PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED
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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 14-O-01145
	)	
BRIAN EDWARD REED,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 95877.	)	
	)	

Brian Edward Reed admitted misappropriating client funds and committing several trust account rule violations in a single client matter; he maintains, however, that his misconduct was unintentional and based on sloppy bookkeeping. The hearing judge disagreed, found Reed acted intentionally, and recommended disbarment. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's findings as set forth below.

Over a period of nearly two years, Reed continually deflected requests from his client for disbursement of her trust funds, claiming outstanding medical liens prevented remittance, yet, at the same time, he invaded the client trust account (CTA) at least 30 times, misappropriating $14,841.11 for his own purposes and providing his client with almost no accounting whatsoever. Under these circumstances, the disciplinary standards call for disbarment, and finding no compelling reason to depart from the standards, we affirm the disbarment recommendation.

I. PROCEDURAL BACKGROUND

Reed was admitted to the practice of law in California on December 16, 1980. He has one prior disciplinary matter—a private reproval from April 1997. (See *post*.)

On July 31, 2014, the State Bar's Office of the Chief Trial Counsel (OCTC) filed a Notice of Disciplinary Charges (NDC), charging Reed with eight counts of misconduct, including five trust account violations (commingling, failure to maintain funds in trust, deficient recordkeeping, failure to render an accounting, and failure to promptly pay client funds), two acts of moral turpitude (misappropriation and misrepresentation), and failure to cooperate.

Trial was set for December 18, 2014, but it was continued several times due to Reed's health issues. When he was medically cleared to return to work, the hearing judge denied his request for another continuance, reset the trial date for July 21, 2015, and granted Reed a modified trial schedule to fit the half-day limitation placed on his work schedule by his doctor. In July 2015, trial was again postponed at Reed's request when he terminated his attorney and asked for additional time to secure new counsel or prepare his defense on his own.

Trial commenced on September 17, 2015, and concluded the following day. Reed appeared with counsel, and stipulated to culpability for commingling, failure to maintain funds in trust, misappropriation, and deficient recordkeeping. He reserved the right to argue that the misappropriation was unintentional, and he contested the remaining counts. On November 20, 2015, the hearing judge issued his decision. The judge found Reed culpable of all five of the charged trust account violations as well as intentional misappropriation, but dismissed the misrepresentation and failure to cooperate counts. After weighing factors in aggravation and mitigation, he recommended disbarment.

Reed sought our review, the matter was fully briefed, and on June 16, 2016, the parties were notified that oral argument would be held on August 18, 2016. Reed filed motions on June 24, 2016 and July 12, 2016, seeking to continue oral argument. Finding no good cause, both were denied. Reed then filed a notice of waiver of oral argument. In response, he was offered the ability to appear by telephone at oral argument on August 18. Reed declined to avail

himself of this opportunity, citing reasons of his East Coast travels. He ultimately did not participate in the scheduled oral argument.

II. FINDINGS OF FACT

On May 17, 2010, Candace Westcott, a Canadian citizen, was involved in an automobile accident in Lancaster, California (the May 17th accident). She was initially treated for her injuries in California, but she also received medical attention after returning to Canada. On July 19, 2010, Westcott retained Reed to handle her personal injury claims. Under the retainer agreement, Reed was entitled to 33 percent of all gross settlement amounts obtained.

Reed settled Westcott's case for $90,000. On December 12, 2012, he deposited the settlement check into his CTA. On January 7, 2013, Reed wired $32,000 to Westcott, which required him to maintain $25,597.60, after deducting his fees and costs ($32,402.40), in trust for the benefit of Westcott.

After receiving the partial payment, Westcott emailed Reed and told him it was "disturbing" that he had had the settlement funds for over a month without communicating with her. She indicated that she wanted all of her money at once, not an advance payment, and asked for an accounting. Reed replied the next day, explaining that: (1) his fees and costs were close to $34,000; (2) the California medical liens were close to $3,600; and (3) he was holding the balance of the funds because he believed that the Canadian healthcare system might also have a lien. He did not provide a proper accounting. Westcott emailed back, disputed the existence of a foreign lien, and reiterated her request for an accounting. Reed provided a copy of the retainer agreement and a list of costs incurred but still did not provide the accounting nor disburse the remaining settlement proceeds.

Thereafter, Reed began making unauthorized withdrawals from the CTA. By his admission, he did not withdraw his fees and costs from the CTA in one or two amounts. Instead,

he withdrew smaller amounts as needed, without maintaining the required trust account records, such as a client ledger, written journals, or monthly reconciliations for his CTA. Between January 30, 2013 and March 20, 2013, Reed made nine withdrawals that caused the balance to repeatedly dip below the $25,597.60 that was required to be held in trust. By March 20, 2013, the balance in the CTA was $10,756.50 and Reed had misappropriated $14,841.11 of Westcott's funds. Over the next several months, Reed made numerous additional withdrawals from the CTA.[1]

When pressed to state the purpose of those withdrawals, he testified: "I have no idea, other than the fact that the money was there, and I spent the money." When questioned specifically about four checks written to himself between March 7 and March 20, 2014, he testified: "[I]t would appear to me that there's payment of salaries, payment of ongoing business expenses, that sort of thing."

On September 16, 2013, nine months after Westcott's settlement had been reached and funded, Reed paid a $390 medical lien to Frye Chiropractic in California. After paying this lien, Reed was required to maintain $25,207.60 in trust. Despite additional requests from Westcott, Reed did not provide an accounting, nor did he disburse the funds to her until nearly 15 months later.

On December 6, 2013, Joshua Bryson, a Canadian attorney whom Westcott retained to assist her in collecting the remaining proceeds from Reed, sent Reed a request for a complete accounting of all monies received on behalf of Westcott. Bryson also indicated he had been in contact with the State Bar of California (State Bar).

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[1] These withdrawals occurred between April 5, 2013 and February 24, 2014. Reed also made deposits to the account during this time period, which caused the CTA level to bounce above and below the amount required to be held in trust.

On December 13, 2013, Reed sent a letter to Bryson reiterating his belief in a yet-to-be identified Canadian lien. However, Reed did not ask the Canadian attorney for assistance in resolving the lien; instead, he offered to send the funds to Bryson and Westcott if they both agreed to sign a hold harmless agreement and to indemnify Reed against any claims regarding Westcott's medical treatment obtained in Canada. Bryson and Westcott refused his offer and continued to pursue their complaint with the State Bar.

On July 8, 2014, 19 months after Westcott's settlement had been reached and funded, Reed paid $2,261 to the second California lienholder, Dewald Chiropractic.

On July 31, 2014, after corresponding with Reed on several occasions about Westcott's complaint and unsuccessfully trying to obtain an accounting on behalf of Westcott, OCTC filed formal disciplinary charges against Reed.[2]

Reed continued to research the existence of a Canadian medical lien. On September 2 and 19, 2014, he contacted the Nova Scotia Department of Health and Wellness (Department of Health and Wellness) and asked that it identify any amounts Westcott might owe to it or any other health care provider in Canada for services related to her injuries from the May 17th accident. On September 23, 2014, the Department of Health and Wellness sent Reed a letter with an itemized list of Westcott's hospital and medical costs and a subrogation claim for $4,039.21, which Reed paid on October 27, 2014.

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[2] On February 12, 2014, the State Bar wrote to Reed about Westcott's complaint and asked for an accounting. On February 20, 2014, Reed responded, but did not provide an accounting. On April 15, 2014, the State Bar again wrote to Reed asking for an accounting. On May 16, 2014, Reed responded and stated that his files were in storage and not presently available. On June 5, 2014, the State Bar wrote yet again and asked Reed to provide an accounting. Reed responded on June 23, 2014, stating he had no deposit slips, client ledger, or reconciliations for the CTA. Throughout these communications, Reed insisted that outstanding liens prevented disbursement of the remaining settlement funds, and he criticized Westcott and her Canadian attorney for not agreeing to indemnify him in exchange for a pay-out of the funds.

On December 11, 2014, roughly two years after Reed first received the Westcott settlement funds, Reed sent Westcott the remainder of her money—$18,907.39.

III. CULPABILITY

Based on Reed's trial stipulation and the record of testimonial and documentary evidence, the hearing judge found Reed culpable of the following four charged ethical violations: failure to promptly remove earned funds (commingling) (Rules Prof. Conduct, rule 4-100(A));[3] failure to maintain $25,597.60 in trust (rule 4-100(A));[4] misappropriation of $14,841.11 in client funds (Bus. & Prof. Code, § 6106);[5] and failure to keep trust accounting records (rule 4-100(C)).[6] We affirm and adopt the hearing judge's culpability findings as to these counts.[7]

Although Reed stipulated to misappropriating the funds, he maintains that the deficit was unintentional and the result of "sloppy" record-keeping. He claims that he was "too busy, understaffed and negligent as to financial records," and, at worst, this demonstrates that he was grossly negligent with his client's funds. Reed's misconduct, however, is not explainable by

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[3] Rule 4-100(A) of the Rules of Professional Conduct, in relevant part, provides that "[n]o funds belonging to the member . . . shall be deposited [in the CTA] or otherwise commingled therewith . . . ." All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[4] Rule 4-100(A), in relevant part, requires an attorney to deposit and maintain in a trust account "[a]ll funds received or held for the benefit of clients."

[5] Business and Professions Code section 6106 states: "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." All further references to sections are to the Business and Professions Code.

[6] Rule 4-100(C) requires a member to maintain and preserve for five years, certain records of all client funds coming into the possession of the member.

[7] As is customary, we accord no added weight to the rule 4-100(A) violation (failure to maintain client funds in trust account) in assessing the degree of discipline because the same misconduct underlies the section 6106 misappropriation, discussed *infra*. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

imperfect accounting or sloppy bookkeeping because by his own admissions, he did no accounting and exercised virtually no oversight over his CTA.

Reed failed to perform basic record keeping despite numerous requests by Westcott for an accounting, which should have put him on notice to check the balance of his CTA and prepare the account journal, ledger, and reconciliation as he was obligated to do.[8] And despite Westcott's escalation of this matter to her attorney and the State Bar, and their respective efforts, Reed consistently exhibited an indifference toward his fiduciary duties. He held client CTA funds for two years under the pretext that an outstanding foreign medical lien prevented remittance, but he failed to make any prompt efforts to identify and pay the lienholder, and, at the same time, he invaded the CTA over 30 times and misappropriated $14,841.11 for his own purposes.

Indeed, Reed's own trial testimony is inconsistent with his claim of "sloppy bookkeeping" and demonstrates that he was using the account inappropriately. As noted, Reed frequently could not recall the nature and purposes of the various checks written to himself and others from the CTA during the time he was required to maintain funds for Westcott, but it appeared from Reed's testimony that trust account funds were used for law office overhead.

We agree with the hearing judge that the timing, frequency, and nature of the takings over such a prolonged period of time, coupled with the absence of any testimony supporting

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[8] Attorneys have a legal, fiduciary, and ethical obligation to preserve client funds entrusted to their care. Rule 4-100 sets up the mandatory minimum framework for them to manage their CTA according to principles designed to prevent actual loss of client money. The State Bar also publishes a resource guide to assist attorneys in managing CTAs. (The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2013) ("Handbook").) The Handbook explains that attorneys must maintain a written client ledger listing every monetary transaction; an account journal tracking the money going in and out of a CTA; bank statements and cancelled checks; a monthly reconciliation of the client finances; and a journal of other securities or properties held, if any. (Handbook, § II, p. 3.) These requirements are "binding on all members" (rule 4-100(C)) and cannot be exempted by the press of business, ignorance, inattention, or incompetence. (Handbook, § 1, p. 1; see *Zitny v. State Bar* (1966) 64 Cal.2d 787, 793 [ignorance no defense to rule violation].)

Reed's position and any record keeping whatsoever, clearly and convincingly demonstrates that Reed intentionally misappropriated client funds.[9]

We also agree with the judge that on this record, Reed violated rule 4-100(B)(3)[10] by failing to render an appropriate accounting to Westcott, even in the face of several written demands by Westcott, her attorney, and the State Bar.

Moreover, we agree that there is ample evidence that Reed violated rule 4-100(B)(4)[11] by failing to promptly pay client funds. This obligation includes the duty to pay valid medical liens where the attorney is holding client funds for that purpose. (See, e.g., *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.) Although Reed received the settlement proceeds in December 2012, and made an initial distribution to Westcott of $32,000 in January 2013, it took roughly two years for all medical liens to be paid and for Westcott to receive full payment of her funds. Reed's efforts in this regard were anything but prompt; it took him nine months to pay the first California medical lien to Frye Chiropractic, over a year and half to pay the second California medical lien to Dewald Chiropractic, and 21 months, with the pressure of a State Bar disciplinary investigation, before even contacting the Canadian authorities to ascertain the mere existence of a medical lien there. He waited still another month to actually pay the Canadian lien and then yet another month and a half to finally disburse the balance of the funds ($18,907.39) to Westcott.

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[9] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[10] Rule 4-100(B)(3) requires a member to "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member . . . and render appropriate accounts to the client regarding them."

[11] Rule 4-100(B)(4) requires a member to "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."

Reed's tenacious insistence on the existence of the foreign lien does not justify his unwarranted delays. Once he wrote to the Department of Health and Wellness in Nova Scotia, it took less than one month to determine the nature and amount of the lien. There is simply no excuse for his waiting almost two years to initiate this contact. Such conduct is a clear violation of rule 4-100(B)(4). (See *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 170 [two-month delay violated rule].)

Finally, we affirm the hearing judge's dismissal of the remaining two counts against Reed: (1) misrepresentation of the CTA balance (§ 6106); and (2) failure to cooperate in the State Bar investigation (§ 6068, subd. (i)).[12] We adopt the hearing judge's findings, and we note that neither party challenges these dismissals, and OCTC specifically requested dismissal of the failure to cooperate charge.

IV. REED'S PROCEDURAL CLAIMS

Additionally, we consider two procedural claims advanced by Reed. First, he argues that he did not have competent counsel to assist him in his State Bar proceeding and that in light of this and his health issues, the trial should not have taken place when it did. Reed's claims lack merit. Reed was granted three trial continuances over a nine-month period in order to accommodate his health issues and provide him with time to substitute counsel or prepare his own defense. When trial commenced in September 2015, Reed had medical clearance from his doctor to resume normal work activities with a half-day schedule; the trial schedule was modified accordingly; and Reed was represented by counsel of his choice. Under these circumstances, Reed suffered no prejudice nor deprivation of due process, as the judge struck a fair balance between accommodating Reed and exercising responsible control over the trial.

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[12] Section 6068, subdivision (i), requires a member to "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself."

(*Jones v. State Bar* (1989) 49 Cal.3d 273, 287 [continuances are generally disfavored in disciplinary proceedings, and hearing referee has discretion to exercise reasonable control over proceedings to avoid unnecessary delay]; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 792 [strong rule against unnecessary delay is essential to ensure public protection by prompt discipline of erring practitioners].)

Second, Reed argues that the State Bar's subpoena for his CTA bank records was defective and did not provide proper notice. Without citation to any authority, he argues that the CTA bank records (Exhibit 37) should be stricken from the record as should any culpability determinations stemming from Exhibit 37 based on the "fruit of the poisonous tree" doctrine. This argument is also unavailing. The documentary evidence demonstrates that he was on notice and fully aware of the State Bar's subpoena months before trial. His letter to the State Bar, dated June 23, 2014, states: "I have no copies of the [CTA] deposit information, but know that you have this information by use of a subpoena duce tecum . . . ." Moreover, Reed's own trial concessions belie his claim of taint, and he otherwise fails to establish any resulting prejudice. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [a party must establish actual prejudice when asserting violation of due process].) Reed entered into a Stipulation as to Facts and Admission of Documents where he made independent factual admissions about the CTA records apart from the evidence of the bank records; he withdrew any objections he had to the authenticity of Exhibit 37 at trial; and he stipulated to culpability for misappropriation and other CTA violations. (See *Athearn v. State Bar* (1977) 20 Cal.3d 232, 235 [respondent's admissions of culpability extinguish any claim of prejudice resulting from unlawful seizure of bank records].)

Reed references *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403 and objects to any culpability determination based on what he claims is now a defective

stipulation. However, that case stands for the plain proposition that a stipulation or acknowledgment of culpability "does not relieve this court of the obligation to determine that there is a factual record sufficient to support a determination of culpability." (*Id.* at p. 409.) As discussed above, upon our independent review, we find that culpability is fully supported by the record. Accordingly, we find no prejudicial error in the hearing judge's decision to receive and admit Exhibit 37 into evidence and no basis to strike the hearing judge's culpability findings.

V. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Reed to meet the same burden to prove mitigation.

A. AGGRAVATION

Like the hearing judge, we conclude that Reed's misconduct is aggravated by his prior discipline (std. 1.5(a)), his multiple acts of wrongdoing (std. 1.5(b)), and his indifference toward rectification and atonement (std. 1.5(k)). However, since the hearing judge did not assign specific weight to some of these factors in aggravation, we do so here.

We agree with the hearing judge in assigning minimal weight to Reed's private reproval from 1997, involving his failure to supervise an associate attorney in his office whose mismanagement of a file led to dismissal of an action for lack of prosecution. It is relatively minor misconduct compared to the current matter, remote in time, and involved acts unrelated to his present misconduct. (*In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713 [no significant aggravation for prior discipline where misconduct occurred 17 years earlier, resulted in private reproval, and involved acts unrelated to present misconduct].)

We assign significant weight to Reed's numerous improper withdrawals from his CTA; those transactions represent serious and multiple acts of misconduct. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple invasions into CTA constitute

aggravation, even when attorney is charged with and found culpable of only one count of moral turpitude]; see also *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [multiple acts in aggravation for one count of moral turpitude where attorney made 11 misrepresentations over two years].)

Finally, we assign significant weight to Reed's indifference toward rectification of or atonement for the consequences of his misconduct. Throughout the State Bar investigation and these proceedings, Reed has continually attempted to avoid and deflect blame, maintaining that the outstanding liens prevented disbursement of the remaining settlement funds to Westcott and criticizing Westcott and her Canadian attorney for not agreeing to indemnify him in exchange for a pay-out of the funds. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 ["The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]"].)

B. MITIGATION

We concur with most of the hearing judge's findings in mitigation. As to Reed's cooperation, we are inclined to accord greater mitigation than did the hearing judge. In our view, Reed is entitled to moderate weight in mitigation for his cooperation with the State Bar. (Std. 1.6(e).) He entered into a detailed pretrial stipulation of facts, and by the commencement of trial, he acknowledged culpability for several of his charged trust account violations as well as that his misappropriation was grossly negligent. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation is appropriate when culpability as well as facts admitted].)

Reed is also only entitled to nominal mitigation credit for his two character witnesses; two witnesses do not constitute "a wide range of references in the legal and general

communities" as called for in standard 1.6(f). (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [assigning diminished mitigation for character evidence from four witnesses who did not constitute wide range of references in legal and general communities].) However, from these witnesses, we learned that Reed has been involved in numerous charity and fundraising activities with the Antelope Valley Fair, the Desert Haven Auction, the Lancaster West Rotary Club, and the Antelope Valley Partners for Health; he served on the Board of the Lancaster School District; and he taught soccer at Antelope Valley College. We find that Reed is entitled to considerable weight in mitigation for his community service for performing many volunteer hours with these groups. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service and pro bono work are mitigating].)

Finally, no mitigation credit is extended for Reed's restitution efforts (std. 1.6(j)) since he only repaid the misappropriated sums after his client complained to the State Bar. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution under threat or force of disciplinary or civil proceedings not mitigating].) Nor is any given for his purported good faith belief in the existence of the Canadian lien. (Std. 1.6(b).) The existence of the foreign lien was never a justification for Reed to misappropriate his client's funds. Similarly, it does not excuse his prolonged delay in identifying and satisfying the Canadian lien or the two California liens; instead, it makes his lengthy period of inaction even more unreasonable. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 ["In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable."].)

VI. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE[13]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.1(a) is directly on point; it specifically deals with intentional misappropriation and provides that disbarment is the presumed sanction for such misconduct "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[14]

Reed intentionally misappropriated a significant amount of money—$14,841.11 (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant amount]), he failed to provide even a basic accounting, disregarded the rights of known lienholders, and deprived his client the use of her money for nearly two years—repaying it only after she hired an attorney and initiated a State Bar complaint. Contrary to his contentions, his mitigation is not compelling, nor does it predominate over his serious and multiple acts of misconduct involving moral turpitude.

His misappropriation of client trust funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) "Even a single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

For these reasons, we reject Reed's claim that disbarment is excessive, and we do not recommend a more lenient sanction under standard 2.1(a). (Stds. 1.2(i), 1.7(c) [lesser sanction

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[13] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to maintain the highest professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1.)

[14] Standard 2.11 also applies and provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude."

than recommended in standard may be warranted where misconduct is minor, little or no injury to client, public, legal system, or profession, and attorney able to conform to ethical responsibilities in future]; see *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) Accordingly, disbarment is warranted by the facts of this case and under relevant decisional law in order to protect the public, the courts, and the legal profession.[15]

VII. RECOMMENDATION

We recommend that Brian Edward Reed be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Reed must comply with rule 9.20 of the California Rules of Court and 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 matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. It is also recommended that Reed be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payments obligation be enforceable as provided for under section 6140.5.

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[15] E.g., *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 (disbarment for $20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party, despite no prior record and no aggravation); *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarment for $27,000 misappropriation, even though 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm); *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511 (disbarment for $40,000 misappropriation, intentionally misleading client about funds, mitigation including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar not sufficiently compelling).

VIII. ORDER OF INACTIVE ENROLLMENT

The order that Brian Edward Reed be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective November 23, 2015, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

HONN, J.

*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme 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 October 18, 2016, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED OCTOBER 18, 2016

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:

BRIAN E. REED
530 W LANCASTER BLVD
LANCASTER, CA 93534

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

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 18, 2016.

Rosalie Ruiz
Case Administrator
State Bar Court