. The attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and
3. That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

A. Reasonable Probability the State Bar will Prevail

The court has made factual findings and legal conclusions, set forth above, as to the likelihood that the State Bar will prevail on the merits of the charges presented in the application.

⁸ A private reproof was imposed effective December 4, 2003 for misconduct including violations of rules 3-110(A), 3-700(D)(2) and 4-100(B)(3) in one client matter. (State Bar Court case no. 01-O-02009, filed November 13, 2003.) One of the reproof conditions was to make restitution to the client for retention of fees unearned because of nonperformance. The court notes the similarity between the misconduct found in the present and prior disciplinary cases.

⁹ Brooks' case was delayed over a long period of time when Brooks was experiencing a traumatic event of which respondent was aware, namely Brooks' wife's terminal diagnosis with Lou Gehrig's disease. This case left Brooks disillusioned with the legal system. Both Brooks and the other client, Glazier, lost the use of the funds they paid respondent.

¹⁰ The matter pending in the Review Department, although not final, is considered a prior disciplinary record. (Rule 5.106(A).)

Accordingly, the court finds that there is a reasonable probability that the State Bar will prevail on the allegations of misconduct in the aforementioned matters.

B. Substantial Harm to the Public or the Attorney's Clients

The evidence supports the conclusion that respondent's misconduct has caused substantial harm to his clients and the public. Respondent has not performed for his clients, consistently made misrepresentations to them and misappropriated their funds. He appears to lie with ease. For example, he told Isaacson that the \$15,000 received for DMTC was seized by the IRS but later admitted that he lied to Isaacson and Ewing. Isaacson may have lost his cause of action. In general, he acted for his personal benefit, reaping thousands of dollars, with little concern for his client's welfare or the adverse consequences of his actions.

Respondent's misconduct has also harmed the legal profession. Respondent's unwillingness or inability to follow the laws of this state tarnishes the reputation of other attorneys and the legal community as a whole.

Accordingly, the court finds that the State Bar has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients and the public.

C. Likelihood that Harm will Continue

Respondent has demonstrated a lack of understanding or appreciation of his ethical duties and the consequences of his misconduct. "Honesty is one of the most fundamental rules of ethics for attorneys. [Citation.] Indeed, an attorney who intentionally deceives his client is culpable of an act of moral turpitude. [Citation.]" (*Gold v. State Bar* (1989) 49 Cal.3d 908, 914.) Absent the court's intervention, it is likely that respondent's conduct will continue to harm clients and the public.

The court notes that the misconduct in respondent's prior disciplinary case, presently pending in the Review Department, is similar in nature and overlaps the present case in its time

frame. The misconduct in the present matters appears to have taken place between April 2011 and January 2013 while in the pending appellate matter, the misconduct took place between November 2007 and April 2011. Thus, respondent has been engaged in a continuous course of misconduct between November 2007 and January 2013, more than five years. The court is concerned about the status of the settlement funds, if any, of the case whose proceeds respondent hopes to use to pay Isaacson, particularly since that client is unaware of respondent's disciplinary status.

Further, in the pending appellate matter, the Hearing Department found misconduct in two client matters that included nonperformance and moral turpitude, similar to that in the instant case. Respondent also has a 2003 private reproof which contained similar misconduct.

The court also finds that respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. The burden of proof, therefore, shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).) Since respondent did not participate in these proceedings, he has not met this burden.

Accordingly, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2) has been established by clear and convincing evidence. The court concludes that respondent's conduct poses a substantial threat of harm to his clients and the public. The court further finds that the involuntary inactive enrollment of respondent is merited for the benefit of the public, the courts and the legal profession.

Conclusion

Accordingly, **IT IS ORDERED** that respondent **HAL ERWIN WRIGHT** be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail. (Rules

Proc. of State Bar, rule 5.231(D).) State Bar Court staff is directed to give written notice of this order to respondent.

IT IS FURTHER ORDERED that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, respondent must:

- (a) Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
- (b) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
- (c) Provide to each client an accounting of all funds received and fees or costs paid and refund any advance payments that have not been either earned as fees or expended for appropriate costs; and
- (d) Notify opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment and file a copy of the notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days after the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court: (1) an affidavit (containing respondent's current State Bar membership records address where communications may thereafter be directed to him) stating that he has fully complied with the provisions of paragraphs 1 and 2 of this order; and (2) copies of all documents sent to clients pursuant to paragraph 1(c) of this order; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement, or for imposing sanctions.

Dated: June _____, 2013

PAT E. McELROY
Judge of the State Bar Court