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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 15-O-11384 (15-O-11486)
)	
DANIEL EUGENE HIBBARD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 138147,)	ENROLLMENT
)	
A Member of the State Bar.)	

Introduction¹

Daniel Eugene Hibbard (Respondent) is charged with eight counts of misconduct, including willfully violating section 6106 by misappropriating funds from two clients and making misrepresentations to hide his misconduct. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) has the burden of proving these charges by clear and convincing evidence.² Respondent stipulated that he committed all of the alleged misconduct, which includes misappropriating over \$25,000. This court finds Respondent culpable of all eight counts and that Respondent's misappropriation was intentional. The court recommends that Respondent be disbarred.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case numbers 15-O-11384 and 15-O-11486 on December 9, 2015. Respondent filed a

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.

² 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.)



response to the NDC on January 11, 2016. The State Bar filed an Amended NDC on January 11, 2016. The parties filed a Stipulation as to Facts and Admission of Documents on March 28, 2016, and filed a Partial Stipulation as to Facts Concerning Aggravation and Mitigation on April 22, 2016.

Trial took place on April 22, 2016. The State Bar was represented by Senior Trial Counsel Murray B. Greenberg. Respondent represented himself. The matter was submitted for decision on April 22, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 9, 1988, and has been a member of the State Bar of California at all times since that date. These findings of fact and conclusions of law are based on the record, evidence admitted at trial, and facts and culpability set forth by the parties in their stipulations.

Case No. 15-O-11384 – The Valenti Matter

Facts

In May 2013, Nicholas Valenti hired Respondent to represent him in a personal injury matter. On February 19, 2014, Respondent received \$15,000 in settlement funds on behalf of Valenti. On the same date, Respondent deposited Valenti's funds into his client trust account (CTA) at Provident Bank. On or about February 19, 2014, Respondent issued a \$5,000 check to himself for his fees. On or about February 26, 2014, Respondent issued a check to Valenti in the amount of \$8,046, which left \$1,954 in the CTA for Valenti's medical provider.

Respondent failed to maintain the remaining \$1,954 in his CTA and despite several requests by Valenti, did not pay the medical provider. On May 31, 2014, the balance in the CTA was \$63.31. On July 31, 2014, the balance in the CTA was \$0.00. During the disciplinary

hearing, Respondent testified that he intentionally removed the funds that were held for the benefit of Valenti's medical provider.

On or about July 23, 2014, Respondent issued a check to Valenti's medical provider in the amount of \$1,954 to resolve the medical bill. The check was not honored due to insufficient funds in the account. Respondent has not made any subsequent attempts to pay the medical provider.

Conclusions

Count One - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])³

The State Bar charged Respondent with failing to maintain \$1,954 in his CTA for Valenti's medical provider, in violation of rule 4-100(A). Respondent stipulated that he willfully violated rule 4-100(A) by failing to maintain a balance of \$1,954 in his CTA for the benefit of Valenti's medical provider. Respondent willfully violated rule 4-100(A) as alleged in Count One.⁴

Count Two - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])⁵

In Count Two, the State Bar alleged that Respondent failed to pay Valenti's medical provider despite Valenti's and the medical provider's payment requests, in violation of rule 4-100(B)(4). Respondent stipulated that he violated rule 4-100(B)(4) by failing to pay any portion

³ 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 must be deposited therein or otherwise commingled therewith, except for limited exceptions.

⁴ Respondent violated rule 4-100(A) and, as set forth below, section 6106. Thus, for the discipline analysis, we assign no additional weight to the rule violation because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

⁵ Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive.

of the balance of \$1,954 owed to Valenti's medical provider as requested by Valenti. The court finds Respondent is culpable of willfully violating rule 4-100(B)(4).

Count Three - (§ 6106 [Moral Turpitude])⁶

The State Bar charged Respondent with dishonestly or gross negligently misappropriating \$1,954 of Valenti's settlement funds, in violation of section 6106. Respondent stipulated that he willfully violated section 6106 by allowing the balance in his CTA to reach \$0.00 prior to any disbursement of \$1,954 to Valenti's medical provider. Respondent knew that he should have held \$1,954 in his CTA for the payment of Valenti's medical provider, but Respondent intentionally used the funds for his own purposes. Respondent is culpable of intentionally misappropriating \$1,954 of Valenti's settlement funds, in willful violation of section 6106.

Count Four - (§ 6106 [Moral Turpitude])

The State Bar alleges that on or about July 23, 2014, Respondent issued a check drawn upon his CTA when Respondent knew or was grossly negligent in not knowing that he had insufficient funds in his account, in violation of section 6106. Respondent stipulated that he issued a \$1,954 check to Valenti's medical provider, but the check was not honored due to the lack of funds in the "account."⁷ Respondent also stipulated that he violated section 6106 by issuing the check when he knew or was grossly negligent in not knowing that there were insufficient funds in his account. There is a lack of clear and convincing evidence that at the time Respondent wrote the \$1,954 check to Valenti's medical provider, Respondent knew he

⁶ Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

⁷ The stipulation does not set forth that the "account" Respondent is referring to was his CTA. The evidence demonstrates that check number 1007 in the amount of \$1,954 was returned for insufficient funds. Respondent's CTA records indicate that check numbers 1002 through 1006 were written in July 2014 during the time period check number 1007 was written. Clear and convincing evidence establishes that the insufficient funds check was drawn on Respondent's CTA.

lacked sufficient funds in his account. The evidence demonstrates that Respondent wrote four checks to various individuals on or about the same time he wrote the check to Valenti's medical provider. Respondent's failure to properly manage his CTA, especially after disbursing numerous checks during the same time period, was at least grossly negligent. Thus, Respondent willfully violated section 6106 by issuing the insufficient funds check.

Case No. 15-O-11486 – The Nibecker Matter

Facts

In July 2010, Robert and Vickie Nibecker (Robert and Vickie)⁸ hired Respondent to represent them in personal injury claims. On July 23, 2013, Respondent received \$12,500 in settlement funds on Robert's behalf and an additional \$12,500 in settlement funds on Vickie's behalf. On the same date, Respondent deposited Robert's and Vickie's funds into his CTA at Provident Bank.

On July 29, 2013, Respondent issued a check to Vickie in the amount of \$3,961.68 and a check to Robert in the amount of \$3,961.68 representing partial settlements for each of their cases. On November 18, 2013, Respondent received \$15,000 in settlement funds on Robert's behalf and \$37,500 in settlement funds on Vickie's behalf. On the same date, Respondent deposited Robert's and Vickie's settlement funds into his CTA at Provident Bank.

On December 13, 2013, Respondent issued a check to Robert from his CTA in the amount of \$20,000 representing a partial settlement for Robert's and Vickie's case. After deducting his fee, Respondent was required to maintain a balance of \$23,743 in his CTA for the benefit of the Nibeckers. Prior to any further disbursements on the Nibeckers' behalf, the CTA fell below the requisite amount on many occasions, and on May 31, 2014, the balance was \$63.31.

⁸ At times, the court refers to the Nibeckers by their first names to avoid confusion.

On June 20, 2014, after the Nibeckers complained to the State Bar, Respondent met them at Provident Bank and gave them \$6,300 in cash. He also assured them that their medical providers would be paid in response to their requests for payment. On July 11, 2014, Respondent paid one of Vickie's medical providers \$2,220 and another medical provider \$1,250, leaving a balance of \$13,973 owing to the Nibeckers and/or their medical providers.

On several occasions between December 13, 2013 and June 20, 2014, Respondent represented to the Nibeckers that he was continuing to negotiate with their medical providers and that he was maintaining funds needed to pay the providers when he knew those representations were false. Respondent has made no subsequent payment to the Nibeckers and/or their medical providers.

Conclusions

Count Five - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account Count]

Respondent is charged with failing to maintain \$23,743.64 in his CTA on the Nibeckers' behalf, in violation of rule 4-100(A). Respondent stipulated that he willfully violated rule 4-100(A) by failing to maintain a balance of \$23,743 in his CTA for the benefit of Nibeckers. Respondent willfully violated rule 4-100(A) as alleged in Count Five.

Count Six - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

Respondent is charged with failing to pay settlement funds owed to the Nibeckers despite their several payment requests. Respondent stipulated that he violated rule 4-100(B)(4) by failing to pay any portion of the balance of \$13,973 owed to the Nibeckers' medical providers as the Nibeckers requested. The court finds Respondent is culpable of willfully violating rule 4-100(B)(4). (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 128) [Rule 4-100(B)(4) applies to attorney's obligation to pay third parties from funds held in trust, including payments to those who hold medical liens].)

Count Seven - (§ 6106 [Moral Turpitude])

The State Bar charged Respondent with dishonestly or gross negligently misappropriating for his own purposes, funds that the Nibeckers were entitled to receive, in violation of section 6106. Respondent was required to maintain a balance of \$23,743 in his client trust account for the benefit of the Nibeckers. Respondent stipulated that he willfully violated section 6106 by allowing the balance in his client trust account to drop to \$63.31 prior to any disbursement of \$23,743 to the Nibeckers' medical providers. Respondent knew that he should have held the funds in his CTA to pay the Nibeckers' medical providers, but he intentionally used the funds for his own purposes. Respondent is culpable of intentionally misappropriating \$23,679.69 of the Nibeckers' funds, in willful violation of section 6106.

Count Eight - (§ 6106 [Moral Turpitude])

Respondent is charged with violating section 6106 by falsely representing to the Nibeckers that he continued to preserve their funds in trust while negotiating with their medical providers, a claim Respondent knew was false. Respondent stipulated that he willfully violated section 6106 by making misrepresentations to the Nibeckers that he was negotiating with their medical providers and continuing to maintain their funds in his CTA, when he knew the representations were false, in willful violation of section 6106. Respondent is culpable of willfully violating section 6106.

Aggravation⁹

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

⁹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Multiple Acts (Std. 1.5(b).)

Respondent stipulated that his multiple acts of conduct are an aggravating factor. Respondent allowed his CTA to drop below the requisite balance on multiple occasions for Valenti and the Nibeckers, issued a check to Valenti's medical provider when there were insufficient funds in the account, and made misrepresentations to the Nibeckers.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent stipulated that he caused significant harm to Valenti and the Nibeckers by misappropriating their funds. Valenti's unpaid medical bill was referred to a collection agency, and the Nibeckers still have medical bills due and owing as a result of Respondent's actions. Respondent's harm to his clients is a significant aggravating circumstance.

Failure to Make Restitution (Std. 1.5(m).)

Respondent has not paid the remaining funds due to Valenti (\$1,954) and the Nibeckers (\$13,963). Respondent's failure to make restitution significantly aggravates this case.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

No Prior Record (Std. 1.6(a).)

Respondent practiced law for 25 years without a prior record of discipline before the current misconduct. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's practice of law for more than 10 years' worth significant weight in mitigation]). However, the mitigation is tempered due to the serious nature of the present misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.) Thus, the mitigating weight of Respondent's years of discipline-free practice is moderate.

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

Respondent demonstrated cooperation with the State Bar by entering into a stipulation as to facts, culpability, victim impact statements and admission of exhibits, saving the State Bar significant resources (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071,1079 [mitigation credit given for entering into stipulation as to facts and culpability].) Respondent's cooperation is a significant mitigating factor.

Remorse/Recognition of Wrongdoing (Std. 1.6(g).)

Respondent was extremely emotional during trial while expressing his remorse and shame for his misconduct. The amount of mitigation for remorse is diminished by Respondent's failure to make restitution to Valenti and the Nibeckers. Thus, Respondent is afforded slight mitigation for his remorse and recognition of wrongdoing.

Discussion

The disciplinary analysis begins with the standards, which provide guidance and are intended to promote consistent application of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Initially, the court considers standard 1.1, which acknowledges that the purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. Standard 2.1(a) is most applicable and provides that disbarment is the presumed sanction for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."

Although standard 2.1(a) is not an inflexible rule (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022 [noting that former standard 2.2(a) "should be viewed as a guideline"]), the court is mindful that "[i]n all but the most exceptional of cases, [willful misappropriation] requires the

imposition of the harshest discipline.” (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29 [disbarment warranted for willful misappropriation where compelling mitigating circumstances did not clearly predominate and restitution made three years later only at demand of client’s attorney].) Severe discipline is especially warranted when an attorney “deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

Respondent misappropriated over \$25,000 from his clients. He chose to put his own interests above the professional and ethical duties he owed to his clients. Respondent took their funds because “there was no cash flow into [his] business.” He was “behind on his mortgage payments . . . behind on all of [his] bills . . . and was unable to pay [his] office rent.” Many attorneys experience comparable financial difficulties, and, “[w]hile these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities.” (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 522.)

“Misappropriation of a client’s funds simply cannot be excused or substantially mitigated because of an attorney’s needs, no matter how compelling.” (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709; see also *Grim v. State Bar, supra*, 53 Cal.3d at p. 31 [“It is precisely when the attorney’s need or desire for funds is greatest that the need for the public protection afforded by the rule prohibiting misappropriation is greatest”].)

After Respondent misappropriated the Nibeckers’ funds, he made misrepresentations to them in order to hide his wrongdoing. While it is clear from Respondent’s emotional trial testimony that he is remorseful for his misconduct, Respondent’s remorse is undercut by the failure to pay \$15,917 in restitution to his clients. In similar cases where attorneys have taken

entrusted funds, particularly where concealment or deceit is present, the result has been disbarment.¹⁰

The record does not establish any exceptional circumstances to depart from recommending the appropriate discipline of disbarment under standard 2.1(a). (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) To protect the public and the courts and to maintain the integrity of the legal profession, the court recommends that Respondent be disbarred.

Recommendations

It is recommended that Respondent Daniel Eugene Hibbard, State Bar Number 138147, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

If is further recommended that Respondent make restitution to the following individuals (or to the Client Security Fund to the extent of any payment from the Fund to any of them, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles:

- (1) Nicholas Valenti in the amount of \$1,954 plus 10 percent interest per year from July 23, 2014; and
- (2) Robert and Vickie Nibecker in the amount of \$13,973 plus 10 percent interest per year from July 11, 2014.

¹⁰ See, e.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarred for \$29,000 intentional misappropriation followed by deceit to victims and State Bar despite 12 years of discipline-free practice and emotional problems]; *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511 (disbarred for \$40,000 misappropriation and intentionally misleading client despite mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar); *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583 (disbarred for \$66,000 intentional misappropriation surrounded by deceit, lack of restitution, and multiple acts despite 14 years of discipline-free practice).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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: July 13, 2016


YVETTE D. ROLAND
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 July 13, 2016, 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:

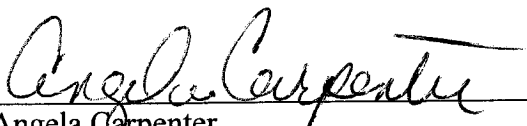
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL E. HIBBARD
LAW OFFICE OF DANIEL E. HIBBARD
3666 UNIVERSITY AVE STE 407
RIVERSIDE, CA 92501

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

Murray B. Greenberg, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 13, 2016.



Angela Carpenter
Case Administrator
State Bar Court