

PUBLIC MATTER

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-J-05671-WKM
)	
TREZANAY MICHELLE ATKINS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE ENROLLMENT
Member No. 249968,)	(Bus. & Prof. Code, § 6007, subd. (c)(4).)
)	
A Member of the State Bar.)	

Introduction

On September 22, 2014, the Supreme Court of the State of Indiana filed an opinion in which it found that respondent **TREZANAY MICHELLE ATKINS** engaged in professional misconduct within its jurisdiction.¹ (*In re Atkins* (Ind. 2014) 16 N.E.3d 950.) Specifically, the Indiana Supreme Court found that respondent “engaged in attorney misconduct by committing criminal conversion while acting in a fiduciary capacity and by engaging in conduct involving dishonesty” in violation of Indiana Rules of Professional Conduct, rules 8.4(b) and 8.4(c), respectively.² (*Id.* at p. 950.) For that misconduct, respondent was suspended from the practice of law in Indiana for a period of not less than two years, without automatic reinstatement, beginning November 3, 2014. In addition, respondent was ordered to comply with additional conditions, such as giving notice of her suspension to her clients and paying the costs of the

¹ Respondent was admitted to the Indiana Bar in 2009.

² Indiana, like California, requires that attorney misconduct be proved by clear and convincing evidence.

proceeding. Respondent must petition the Indiana Supreme Court for reinstatement to the practice of law in that state.³

Following the Indiana Supreme Court's opinion in *In re Atkins, supra*, 16 N.E.3d 950, the Office of the Chief Trial Counsel of the State Bar of California (OCTC) initiated this streamlined disciplinary proceeding against respondent. (Cal. Bus. & Prof. Code, § 6049.1;⁴ Rules Proc. of Cal. State Bar, rule 5.350 et seq.) Under California section 6049.1, subdivision (a), a certified copy of a final sister-state order or judgment imposing discipline on a California attorney for professional misconduct that the attorney committed in the sister state is conclusive evidence that the attorney is also culpable of professional misconduct in California unless (1) the attorney's culpability in the sister state would not warrant discipline in California under the laws and rules of this state in effect at the time the attorney committed the misconduct in the sister state or (2) the proceedings in the sister state lacked fundamental constitutional protection. (Cal. § 6049.1, subds. (2), (3).)

As set forth *post*, each of the Indiana Supreme Court's findings of professional misconduct contains a determination that respondent is culpable of violating an Indiana Rule of Professional Conduct that is *substantially identical* to a California rule or statute that was in effect when respondent engaged in the misconduct in Indiana. Thus, it is clear that respondent's misconduct in Indiana warrants the imposition of discipline in California under the laws and rules of this state in effect at the time respondent committed the misconduct in Indiana. Moreover, even though respondent alleged in her response to the NDC that the Indiana

³ "Reinstatement [in Indiana] is discretionary and requires clear and convincing evidence of the attorney's remorse, rehabilitation, and fitness to practice law. [Citation.]" (*In re Atkins, supra*, 16 N.E.3d at p. 952.)

⁴ Unless otherwise noted, all further California statutory references (i.e., references to California sections) are to the California Business and Professions Code.

proceeding lacked fundamental constitutional protection, she failed to present any evidence whatsoever to support the allegations. In sum, this court accepts all of the Indiana findings of misconduct as conclusive evidence of respondent's culpability in California.

Finally, even though the Indiana findings of misconduct conclusively establish respondent's culpability in California, the Indiana findings do not establish the appropriate degree of discipline in California. Instead, this court must independently determine and recommend the appropriate level of discipline under California law just as it does in original disciplinary proceedings. (*In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 358, 362 [California "section 6049.1 is not a 'like discipline' statute but rather requires that discipline be decided anew in this state based on all relevant factors."]; *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 217 [Under California "section 6049.1, the appropriate degree of discipline is not presumed by the other state's discipline, but is open for determination in this state."].)

For the reasons set forth *post*, the court concludes that the appropriate level of discipline in this state for the found misconduct is disbarment. Moreover, because the court recommends respondent's disbarment, it will also order that she be involuntarily enrolled as an inactive member of the State Bar of California in accordance with California section 6007, subdivision (c)(4).

Pertinent Procedural History

OCTC filed the NDC in this matter on February 18, 2015. Thereafter, respondent filed her response to the NDC on April 6, 2015.

This matter was originally assigned to State Bar Court Judge Patrice E. McElroy. However, effective May 26, 2015, the matter was reassigned to the undersigned State Bar Court Judge for all purposes.

On September 11, 2015, the day of trial, the parties filed a partial stipulation of facts and admission of documents. Additionally, on September 11, 2015, respondent filed and served a motion in which she sought to have the assigned Deputy Trial Counsel representing OCTC in this proceeding disqualified. After hearing arguments from both parties, the court denied respondent's disqualification motion from the bench on September 11, 2015, as untimely filed under rule 1113 of the California State Bar Court Rules of Practice.

Moreover, respondent failed to file her motion to disqualify promptly after she first learned of the alleged grounds for disqualification. (Cf. Rules Proc. of Cal. State Bar, rule 5.46(I)(1).) According to respondent's motion, the alleged grounds for disqualification occurred on March 30, 2015, June 16, 2015, and July 21, 2015. Respondent, however, waited until the first day of trial to file her motion for disqualification. This fact alone strongly suggests that respondent filed her motion for the improper purpose of delay.

Further, respondent's motion and its allegations of ethical breaches lacked adequate factual support. (Rules Proc. of Cal. State Bar, rule 5.45(C).) Notably, no credible evidence exists that the assigned Deputy Trial Counsel knowingly and maliciously attempted to dissuade any witness from attending or giving testimony at the trial in this proceeding. Finally, even if all of the ethical breaches and appearances of impropriety alleged in respondent's motion were adequately supported by credible declarations made by persons with personal knowledge or by properly authenticated exhibits, the alleged breaches and appearances of impropriety fall woefully short of establishing that the assigned Deputy Trial Counsel is or should be disqualified from representing OCTC in this proceeding.

Trial took place in its entirety on September 11, 2015, and the court took the matter under submission for decision that same day. At trial, OCTC was represented by Deputy Trial Counsel Adriana M. Burger. Respondent represented herself.

Findings of Fact and Conclusions of Law

The following findings of fact are based on respondent's response to the NDC, the parties' August 12, 2015, partial stipulation of facts and admission of documents, and the documentary and testimonial evidence admitted at trial, including the certified copy of the Indiana Supreme Court's opinion and order in *In re Atkins, supra*, 16 N.E.3d 950 (Exhibit 9).

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 12, 2007. Respondent has been a member of the State Bar of California since that date.

Findings of Fact

As noted *ante*, respondent has been licensed to practice law in the State of Indiana since 2009. In 2011, respondent joined the Marion County Bar Association (MCBA), which the Indiana Supreme Court describes as a local bar association assisting in the professional development of African American attorneys practicing in the Indianapolis area.

Respondent became MCBA's treasurer in June 2011, and she served as treasurer from June 2011 until she resigned in December 2012 (a period of about 18 months). As treasurer, respondent had signatory authority on MCBA's checking account at Regions Bank; thus, respondent clearly served in a fiduciary capacity as treasurer of the MCBA. Additionally, as treasurer, respondent also prepared monthly financial reports, which were distributed to all MCBA officers and board members.

During her 18-month term as treasurer, respondent repeatedly misappropriated MCBA funds for her own use and benefit. In the Indiana proceeding, respondent admitted that she converted the proceeds of one ATM debit and the proceeds of 21 counter checks drawn on MCBA's checking account. In addition, respondent admitted that she converted the proceeds of 30 checks drawn on MCBA's checking account. The memo lines on those unauthorized checks

often contained false statements to make it appear that the checks were issued to pay legitimate MCBA expenses. Additionally, respondent falsified her monthly financial reports to conceal her thefts from MCBA. Respondent admitted that she converted more than \$9,100 from MCBA. Respondent misappropriated all of the converted funds for her own use and benefit.

On February 5, 2013, respondent deposited \$2,651.52 into MCBA's checking account in order to partially replace what she had taken earlier. This deposit created a balance discrepancy that the next treasurer of the organization noticed.

Further, around this time, respondent needed to give funds to the Indiana University-Indianapolis School of Law for a scholarship donation that MCBA thought it had made, when, in fact, respondent had taken those funds for her personal use. She realized that she had no way to give the funds to the law school so that MCBA could use the donation as a tax deduction. Finally, respondent was also aware that MCBA was seeking to obtain 501(c)(6) tax exempt status from the United States Internal Revenue Service, which would require a comprehensive audit of MCBA. Respondent was also aware that the organization was considering hiring an accountant to review its financial records. Thus, respondent was clearly aware by March 2013 that her misappropriations were on the verge of being discovered.

On March 15, 2013, respondent told MCBA's president that she had taken more than \$9,100 from MCBA. Respondent explained to the organization's president that she was planning to make additional payments in order to repay all the funds she misappropriated. Shortly afterwards, she learned from certain MCBA board members that the organization had filed a police report concerning her thefts and a grievance with the Indiana Supreme Court Disciplinary Commission. Prior to the actual imposition of discipline in Indiana, respondent paid back all the money she misappropriated from MCBA.

The Indiana Supreme Court found that respondent's violations of Indiana rules 8.4(b) and 8.4(c) were aggravated by the fact that respondent converted MCBA's funds while she was serving as a fiduciary, and that respondent committed multiple offenses and engaged in a pattern of misconduct. In mitigation, the Indiana Supreme Court found that respondent had no prior disciplinary history, cooperated with the disciplinary process, and was remorseful. Even though respondent's payment of restitution was not a mitigating factor because respondent completed her repayment after MCBA filed its disciplinary complaint, respondent's failure to make such restitution would have been an aggravating factor.

Notwithstanding her admission of misconduct in the Indiana proceeding, at trial on September 11, 2015, respondent provided evasive answers to questions by OCTC regarding her misappropriations and also, at times, stated her answers in a way that justified her misconduct. Even though respondent, later in the trial, indicated that she understood that her conduct was dishonest in response to the court's direct questioning, the overall impression of respondent's testimony is that she lacks any meaningful understanding or a full appreciation for the wrongfulness of her misconduct.

Conclusions of Law

California Section 6106 -- Moral Turpitude, Dishonesty, or Corruption

The parties stipulated that the Indiana Supreme Court's September 22, 2014, opinion and disciplinary order in *In re Atkins, supra*, 16 N.E.3d 950 is final. As the court noted *ante*, the Indiana Supreme Court found that respondent violated Indiana Rules of Professional Conduct, rules 8.4(b) and 8.4(c) "by committing criminal conversion while acting in a fiduciary capacity and by engaging in conduct involving dishonesty."

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Without question, Indiana Rules of Professional Conduct, rules 8.4(b) and 8.4(c) are substantially identical to California section 6106 because they proscribe extremely similar, if not virtually identical, misconduct. California section 6106 provides:

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor.

Because Indiana rules 8.4(b) and 8.4(c) are substantially identical to California section 6106, which was in effect at the time respondent engaged in the misconduct in Indiana, respondent's violations of Indiana rules 8.4(b) and 8.4(c) conclusively establish that respondent willfully violated California section 6106 as set forth *post* and warrant the imposition of discipline in California. (Cal. § 6049.1.) Without question, respondent deliberately violated her fiduciary duties to MCBA when she misappropriated more than \$9,100 from MCBA for her own use and benefit, when she wrote false memos on many of the 30 unauthorized checks that she issued to herself, and when she falsified monthly financial reports she prepared for MCBA. "[A]n attorney's deliberate breach of a fiduciary duty ... involves moral turpitude [in willful violation of California section 6106] even in the absence of an attorney-client relationship. That is because '[a]n attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal professional whether or not he acts in his capacity of an attorney.' [Citations.]" (*In the Matter of Kittrell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 208.) In addition, respondent's deliberate violations of her fiduciary duties to MCBA also involved dishonesty in willful violation of section 6106.

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California Section 6068, Subdivision (a) – Duty to Support Constitution and Laws of United States and California

In the NDC, OCTC alleges that the Indiana Supreme Court's opinion and disciplinary order establish that respondent willfully violated California section 6068, subdivision (a) "for violating [her] duty as a fiduciary to support the laws of this state." Section 6068, subdivision (a), provides that an attorney has a duty "[t]o support the Constitution and laws of the United States and [California]." OCTC has not alleged that respondent violated a provision of either the United States Constitution or the California Constitution, nor has OCTC alleged that respondent violated a law of either the United States or California. In short, the allegations fail to provide respondent with adequate notice of the charges against her, and therefore, the alleged violation of California section 6068, subdivision (a) is DISMISSED with prejudice.

Aggravation

OCTC is required to prove each aggravating circumstance by clear and convincing evidence. (Rules Proc. of Cal. State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5.)⁵ The court finds three factors in aggravation.

Multiple Acts (Cal. Std. 1.5(b).)

Respondent's misconduct evidences at least the following 52 separate acts of serious wrongdoing: respondent misappropriated the proceeds from 30 checks drawn on MCBA's checking account, one ATM debt, and 21 counter checks.

Pattern of Misconduct (Cal. Std. 1.5(c).)

Even though respondent's misconduct evidences numerous acts of very serious wrongdoing, the record fails to establish that respondent engaged in a pattern of misconduct under California standard 1.5(c). "[T]o be considered pattern-of-misconduct aggravation, an attorney's misconduct must ordinarily include not only the type of serious misconduct found

⁵ All further references to California standards (or Cal. stds.) are to this source.

against respondent in this proceeding, but it must also span over an extended period of time.

[Citation.]” (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

Here, respondent’s conduct occurred over only an 18-month period of time, which is found not to be an extended period of time.

Lack of Insight and Remorse

As noted *ante*, the record at trial establishes that respondent lacks any meaningful insight into the wrongfulness of her conduct. (*In re Morse* (1995) 11 Cal.4th 184, 197-198, 206, 209.)

Respondent’s lack of insight into the seriousness of her misconduct is particularly troubling because it suggests that respondent’s misconduct will reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

Lack of Cooperation to OCTC and the State Bar Court (Std. 1.5(h))

The court finds that respondent displayed a serious lack of cooperation to OCTC and this court by filing an obviously untimely and meritless motion seeking the disqualification of the assigned Deputy Trial Counsel on the day of trial. Respondent failed, inter alia, to give OCTC at least 10 days within which to file a response to her motion. (See Rules Proc. of Cal. State Bar, rule 5.45(B).) In addition, respondent filed the untimely and meritless motion at least in part for the improper purpose of delay.

Mitigation

Respondent is required to prove each mitigating circumstance by clear and convincing evidence. (std. 1.6.) Respondent failed to establish any factors in mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession, to maintain the highest possible professional standards for attorneys, and to preserve public confidence in the legal profession.

(Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, this 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.) The court then looks to the 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(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. The most severe sanction for the found misconduct is found in standard 2.1(a), which applies to respondent's willful misappropriation of more than \$9,100 from MCBA. Standard 2.1(a) provides:

Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.

While not knowing the individual amounts misappropriated by the respondent on each occasion, the aggregate amount dishonestly misappropriated, over \$9,100, is by no means insignificantly small, and respondent failed to establish any mitigating circumstances. Accordingly, under standard 2.1(a), disbarment is the presumed sanction. "Multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment. [Citations.]" (*Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45.)

As the review department aptly noted in *In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at pages 360 to 361:

The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656; see *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) [D]isbarment is most frequently imposed where there are several instances of misappropriation of large

sums, involving multiple clients. (See *Rosenthal v. State Bar* (1987) 43 Cal.3d 658.) However, the Supreme Court has imposed disbarment on an attorney with no prior record of discipline in a case of a single misappropriation even though there was substantial mitigation. (*In re Abbott* (1977) 19 Cal.3d 249 [taking of \$29,500, showing of manic-depressive condition, prognosis uncertain].) In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with slightly over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately \$29,000 in law firm funds over an 8-month period, while in *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost \$7,900 from his law firm, coincident with his termination by that firm, and was disbarred.

“In misappropriation cases, discipline of less than disbarment is warranted only where extenuating circumstances show that the misappropriation of entrusted funds is an isolated event. [Citation.]” (*In the Matter of Freydl, supra*, 4 Cal. State Bar Ct. Rptr. at p. 361.) The record here shows that respondent’s misconduct did not involve a single instance in which respondent misappropriated more than \$9,100 from MCBA. Instead, the record shows that respondent’s misconduct involved 52 separate instances in which she deliberately misappropriated a total of more than \$9,100 from MCBA. Notwithstanding the significant number of times in which respondent misappropriated MCBA funds, respondent attempted to conceal her thefts by repeatedly making misrepresentations on checks and repeatedly preparing fraudulent financial reports. Finally, respondent continued to repeatedly misappropriate funds from MCBA, even though she had 18 months to reflect upon the wrongfulness of her conduct. “Respondent’s deliberate theft from an association she served as treasurer in violation of her fiduciary duty is among the most serious types of misconduct.” (*In re Atkins, supra*, 16 N.E.3d at p. 952.) Finally, respondent’s testimony at trial gives pause to any meaningful consideration that she fully appreciates the effect of her behavior, and, thus, the court is left to conclude that, in similar circumstances, respondent could again engage in such misconduct. Consequently, after careful review and consideration, the court finds that only disbarment will fulfill the purposes of public protection.

Recommendations

Discipline

The court recommends that respondent **TREZANAY MICHELLE ATKINS**, State Bar member number 249968, be disbarred from the practice of law in California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that respondent **TREZANAY MICHELLE ATKINS** be ordered to comply with California Rules of Court, rule 9.20 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 California Supreme Court order in this proceeding.

Costs

Finally, the court recommends that costs be awarded to the State Bar of California in accordance with California Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with California Business and Professions Code section 6007, subdivision (c)(4), the court orders that **TREZANAY MICHELLE ATKINS** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of Cal. State Bar, rule 5.111(D)).

Dated: December 10, 2015.



W. KEARSE MCGILL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 10, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

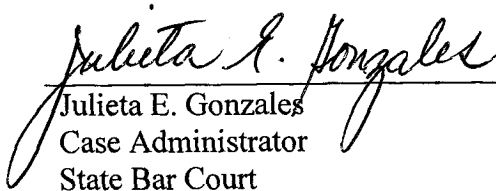
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

TREZANAY M. ATKINS
560 N EAST ST APT 259
INDIANAPOLIS, IN 46204

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Adriana M. Burger, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 10, 2015.



Julieta E. Gonzales
Case Administrator
State Bar Court