

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

|                                   |   |                                  |
|-----------------------------------|---|----------------------------------|
| In the Matter of                  | ) | Case Nos. <b>07-O-10074-RAH;</b> |
|                                   | ) | (07-O-13726; 08-O-10383)         |
| <b>BENJAMIN TAE WOUN LEE,</b>     | ) |                                  |
|                                   | ) | <b>DECISION AND ORDER OF</b>     |
| <b>Member No. 169034,</b>         | ) | <b>INVOLUNTARY INACTIVE</b>      |
|                                   | ) | <b>ENROLLMENT</b>                |
| <u>A Member of the State Bar.</u> | ) |                                  |

**I. Introduction**

In this default matter, respondent Benjamin Tae Woun Lee (respondent) is charged with eleven counts of professional misconduct, involving three client matters. The court finds, by clear and convincing evidence, that respondent is culpable of ten of the charged acts of misconduct.

Based on the evidence before the court and the factors in aggravation, the court recommends, among other things, that respondent be disbarred from the practice of law.

**II. Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent, in the above-listed case numbers, on July 19, 2010. That same day, a copy of the NDC was properly served on respondent in the

manner set forth in rule 60 of the Former Rules of Procedure of the State Bar of California (Former Rules of Procedure).<sup>1</sup>

Respondent did not file a response to the NDC or appear before the court at the initial status conference on August 26, 2010.

On October 15, 2010, however, the State Bar filed an amended NDC, and a copy of the amended NDC was properly served on respondent in the manner set forth in rule 60 of the Former Rules of Procedure.

On February 22, 2011, respondent appeared before the court at a telephonic status conference. At this hearing, the court discussed various issues regarding this matter and the parties' readiness for trial.

Despite his appearance, respondent did not subsequently file a response to the amended NDC. Consequently, the State Bar, on April 28, 2011, filed and properly served a motion for the entry of respondent's default.<sup>2</sup> When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, the court, on May 17, 2011, filed an order of entry of default and involuntary inactive enrollment.<sup>3</sup> A copy of said order was properly served on respondent. This order was subsequently returned by the U.S. Postal service as undeliverable.

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<sup>1</sup> Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Based on the court's determination that injustice would otherwise result, the court applied the Former Rules of Procedure in this proceeding.

<sup>2</sup> The State Bar also requested that the court take judicial notice of respondent's official membership records address history. The court grants this request.

<sup>3</sup> Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

Thereafter, the State Bar waived a hearing in this matter, and it was submitted for decision on May 23, 2011. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the amended NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Former Rules Procedure, rules 200, et seq.)

Respondent was admitted to the practice of law in California on December 13, 1993, and has been a member of the State Bar of California at all times since that date.

#### **A. Case No. 07-O-13726 – The Arrington Matter**

##### **Facts**

On or about August 19, 2004, Jeffrey L. Arrington (Arrington) filed a petition for dissolution of marriage, in the Los Angeles County Superior Court, in the matter titled *Jeffrey L. Arrington v. Sheila M. Arrington*, Case No. BD412149 (*Arrington v. Arrington*).

On or about October 11, 2005, Arrington hired the law firm of Gollub, Golsan, & Ziff (the firm) to represent him in *Arrington v. Arrington*. Arrington paid an advanced fee of \$3,000 to the firm. Respondent was assigned by the firm to handle the matter.

In or about March 2006, respondent left the firm and opened a legal practice titled the Law Offices of Benjamin T. Lee. In or about March or April 2006, Arrington decided to hire respondent to continue representing him in *Arrington v. Arrington* in place of the firm.

On or about April 19, 2006, the firm caused the sum of \$1,673.73 to be deposited into respondent's bank account, which represented the unused advanced fees paid by Arrington to the

firm. On or about April 20, 2006, respondent filed a substitution of attorney in *Arrington v. Arrington*, as Arrington's attorney of record in place of the firm.

On or about April 25, 2006, the superior court voided the petition filed by Arrington in *Arrington v. Arrington*, on the grounds that he had not paid the filing fee. Respondent received notice that the petition had been voided.

Between on or about April 25 and April 28, 2006, respondent and Arrington discussed the voiding of the petition by the superior court. Respondent told Arrington that respondent would prepare a new petition, send the new petition to Arrington, and file the new petition with the superior court once Arrington returned it.

On or about April 28, 2006, Arrington received the new petition prepared by respondent. Arrington signed the new petition and returned it to respondent. Respondent received the new petition signed by Arrington.

Respondent did not file the new petition with the superior court and ceased performing any services to obtain a dissolution for Arrington. Respondent did not inform Arrington that he had not filed the new petition or that he had ceased performing any services to obtain a dissolution for Arrington.

In or about October 2006, Arrington called and spoke with respondent to request a status report on *Arrington v. Arrington*. Respondent told Arrington that he was still working on obtaining a dissolution for Arrington.

On or about July 15, 2007, Arrington called and spoke with respondent to request a status report on *Arrington v. Arrington*. Respondent told Arrington that he would follow-up on the matter and write to Arrington's ex-wife again.

Between on or about July 15 and August 15, 2007, Arrington called respondent's office telephone number on numerous occasions. He was unable to speak with respondent and left several messages with respondent's receptionist or voice message system stating his name and telephone number, and requesting that respondent call him and provide a status report. Respondent received the messages, but did not provide the requested status report.

On or about August 15, 2007, Arrington mailed a certified letter to respondent requesting that respondent contact Arrington as soon as possible to provide a status report. Respondent received the letter, but did not respond to it.

On or about September 8, 2007, Arrington mailed a letter to respondent terminating respondent's employment and requesting that respondent send Arrington's file and any billing invoices and charges to Arrington. Respondent received the letter, but did not respond to it, deliver Arrington's file to him, or provide any invoices or charges to Arrington.

Between on or about April 19, 2006 and September 8, 2007, respondent provided no services of value to Arrington. Respondent did not earn any of the advanced fees paid by Arrington to the firm that the firm had deposited into respondent's client trust account. At no time did respondent refund any portion of the \$1,673.73 paid by Arrington after he was terminated on or about September 8, 2007.

On or about January 8 and January 24, 2008, a State Bar investigator mailed letters to respondent at his official member records address requesting that respondent respond in writing to a complaint by Arrington concerning respondent's handling of *Arrington v. Arrington*. Respondent received the letters, but did not provide a written or oral response to the investigator's letters.

## **Conclusions of Law**

### ***1. Count One – (Rules Prof. Conduct, rule 3-110(A)<sup>4</sup> [Failure to Perform Competently])***

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to file the new petition with the superior court or seek to obtain a dissolution of marriage for Arrington after being hired to do so, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

### ***2. Count Two – (Bus. & Prof. Code, § 6068, subd. (m)<sup>5</sup> [Failure to Communicate])***

Section 6068, subdivision (m) provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to respond to Arrington's messages and letter requesting a status report, and by failing to inform Arrington that he had not filed the new petition and had ceased performing any services to obtain a dissolution for Arrington, respondent failed to respond to reasonable status inquiries and to inform his client of significant developments, in willful violation of section 6068, subdivision (m).

### ***3. Count Three – (Rule 3-700(D)(2) [Failure to Refund Unearned Fees])***

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not refunding the

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<sup>4</sup> Unless otherwise indicated, all further references to rules refer to the State Bar Rules of Professional Conduct.

<sup>5</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

\$1,673.73 to Arrington, respondent failed to refund unearned fees, in willful violation of rule 3-700(D)(2).

**4. Count Four – (Rule 3-700(D)(1) [Failure to Release File])**

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property. By failing to release Arrington’s file after he requested it on September 8, 2007, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all client papers and property, in willful violation of rule 3-700(D)(1).

**5. Count Five – (§ 6068, subd. (i) [Failure to Cooperate with a State Bar Investigation])**

Section 6068, subdivision (i) provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations in the Arrington complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

**B. Case No. 08-O-10383 – The Romero Matter**

**Facts**

On or about July 3, 2003, Jose Carlos Romero-Navarro (Navarro) filed a petition for dissolution of marriage against Maria Huevo Romero (Romero), in the Los Angeles County Superior Court, in the matter titled *Jose Carlos Romero-Navarro v. Maria Huevo Romero*, Case No. BD412149 (*Navarro v. Romero*).

In or about October 2005, Romero hired the firm to represent her in *Navarro v. Romero*. Respondent was assigned by the firm to handle the matter.

In or about March 2006, respondent left the firm and opened a legal practice titled the Law Offices of Benjamin T. Lee. In or about March or April 2006, Romero decided to hire respondent to continue representing her in *Navarro v. Romero* in place of the firm.

On or about April 13, 2006, respondent filed a substitution of attorney in *Navarro v. Romero* as Romero's attorney of record in place of the firm.

On or about September 27, 2006, the parties settled *Navarro v. Romero* during a settlement conference. The settlement required Navarro to pay \$175,500 to Romero by cashier's check on or before October 6, 2006. The superior court directed respondent to prepare the judgment of dissolution (the judgment), which would include child custody, child support, spousal support, and property division.

Between on or about September 27, 2006 and January 29, 2007, Romero called and spoke with respondent on numerous occasions to request that he finalize the judgment. In these conversations, respondent would tell Romero that he was working on the judgment. During this same time period, Romero also left messages on respondent's voice message system requesting that respondent provide a status report on finalizing the judgment. Respondent received the messages, but did not provide the requested status report.

Between on or about September 27, 2006 and April 24, 2007, Navarro's attorney called respondent, on several occasions, and left messages requesting that he finalize the judgment. Respondent received these messages, but did not prepare the judgment.

On or about October 6, 2006, Navarro gave a cashier's check for \$175,000 to respondent. Respondent did not deposit the \$175,000 into an account until on or about December 9, 2006.

On or about December 9, 2006, Romero did not have a bank account and requested that respondent make the following payments: (1) a check for \$3,000 to Ted Galvan; (2) a check for

\$2,000 to Yosh Naarahara; and (3) cash of \$3,000 to Romero. Respondent made the payments. After making the payments, respondent was required to maintain the approximate sum of \$167,000 in trust on behalf of Romero.

Between on or about December 9 and December 31, 2006, respondent gave a check for \$5,000 to Romero to open a bank account. After making the payment, respondent was required to maintain the approximate sum of \$162,000 in trust on behalf of Romero. Romero opened a bank account with the check for \$5,000.

In or about January 2007, respondent gave Romero an invoice setting forth \$10,828 in attorney's fees and costs, which Romero authorized respondent to pay from the sum that he was holding on her behalf. After making the payment, respondent was required to maintain the approximate sum of \$151,172 in trust on behalf of Romero.

On or about January 29, 2007, respondent gave a check for \$140,000 to Romero. After making the payment, respondent was required to maintain the approximate sum of \$11,172 in trust on behalf of Romero.

Between on or about January 29 and July 31, 2007, Romero called respondent's telephone number on numerous occasions. Respondent was not available and she left messages on respondent's voice message system each time stating her name and telephone number, and requesting that respondent: (1) provide a status report on the judgment; (2) pay the remaining amount he was holding in trust for her; and (3) provide an accounting. Respondent received the messages, but did not provide the requested status report, finalize the judgment, provide an accounting, or pay the remaining \$11,172 in settlement funds held on behalf of Romero.

On or about April 24, 2007, the attorney for Navarro filed the judgment with the superior court, because respondent had failed to do so and the superior court had agreed to enter the

judgment without respondent's signature due to his failure to participate in the proceeding. The superior court entered the judgment on or about July 31, 2007.

On or about May 14 and June 3, 2008, a State Bar investigator mailed letters to respondent at his official member records address requesting that respondent respond in writing to a complaint by Romero concerning respondent's handling of *Navarro v. Romero* and failure to pay the remaining settlement funds held on Romero's behalf. Respondent received the letters, but did not provide a written or oral response to the investigator's letters.

### **Conclusions of Law**

#### ***1. Count Six – (Rule 3-110(A) [Failure to Perform Competently])***

By failing to finalize and file the judgment despite direction from the superior court to do so and repeated requests to do so from Navarro's attorney and Romero, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***2. Count Seven – (§ 6068, subd. (m) [Failure to Communicate])***

By failing to respond to Romero's messages requesting a status report on the judgment and payment of the remaining amount held in trust on behalf of Romero, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

#### ***3. Count Eight – (Rule 4-100(B)(3) [Failure to Account])***

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession. By failing to respond to Romero's messages requesting an accounting, respondent failed to render appropriate accounts

to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

**4. Count Nine – (§ 6106 [Moral Turpitude – Misappropriation])**

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. “There is no doubt that the wilful misappropriation of a client's funds involves moral turpitude. [Citations.]’ [Citations omitted.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034.) By misappropriating \$11,172 of Romero's settlement funds, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

**5. Count Ten – (§ 6068, subd. (i) [Failure to Cooperate with a State Bar Investigation])**

By not providing a written response to the allegations in the Romero complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

**C. Case No. 07-O-10074 – The Eischen Matter**

**Facts**

On or about April 14, 2006, a civil complaint alleging general negligence and professional negligence was filed against respondent by Larry Eischen, in the Los Angeles County Superior Court, in the matter titled *Larry Eischen v. Benjamin T. Lee*, Case No. MC017232 (*Eischen v. Lee*).

On or about September 5, 2006, the superior court entered a default judgment against respondent for \$400,410 in *Eischen v. Lee*.

## **Conclusions of Law**

### ***1. Count Eleven – (§ 6068, subd. (i) [Failure to Cooperate with a State Bar Investigation])***

The State Bar alleged that respondent failed to cooperate and participate in a disciplinary investigation in the Eischen matter. This allegation, however, was not supported by clear and convincing evidence. Count Eleven refers to investigative letters sent to respondent based on Romero's complaint. The amended NDC contains no factual allegations regarding investigative letters sent to respondent in the Eischen matter. Consequently, Count Eleven is dismissed with prejudice.

## **IV. Mitigation and Aggravation**

### **A. Mitigation**

No mitigating factors were submitted into evidence and none could be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>6</sup>

### **B. Aggravation**

#### ***1. Prior Record of Discipline***

Respondent's prior record of discipline is a factor in aggravation. (Std. 1.2(b)(i).) On December 2, 2009, the California Supreme Court issued an order (S176782) suspending respondent from the practice of law for one year, stayed, with a two-year period of probation, including a 30-day actual suspension. In this proceeding, respondent stipulated to misconduct including failing to perform legal services with competence, failing to promptly release all client papers upon termination of employment, failing to keep a client reasonably informed of significant developments, and failing to cooperate in a disciplinary investigation. In mitigation,

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<sup>6</sup> All further references to standard(s) are to this source.

respondent had no prior record of discipline and cooperated with the State Bar after the filing of formal charges. In aggravation, respondent engaged in multiple acts of misconduct.

### ***2. Multiple Acts of Misconduct***

Respondent was found culpable of ten acts of misconduct involving two client matters. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

### ***3. Significant Harm***

Respondent's misconduct also resulted in significant harm to his clients. (Std. 1.2(b)(iv).) Respondent's misappropriation and failure to refund unearned fees caused significant financial harm to Romero and Arrington.

### ***4. Failure to Cooperate***

Respondent's failure to participate in the present proceedings prior to the entry of his default constitutes an additional factor in aggravation. (Std. 1.2(b)(vi).)

## **V. 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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.6, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges that respondent be disbarred. The court agrees. The Supreme Court has repeatedly held that disbarment is the usual discipline for the willful misappropriation of client funds. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; and *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar, supra*, 51 Cal.3d 215, 221.)

Here, respondent committed misconduct in two client matters, including the misappropriation of \$11,172. Based on respondent’s egregious misconduct, his failure to

participate in the present proceedings, and the factors in aggravation, as well as the lack of mitigation, the court finds no reason to deviate from the standards. Therefore, it is recommended that respondent be disbarred.

## **VI. Recommendations**

The court recommends that respondent **Benjamin Tae Woun Lee** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is further recommended that Benjamin Tae Woun Lee make restitution as follows:

(1) To Jeffrey L. Arrington in the amount of \$1,673.73 plus 10 percent interest per annum from September 8, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Jeffrey L. Arrington in accordance with Business and Professions Code section 6140.5); and

(2) To Maria Huevo Romero in the total amount of \$11,172 plus 10 percent interest per annum from January 29, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Maria Huevo Romero in accordance with Business and Professions Code section 6140.5).<sup>7</sup>

### **A. California Rules of Court, Rule 9.20**

The court further recommends that respondent 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 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>8</sup>

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<sup>7</sup> Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

<sup>8</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**B. 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.

**VII. Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

Dated: July \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court