PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of JOHN FREDERICK NORRIS, A Member of the State Bar, No. 159001.	Case No. 16-O-17486-CV DECISION

INTRODUCTION

Respondent John Frederick Norris is charged, in a single-count Notice of Disciplinary Charges (NDC), with improperly paying personal expenses from his client trust account in willful violation of State Bar Rules of Professional Conduct, rule 4-100(A) (commingling – payment of personal expenses from client trust account) (rule 4-100(A)).

Having considered the facts and the law, the court finds that respondent is culpable as charged and recommends that he be placed on a one-year period of stayed suspension and a one-year period of probation on conditions, including an actual suspension of thirty days.

PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed the NDC in this matter on July 21, 2017. Respondent filed his response to the NDC on September 15, 2017. Thereafter, on December 26, 2017, the parties filed a partial stipulation of facts and admission of documents. A one-day trial was held on January 4, 2018, and the matter was submitted for decision that same day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on June 8, 1992, and has been a member of the State Bar of California since that time.

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Facts

Respondent has not practiced law since 2014. Nor has respondent received or held client funds since that time. Nonetheless, until recently, respondent maintained a client trust account (CTA) at US Bank.

Respondent admits and stipulates that, between June and November 2016, he deposited his own funds into, and paid personal expenses from, his CTA. Specifically, respondent admits that, during the period of almost four months from June 10 to October 3, 2016, he paid the following 12 personal expenses totaling $1,695.79 from his CTA:

Date	Payee	Amount
June 10, 2016	Verizon Wireless	$250.25
June 15, 2016	So Cal Edison Co.	270.00
June 17, 2016	Charter Communications	73.00
July 5, 2016	So Cal Edison Co.	286.00
July 18, 2016	BillMatrix	1.50
July 18, 2016	So Cal Edison Co.	25.00
August 1, 2016	Verizon Wireless	183.80
August 8, 2016	Dish Network	27.00
August 30, 2016	Charter Communications	71.51
September 19, 2016	Verizon Wireless	213.72
September 23, 2016	Charter Communications	80.01
October 3, 2016	Verizon Wireless	214.00
	TOTAL	$1,695.79

Throughout the foregoing period, no client funds were in respondent's CTA.

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Conclusions of Law

Count One – Rule 4-100(A) (Commingling)

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 that, except for a few limited exceptions not relevant here, no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. In count one, respondent is charged with willfully violating rule 4-100(A)'s proscription of commingling his funds with those of his clients by paying the foregoing 12 personal expenses totaling $1,695.79 from his CTA.

Respondent, however, contends that, as a matter of law, he cannot be guilty of commingling because there were no client funds in his CTA when he paid the foregoing 12 personal expenses totaling $1,695.79 from his CTA. As set forth *post*, the court must reject respondent's contention in light of *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871.

Rule 4-100(A) does not define "commingling." Nor did rule 4-100(A)'s two predecessors—former rules 9 and 8-101(A) of the Rules of Professional Conduct—define that term. However, the Review Department unequivocally held in *In the Matter of Doran, supra*, 3 Cal. State Bar Ct. Rptr. at p. 876, that the attorney's depositing of his own funds into his two CTA's and his payment of personal expenses from those two accounts "constituted commingling within the meaning of rule 4-100 *even [though] there were no client funds in the trust account[s]*. [Citations.]" (Italics added.) In accordance with *In the Matter of Doran,* the court finds that the record in the present proceeding clearly establishes that respondent engaged in commingling in willful violation of rule 4-100(A) when he paid the foregoing 12 personal expenses totaling $1,695.79 from his CTA between June 10 and October 3, 2016, even though there were no client funds in his CTA at the time.

Aggravation[1]

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct involved 12 separate payments of personal expenses from his CTA. These multiple acts of misconduct are a significant aggravating circumstance.

Mitigation

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

Respondent was admitted to practice law in California in June 1992 and thereafter practiced law for about 21 years (i.e., from 1992 through 2013) before the present misconduct occurred in 2016 after respondent had stopped practicing law. Respondent is entitled to mitigation for his 21 years of misconduct-free practice. Without question, "[a]n unblemished record over such a long period of time is considered an important mitigating circumstance. [Citation.]" (*In re Brown* (1995) 12 Cal.4th 205, 222; see also *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice is entitled to significant weight].)

No Harm (Std. 1.6(c).)

Respondent's commingling/personal use of his CTA did not result in harm to any client, the public, or the administration of justice. (*Arm v. State Bar, (*1990) 50 Cal.3d 763, 779.) The lack of harm is another significant mitigating circumstance.

Extreme Emotional Difficulties (Std. 1.6(d).) and Extreme Financial Difficulties

In about 2000, respondent's wife of more than 30 years was diagnosed with a rare debilitating disease. Between 2000 and 2016, respondent's wife's physical condition steadily declined, and she endured the hardening of her skin and the atrophy of her joints. By about 2007, she lost the use of her hands, legs, and feet. Eventually, one of her legs was amputated.

[1] All references to standards (stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Consequently, she was ultimately completely immobilized. Throughout much of this time period, she suffered severe and chronic pain, and required constant care.

Respondent and his wife quickly drained their savings paying for her expensive medical treatments for her rare disease that were not covered by their health insurance. In addition to her rare disease diagnosis, respondent's wife was diagnosed with cancer in about 2014. In 2014, respondent stopped working as an attorney and became his wife's primary, if not sole, caretaker. By 2016, respondent's wife was so ill that he could not leave her unattended for any significant period of time.

As a result of her rare disease and cancer, respondent's wife died in May 2017. Throughout his wife's illness, respondent encountered extreme financial difficulties because of his wife's very high medical bills. He had to sell various assets to stay afloat financially. He contemplated filing bankruptcy, but that ultimately became unnecessary because respondent's wife's cancer diagnosis triggered insurance coverage for many of her medical expenses.

Respondent began using his dormant CTA, which was located at a bank branch in the grocery store nearest his home, for personal purposes in about June 2016 after his wife became so ill that he could not leave her unattended for any significant length of time. Respondent's personal use of his CTA did not involve any venal intent (e.g., he did not use his CTA in an attempt to misappropriate client funds or to secret assets from his creditors). Instead, respondent mistakenly believed that his personal use of his CTA was a practical necessity. Respondent now realizes that he could have, and should have, simply opened a personal checking account at the same bank branch. But, in June 2016, respondent was struggling with overwhelming personal, medical, and financial crises emanating from his wife's illnesses. In short, respondent was so overwhelmed with caring for his dying wife and dealing with his financial difficulties that he

was unable to think clearly and logically, and he failed to appreciate the impropriety of using his CTA for personal purposes.

Since the death of his wife eight or nine months ago, respondent has still not returned to full-time work. He lives "just surviving" and "just getting by" by taking odd jobs in construction. He no longer has large medical bills. He has applied for, and was approved for, financial assistance from the county, but at the time of the trial in this proceeding, he did not know how much assistance he will receive. He intends to move on with his life and wants to practice law again someday.

The court finds that respondent's overwhelming personal and financial crises have now ended and no longer pose a risk of future misconduct. In sum, the extenuating circumstances underlying respondent's misconduct have abated. Even though respondent failed to proffer any expert testimony to establish that the overwhelming personal crises that he endured at the time of his misconduct were directly responsible for his misconduct or that those crises no longer pose a risk of misconduct, the court finds that it is appropriate to assign "some mitigating weight" both because respondent provided evidence of his wife's medical conditions via her health records and her certificate of death, and because respondent's testimony on this issue was not disputed by OCTC. (*In re Brown, supra*, 12 Cal.4th at p. 222.) The court gives significant mitigating weight to respondent's extreme emotional and financial difficulties, which were not reasonably foreseeable and were beyond respondent's control. (*Ibid.*)

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

Respondent is entitled to additional mitigation for his candor and cooperation. Upon being contacted by OCTC, respondent was immediately cooperative. Respondent displayed exemplary conduct during this proceeding. He entered into a partial stipulation of facts and admission of documents with OCTC. Even though respondent raised a legal argument in

defense to the commingling charge, which the court rejected *ante*, respondent never denied and readily admitted to using his CTA as a personal checking account. Respondent's admission of the facts establishing his culpability is entitled to significant mitigating weight, and his cooperation with OCTC is in no way diminished by his assertion of an unsuccessful defense to the commingling charge, which he asserted based on an honest belief in his innocence of intermingling client funds with attorney funds. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 358.) To conclude otherwise would penalize respondent because he, in good faith, exercised his right to litigate and obtain an adjudication of his defense to the commingling charge.

Lack of Bad Faith

The absence of bad faith is another significant mitigating circumstance in the present proceeding. (*Arm v. State Bar, supra*, 50 Cal.3d at pp. 779-780.) As noted *ante*, no client funds were in respondent's CTA during the period of his personal use of the account. Thus, it is clear that respondent's misuse of his CTA did not involve overreaching or an attempt to misappropriate client funds. Moreover, respondent did not use his CTA in an attempt to hide assets from his creditors. "Such circumstances lessen the seriousness of an attorney's misconduct." (*Id.* at p. 780.)

DISCUSSION

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

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The standards, of course, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) While the standards are entitled to great weight (*In re Silverton* (2005) 36 Cal.4th 81, 92), they are not applied talismanically (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222).

Even though the standards provide appropriate guidelines on the issue of discipline, a proper discipline recommendation ultimately rests on "a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316; accord *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940; see also *Howard v. State Bar, supra*, 51 Cal.3d at pp. 221-222 [the Supreme Court is "permitted to temper the letter of the law with considerations peculiar to the offense and the offender"].)

In its pretrial statement, OCTC recommends that respondent be placed on "90 days of actual suspension and 3 years of probation." But, OCTC did not cite a single case to support its recommendation.[2] Respondent contends that, at most, an actual suspension of 30 to 60 days is appropriate under standard 2.2(a) in light of the significant mitigating circumstances.

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[2] "The standards are guidelines *which must be construed in light of decisional law*." (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 30, italics added.) In any event, the court notes that the reported cases in which a three-month actual suspension has been imposed on the attorney under the standards for violating the trust account rules have involved significantly greater misconduct than that found here. (See, e.g., *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [90-day actual suspension under former standard 2.2(b) for numerous CTA violations, including the negligent misappropriation of $12,000; failing to communicate and failing to perform competently resulting in loss of client's claim]; *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91 [90-day actual suspension under former standard 2.2(b) for CTA violations over five years with attitude of indifference]; *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420,

Because the rule 4-100 commingling violations found in this proceeding do not involve the misappropriation of client funds, the applicable standard is set forth in standard 2.2, which provides that actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds.

The Supreme Court expressly declined to impose the three-month actual suspension that was set forth in former standard 2.2(b) in *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1100. In that case, the Supreme Court imposed a public reproval on the two respondent attorneys who (1) violated former rule 8-101(A) by depositing a $5,356.94 settlement check into their general bank account (i.e., commingling) when they should have deposited the check into their CTA and (2) violated former rule 8-101(B)(4) by refusing to pay the funds over to their clients as requested.

Moreover, in *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, while the court did not expressly reject the minimum three-month actual suspension that was set forth in former standard 2.2(b), the court imposed only 30 days' actual suspension and one-year probation for violations of the trust account rule. In *Sternlieb*, the attorney violated the trust account rule by misappropriating trust funds, failing to maintain proper records of the trust funds, and failing to account for the trust funds. There the attorney's misappropriation of trust funds did not involve moral turpitude or otherwise violate section 6106 because the attorney honestly, but unreasonably believed that her client had authorized her to use the trust funds for payment of her attorney's fees. The misconduct in *Sternlieb* was significantly more egregious than that in the present proceeding.

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428 [90-day actual suspension under former standard 2.2(b) for "serious and prolonged" misuse of CTA, which put the client funds in the account in outright jeopardy; engaged in moral turpitude by writing not sufficiently funded (NSF) checks; and failing to manage or supervise CTA].)

After carefully considering the found misconduct together with the mitigating and aggravating circumstances in the present proceeding, the court finds that the significant mitigating circumstances outweigh the single aggravating circumstance and demonstrate that a lesser sanction than three months' actual suspension will adequately fulfill the goals of attorney discipline (i.e., protection of the public, the courts, and the legal profession; maintenance of the highest professional standards; and preservation of the public's confidence in the legal profession [std. 1.1]). (Std. 1.7(c).) As noted *ante*, there was no injury to any client, the public, the profession, or the legal system, and respondent has demonstrated that he is willing and able to conform his conduct to the ethical strictures of the profession. In addition, the record establishes that respondent is not likely to again engage in misconduct. Respondent's 21-years of misconduct-free practice alone is a key indicator of the lack of potential for future misconduct.

The fact that no client funds were on deposit in respondent's CTA during the period of his commingling/personal use of the account also lowers the seriousness of the violation. Commingling/personal use of a CTA when client funds are on deposit is a much more serious violation of rule 4-100(A) because when "client funds are in the account, invading the trust account to satisfy personal debts puts the client funds in outright jeopardy, contrary to the very therapeutic purpose of [the rule against commingling]" (*In the Matter of Heiser,* (1990) 1 Cal. State Bar Ct. Rptr. 47, 54). (See *Arm v. State Bar, supra*, 50 Cal.3d at pp. 779-780 [such circumstances lessen the seriousness of an attorney's misconduct"].)

On balance, the court finds that the appropriate level of discipline for the found misconduct is a one-year period of stayed suspension and a one-year period of probation on conditions, including actual suspension of thirty days.

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RECOMMENDATIONS

Discipline

The court recommends that respondent **JOHN FREDERICK NORRIS, State Bar number 159001,** be suspended from the practice of law in the State of California for one year, that execution of the one-year suspension be stayed, and that he be placed on probation for one year[3] on the following conditions:

1. Respondent John Frederick Norris is suspended from the practice of law for the first 30 days of probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

3. Within 30 days after the effective date of the Supreme Court order in this matter, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. Respondent must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. Respondent must submit written quarterly reports to the Office of Probation no later than January 10, April 10, July 10, and October 10 each year. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Within one year after the effective date of the Supreme Court order in this matter, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE)

[3] The probation period will commence on the effective date of the Supreme Court order in this matter. (See Cal. Rules of Court, rule 9.18.)

requirement, and respondent shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

8. At the expiration of the period of probation, if respondent has complied with all conditions of probation, the one-year stayed suspension will be satisfied and that suspension will be terminated.

Professional Responsibility Examination

The court further recommends that respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.[4]

Dated: March 23, 2018.

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

[4] In his pretrial statement, respondent requests that the court "either waive, reduce, and/or allow a longer time period to" pay costs. Respondent's request is premature as no order assessing respondent with costs has been made. (Bus. & Prof. Code, § 6086.10, subds. (a) & (c); Rules Proc. of State Bar, rule 5.130(B).) Accordingly, respondent's premature request is dismissed for want of jurisdiction. Once an order assessing respondent with costs has been made by the Supreme Court, respondent may file a formal motion seeking relief in the State Bar Court.

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 March 23, 2018, I deposited a true copy of the following document(s):

DECISION

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:

ALESSANDRO G. ASSANTI
A. G. ASSANTI & ASSOCIATES, PC
9841 IRVINE CENTER DR STE 100
IRVINE, CA 92618 - 4314

Courtesy copy:
JOHN F. NORRIS
1529 S FAIRWAY KNOLLS RD
WEST COVINA, CA 91791 - 3724

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

ROSS E. VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 23, 2018.

Erick Estrada
Court Specialist
State Bar Court