

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 07-O-10219-PEM (07-O-12147;
)	07-O-12619; 07-O-12675;
JERROLD ARTHUR BLOCH,)	07-O-13294; 07-O-13490;
)	08-O-10527)
Member No. 34909,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	
_____)	

I. Introduction

In this contested disciplinary proceeding, respondent **Jerrold Arthur Bloch** is charged with 23 counts of misconduct in seven client matters, involving: (1) failure to maintain client funds in a trust account; (2) failure to perform legal services competently; (3) engaging in multiple acts of moral turpitude; (4) failure to promptly pay client funds; (5) failure to promptly notify a client of receipt of client funds; (6) failure to deposit client funds in a client trust account; (7) failure to cooperate with the State Bar; (8) failure to respond to client inquiries; (9) failure to keep clients reasonably informed of significant developments; (10) failure to promptly release a client file; and (11) failure to return unearned fees.

The court finds by clear and convincing evidence, that respondent is culpable of all but one of the charged acts of misconduct. In view of the serious professional misconduct, and after

considering the aggravating and mitigating circumstances surrounding respondent's misconduct, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 12, 2008. On January 9, 2009, respondent filed a response to the NDC.

A three-day trial was held on the following dates: May 19, 20, and 21, 2009. The State Bar was represented by Deputy Trial Counsel (DTC) Ashad Mooradian. Respondent represented himself.

On May 19, 2009, the parties filed a Stipulation as to Facts and Admission of Documents in case Nos. 07-O-10219; 07-O-12147; 07-O-12619; 07-O-12675; 07-O-13294; 07-O-13490; and 08-O-10527. On May 20, 2009, the parties filed as Stipulation as to Facts in Case Number 07-O-10219.

On May 21, 2009, following closing arguments, the court took this matter under submission.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence, the parties' stipulations, and testimony introduced at this proceeding.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on January 4, 1964, and has been a member at all times since that date.

B. The Parra Matter (Case No. 07-O-10219)

On March 24, 2004, Roseann Parra (Parra) employed respondent to represent her in two matters: (1) a personal injury matter that occurred on or about May 3, 2003, entitled,

Roseann Parra v. Nilofar Mandavi (Mandavi), Orange County Superior Court case No. 04CC08308, and (2) a medical malpractice matter entitled, *Roseanne Parra v. Crown Valley Surgi-center (Crown Valley)*, Orange County Superior Court case No. 04CC12043. Both cases were contingent fee cases. Parra's contingent fee for the *Mandavi* personal injury matter was 33⅓%.¹

On June 13, 2005, Parra's personal injury case (*Mandavi*) settled for \$250,000. On that date, respondent deposited the settlement funds into his client trust account #XXXX 4025² at Wells Fargo Bank (CTA).

On June 29, 2005, respondent informed Parra that he was charging an attorney fee of \$83,333 and costs of \$1,090.50, for a total of \$84,423.50, and paid her \$100,000 of the *Mandavi* settlement funds from his CTA. On June 29, 2005, respondent told Parra he was maintaining \$5,000 in order to pay the Coast Family Chiropractic's compromised lien (chiropractor lien) and \$22,000 to pay the Liberty Mutual Assurance Company lien for long-term disability payments made to her.³

Between June 27, 2005 and October 31, 2005, respondent accounted for and paid out approximately \$37,364 for Parra's additional settlement funds, medical bills, and expenses incurred by Parra for the *Mandavi* personal injury matter, as follows:

¹ Parra testified that the contingent fee agreement for personal injury matter was 25% if the matter did not go to trial and 33⅓% if the matter were to go to trial. The parties stipulated in the May 19, 2009, Stipulation As to Facts and Admission of Documents that respondent's contingent fee for the *Mandavi* matter was 33⅓%. The court accepts that respondent's contingent fee for the *Mandavi* matter was 33⅓%, as the parties stipulated.

² The complete account number is excluded from this Decision to protect the account from identity theft.

³ In his testimony at the hearing in this matter, respondent admitted that he did not keep an accounting of the amount of money he should have held in trust for Parra. He stipulated that he did not hold the chiropractor lien and Liberty Mutual lien in his trust account. Respondent did not pay the \$22,000 lien to Liberty Mutual until January 2009; and, to this date he has not fully paid the chiropractor lien.

<u>DATE</u>	<u>PAYEE</u>	<u>CHECK NO.</u>	<u>AMOUNT</u>
06/27/05	Susan Shalit	1121	\$1,040
06/29/05	Robert Eberle	1122	5,319
06/29/05	Bristol Park	1123	3,200
06/29/05	Tru-Vu1	1124	2,500
06/30/05	K. Albertson	1126	5,000
08/10/05	Parra	1128	10,000
09/05/05	SCSSMA	1132	305
10/24/05	Parra	1137	5,000
10/31/05	Parra	1140	<u>5,000</u>

Total= \$37,364

Thus, following the October 31, 2005 disbursement, respondent should have maintained \$28,212.50 on Parra's behalf in his Wells Fargo Bank CTA.

On August 15, 2005, respondent's Well Fargo Bank CTA had a balance of \$25,980.49. On January 18, 2006, respondent's Wells Fargo Bank CTA had a balance of \$3.36. On November 1, 2006, respondent's Wells Fargo Bank CTA had a balance of \$1.90, and on December 7, 2006, respondent's Wells Fargo Bank CTA had a balance of [-\$16.46].

On December 1, 2006, Parra asked respondent to pay the Coast Family Chiropractic bill. Respondent falsely represented to Parra that he could not pay the bill because the IRS had seized all of his accounts. The IRS had not seized any funds from respondent's Wells Fargo Bank CTA.

On November 15, 2005, in Parra's medical malpractice matter, the *Crown Valley* case, the court granted defendant Crown Valley's motion for summary judgment against Parra. On or about November 30, 2005, Crown Valley filed a Memorandum for Costs for \$11,755.55.

Respondent agreed not to file an appeal of the summary judgment decision in return for a waiver of costs. The court dismissed the *Crown Valley* case on or about December 5, 2005, because neither party appeared for trial. Based on the agreement with respondent, Crown Valley filed an Acknowledgment of Satisfaction of Judgment on or about February 27, 2006.

Respondent did not notify Parra that the trial in the *Crown Valley* case was set for trial on or about December 5, 2005. Respondent never communicated to Parra that Crown Valley's motion for summary judgment had been granted. Respondent did not communicate to Parra that the *Crown Valley* case had been dismissed by the court on or about December 5, 2005. Nor did respondent ever inform Parra of his agreement with Crown Valley to forgo an appeal of the summary judgment decision in exchange for a waiver of costs.

Count 1: Failure to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))⁴

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

After the October 31, 2005 disbursement of funds, respondent had a fiduciary duty to hold in trust at least \$28,212.50 of entrusted settlement funds belonging to Parra in his CTA. Respondent had a fiduciary duty to hold in trust the settlement proceeds he received on behalf of Parra until such time as those funds held in trust were paid to her or others for her benefit. But, as set forth in footnote 3, respondent admitted that he did not maintain the funds for the chiropractor lien and the Liberty Mutual lien in his trust account.

⁴References to rules are to the Rules of Professional Conduct, unless otherwise stated.

On January 18, 2006, respondent's Wells Fargo Bank CTA had a balance of \$3.36. On November 1, 2006, respondent's Wells Fargo Bank CTA had a balance of \$1.90, and on December 7, 2006, respondent's Wells Fargo Bank CTA had a balance of -\$16.46.

By not maintaining at least \$28,212.50 received on behalf of Parra in his CTA, respondent willfully failed to maintain client funds in a trust account in violation of rule 4-100(A).

Count 2: Moral Turpitude (Bus. & Prof. Code, § 6106)⁵

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

Here, respondent received \$250,000 for the benefit of Parra. Respondent deposited the funds into his CTA. Between June 27, 2005 and October 31, 2005, respondent disbursed \$100,000 to the client, \$84,423.50 to himself for his fee and costs, and paid out \$37,364, which included additional settlement fund payments to Parra and payments for medical bills and expenses incurred by Parra in the *Mandavi* case. Following the October 31, 2005 disbursement, there should have remained a balance of approximately \$28,212.50 in the CTA. Therefore, because the balance in respondent's CTA fell below the approximately \$28,212.50 of entrusted funds to -\$16.46 by December 7, 2006, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

⁵ References to sections are to the provisions of the Business and Professions Code.

By misappropriating approximately \$28,212.50, respondent committed an act or acts of moral turpitude in violation of section 6106.

Count 3: Failure to Return Client Funds Promptly (Rules Prof. Conduct, Rule 4-100(B)(4))

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive. By not promptly paying Parra's Coast Family Chiropractic bill, after he was requested to do so by Parra on or about December 1, 2006,⁶ and by not paying the Liberty Mutual lien until 2009, respondent failed to promptly pay client funds in willful violation of rule 4-100(B)(4).

Count 4: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. The State Bar alleges in Count 4 that respondent intentionally, recklessly or repeatedly failed to perform legal services with competence by not communicating the trial date to Parra or the disposition of the *Crown Valley* case (i.e., the court dismissed the case after granting defendant Crown Valley's summary judgment motion), by forgoing an appeal of the summary judgment without informing Parra, and by allowing the dismissal of the *Crown Valley* case in an exchange for a waiver of costs in the amount of \$11,755.55 without informing Parra.

The court cannot conclude, by clear and convincing evidence, that respondent intentionally, recklessly or repeatedly failed to competently perform legal services on behalf of Parra. No evidence was introduced to show that forgoing an appeal of the summary judgment was an unwise, let alone incompetent decision. Further, the retainer agreement between respondent and Parra (Ex. 1) states that if the client's case is dismissed and the court awards costs against the client, those costs will be "the personal obligation of CLIENT(S)." Thus, it is

⁶ As noted in footnote 3, *ante*, to this date respondent has not fully paid the chiropractor lien.

not clear that respondent's decision to allow the dismissal of the *Crown Valley* case in an exchange for a waiver of costs in the amount of \$11,755.55 was not in his client's interest.

What is clear is that respondent failed to keep Parra reasonably informed of significant developments in matters with regard to which respondent agreed to provide legal services. Respondent did not communicate to his client that the trial was set for December 5, 2005. Nor did respondent communicate that the court dismissed the case against Crown Valley "on or about December 5, 2005." Respondent did not inform Parra that he did not appeal the summary judgment. And, respondent did not communicate that he agreed to allow the dismissal of the *Crown Valley* case in an exchange for a waiver of costs in the amount of \$11,755.55.

The court, however, cannot find by clear and convincing evidence that respondent's failure to communicate was tantamount to an intentional, reckless, or repeated failure to perform legal services with competence.

Accordingly, count 4 is dismissed with prejudice.

C. The Eisner Matter (Case No. 07-O-12147)

On May 2, 2004, Susan Eisner (Eisner) was involved in an automobile accident and incurred a personal injury. The other party to the accident was insured by State Farm Insurance. After the accident, Eisner met respondent at a garage sale and began talking about the accident. Respondent arranged to meet with her in Laguna Beach to discuss her case. Respondent did not enter into a written fee agreement with Eisner; but, he did agree to look into the matter. On January 4, 2005, respondent and Eisner entered into a Lien & Assignment Agreement with Matrix Rehabilitation (Matrix), so that Eisner could get treatment for the injuries that she had incurred in the automobile accident.

On April 19, 2005, respondent made a demand for settlement with State Farm Insurance (State Farm) for treatments received from Matrix for Eisner's injuries. On May 3, 2006,

respondent received a \$3,000 check from State Farm for settlement of Eisner's personal injury claim. Without advising Eisner that he had received the check, respondent endorsed the check with Eisner's name without her permission and deposited the check on May 3, 2006, into his client trust account No. XXXX 4025 at Wells Fargo Bank (CTA). Eisner testified that she became aware of the fact that State Farm had paid \$3,000 to respondent when she called State Farm after she started to receive letters and bills from Matrix.

On May 4, 2006, respondent's CTA reached a balance of \$48.48. On or about December 7, 2006, respondent's CTA reached a balance of [-\$16.46]. As of on or about December 18, 2006, no CTA funds had been paid to Eisner or to Matrix on behalf of Eisner. In approximately March of 2009, Eisner received a cashier's check from respondent for \$1,500.

Count 5: Failure to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

By not maintaining a balance in his CTA of at least \$3,000 from May 3, 2006, through on or about December 7, 2006, to pay Matrix, respondent willfully failed to maintain Eisner's settlement funds received for her benefit in a trust account in violation of rule 4-100(A).

Count 6: Failure to Notify Client of Receipt of Client Funds (Rules Prof. Conduct, Rule 4-100(B)(1))

Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds. By not informing Eisner that on May 3, 2006, that he had received the State Farm Insurance settlement check to pay Matrix, respondent failed to notify a client promptly of the receipt of the client's funds, securities, or other properties in willful violation of rule 4-100(B)(1).

Count 7: Moral Turpitude (Bus. & Prof. Code, § 6106)

As discussed, the mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of

misappropriation. The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See Count 2, *ante*.)

On May 3, 2006, respondent received \$3,000 for the benefit of Eisner. On May 4, 2006, respondent's CTA reached a balance of \$48.48. On or about December 7, 2006, respondent's CTA reached a balance of -\$16.46. As of, on or about December 18, 2006, no CTA funds had been paid to Eisner or to Matrix on behalf of Eisner. Because the balance in respondent's CTA fell below the amount of entrusted funds of \$3,000 to -\$16.46 by December 7, 2006, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

Accordingly, the court finds by clear and convincing evidence, that by endorsing Eisner's check without her permission, and by misappropriating \$3,000 of funds from the CTA, which were received on Eisner's behalf, respondent committed an act or acts involving moral turpitude, dishonesty or corruption.

D. The Chantiloupe Matter (Case No. 07-O-12619)

On July 6, 2006, respondent was employed by Magetta Chantiloupe (Chantiloupe) to substitute into and to litigate a medical malpractice case, entitled *Chantiloupe v. Pavel*, San Diego Superior Court case No. GIC858438. Chantiloupe had filed the case in pro per on or about December 15, 2005.

On July 6, 2006, Chantiloupe advanced respondent \$5,000. Half of the \$5,000 was to be used for the payment of expert witness fees; the other half was to be used for the depositions of attending physicians. On or about July 7, 2006, respondent deposited the \$5,000 into his Wells Fargo Bank client trust account (CTA) No. XXXX4025.

Chantiloupe, through her own efforts, found an expert to testify on her behalf. On or about July 26, 2006, she sent an advance of \$2,300 to respondent. That advance was to be

added to her previous \$2,500 advance to pay for an expert. Chantiloupe instructed respondent to pay \$4,800 to her expert witness. Respondent deposited the \$2,300 advance into his CTA on July 31, 2006; but, respondent did not pay Chantiloupe's expert.

On September 7, 2006, at respondent's request, Chantiloupe advanced an additional \$2,500 for medical expert witness fees. The check was cashed by respondent on or about September 11, 2006; respondent did not deposit those funds into his Wells Fargo Bank CTA. Respondent did not use the \$2,500 to pay for expert testimony in Chantiloupe's case.

Respondent testified that Chantiloupe came to his office at some unspecified point in time and wanted half of the funds that she had advanced to him.⁷ Respondent claims to have returned half of the advanced funds to Chantiloupe. Respondent did not offer a cancelled check or other tangible evidence to support his claim. Respondent, however, did admit that if his claim were true he still should have maintained at least \$4,000 in his trust account on Chantiloupe's behalf, which he did not do. He also testified that he never paid the expert witness the \$5,000 owed him.

The State Bar contends that following the July 7, 2006 deposit of \$5,000 and the July 31, 2006 deposit of the \$2,300 advance for the expert, respondent should have maintained a balance of approximately \$7,199.12 in his CTA on behalf of Chantiloupe for costs and expert witness fees. ($\$5,000$ [7/6/06 advance] + $\$2,300$ [7/31/06 advance] = $\$7,300$ - $!00.88$ [balance in CTA]) On August 2, 2006, respondent's CTA reached a balance of \$100.88.

⁷ Chantiloupe did not testify in this proceeding. All the evidence received by the court is based on respondent's testimony, the May 19, 2009 Stipulation As to Facts and Admission of Documents, and the documents admitted into evidence.

Count 8: Failure to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Respondent admitted in his testimony that he should have maintained at least \$4,000 in his CTA for Chantiloupe's benefit, which he did not do.

Thus, the court finds by clear and convincing evidence that by not maintaining a balance in his CTA of at least \$4,000 through August 2, 2006, respondent failed to maintain funds received for his client's benefit in willful violation of rule 4-100(A).

Count 9: Moral Turpitude (Bus. & Prof. Code, § 6106)

By his own admission respondent should have maintained at least \$4,000 of the \$7,300 that he had deposited by July 31, 2006, in his CTA. But, by August 2, 2006, respondent's CTA reached a balance of \$100.88. The balance in respondent's CTA fell below the \$4,000 minimum of the entrusted funds, which respondent conceded in his testimony should have been held in his CTA on behalf of Chantiloupe. Thus, the court finds by clear and convincing evidence that respondent misappropriated at least \$4,000 of entrusted funds that he had a duty to maintain on behalf of his client, and by so doing committed an act of moral turpitude in willful violation of section 6106.

Count 10: Failure to Deposit Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

Respondent admits that he never deposited the \$2,500 that Chantiloupe advanced to him on or about September 7, 2007, for expert witness fees.

The court finds by clear and convincing evidence that respondent violated rule 4-100(A) by not depositing on or after September 7, 2006, Chantiloupe's \$2,500 advanced fees into a bank account labeled "Trust Account", "Client Funds Account" or words of similar import.

Count 11: Moral Turpitude (Bus. & Prof. Code, § 6106)

On or about September 7, 2006, respondent received \$2,500 for the benefit of Chantiloupe. The check for the \$2,500 was cashed by respondent on or about September 11, 2006; respondent did not deposit those funds into his CTA. Respondent did not use the \$2,500 to pay for medical expert fees in Chantiloupe's case.

The court finds by clear and convincing evidence that respondent misappropriated his client's funds in the amount of \$2,500, by not depositing them in his CTA and not using them to pay the medical expert fees, and by so doing committed an act of moral turpitude in willful violation of section 6106.

E. The Landry Matter (Case No. 07-O-12675)

In June 2005, Lawrence and Karen Landry (the Landrys) employed respondent to represent them in a personal injury claim. On June 9, 2005, respondent filed a lawsuit entitled *Landry v. Citrus (Citrus)*, Los Angeles Superior Court case No. KC046346.

On or about August 2, 2006, respondent settled the Landrys' case for \$25,000. Lawrence Landry (Lawrence) received \$15,000 as his share of the settlement and Karen Landry (Karen) received \$10,000 as her share of the settlement. As part of the settlement agreement, the State Compensation Insurance Fund was to be paid \$2,500 as settlement of its lien rights. (Ex. 46.) Respondent received the settlement funds of \$25,000, which he deposited into his Wells Fargo Bank client trust account (CTA) No. XXXX 4025 on August 9, 2006.

On October 20, 2006, respondent's CTA reached a balance of \$.99. On or about December 7, 2006, respondent's CTA reached a balance of -\$16.46. No settlement funds were

ever paid by respondent to the Landrys until the beginning of 2009, when they received a check from respondent for \$11,500. (Ex. C.) Moreover, respondent testified that he has not paid the State Compensation Insurance Fund the \$2,500 owed them as their share of the settlement, because he does not have the money.

On or about July 5, 2007, the State Bar opened an investigation, case No. 07-O-12675, pursuant to a complaint (the Landry matter) filed by Lawrence. On August 24, 2007, the investigator for the State Bar sent a letter to respondent, regarding the allegations in the Landry matter. In the letter, the investigator requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the August 24, 2007, letter. Respondent, however, failed to respond to the investigator's letter, and failed to otherwise cooperate or communicate with the investigator in connection with the Landry matter.

On October 18, 2007, the investigator for the State Bar sent respondent a second letter regarding the allegations in the Landry matter. In the letter, the investigator again requested that respondent provide the State Bar with a written response to the allegations, including any documents that supported respondent's position. Respondent received the October 29, 2007, letter. Respondent did not respond to the investigator's letter dated October 29, 2007, and failed to cooperate or communicate with the investigator in connection with the Landry matter.

Count 12: Failure to Deposit Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

On August 2, 2006, respondent settled the Landrys' case for \$25,000. Respondent received the settlement funds, which he deposited into his CTA on August 9, 2006. By October 20, 2006, respondent's CTA reached a balance of \$.99. On or about December 7, 2006 respondent's CTA reached a balance of -\$16.46. No settlement funds were ever paid to the Landrys until the beginning of 2009, when they received a check from respondent for \$11,500. Moreover, respondent testified that he had not paid the State Compensation Insurance Fund the \$2,500 owed to it as its share of the settlement.

Respondent had a fiduciary duty to hold in trust \$25,000 of entrusted funds for the benefit of the Landrys. Between August 9, 2006 and December 7, 2006, the balance in the CTA fell below \$25,000. On December 7, 2006, the balance was -\$16.46. Thus, respondent's failure to hold in trust the Landry's settlement funds in the CTA was clearly and convincingly in violation of rule 4-100(A).

Count 13: Moral Turpitude (Bus. & Prof. Code, § 6106)

Respondent settled the *Citrus* case, and received settlement funds in the amount of \$25,000 for the Landrys. Lawrence's share of the settlement was \$15,000; Karen's share was \$10,000. On August 9, 2006, respondent deposited the \$25,000 settlement funds in his CTA. On or about December 7, 2006, respondent's CTA reached a balance of -\$16.46. No settlement funds were ever paid to the Landrys until the beginning of 2009, when they received a check from respondent for \$11,500. Respondent testified that he did not pay the State Compensation Insurance Fund the \$2,500 owed to it as its share of the settlement.

The court, therefore, finds by clear and convincing evidence that respondent misappropriated the \$25,000 in settlement funds that he had a duty to maintain on behalf of his clients, and by so doing committed an act of moral turpitude in willful violation of section 6106.

Count 14: Failure to Cooperate in State Bar Investigation (Bus. & Prof. Code, § 6068, Sub. (i)

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 Landry matter as requested in the investigator's letters dated August 24, 2007 and October 29, 2007, and by failing to otherwise cooperate in the investigation of the Landry matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

F. The Papagni Matter (Case No. 07-O-13294)

On or about November 27, 2005, a train on which Judi Papagni (Papagni) was a passenger struck a small truck. On January 25, 2006, Papagni employed respondent to pursue a personal injury matter related to the train accident and to pursue a subsequent separate malpractice matter against the hospital that treated her for her injury that later required emergency surgery.

On February 3, 2006, respondent sent a letter to Papagni informing her that he had received all of her documents. Among the documents that respondent informed Papagni he had received was a retainer agreement signed by Papagni.

On November 6, 2006, Papagni sent an e-mail to respondent wherein she requested a status update regarding her cases. On that same date, respondent sent a response, stating that he had put the "MED MAL DEFTS ON NOTICE OF INTENT TO FILE LITIGATION." In fact, no such notice of intent was given by respondent.

Papagni and respondent communicated by e-mail until on or about March 11, 2007. On March 11, 2007, March 20, 2007, March 24, 2007, May 2, 2007, May 3, 2007, May 8, 2007, May 23, 2007, June 4, 2007, July 18, 2007, and July 20, 2007, Papagni e-mailed respondent

inquiring about the status of her cases. But, respondent did not communicate to Papagni the status of her cases. Finally, on July 20, 2007, responded e-mailed a response, wherein he advised Papagni that he would send her case file to her.

From January 25, 2006, through July 20, 2007, respondent did not subpoena the accident report regarding the train accident from the sheriff's department, did not interview witnesses or gather evidence for either matter, did not employ an investigator to interview witness or gather evidence for either matter, did not seek to determine the probable defendants in either matter or determine whether they were insured or determine the identity of their insurance carriers, did not seek the advice of a medical expert for the malpractice matter, and did not file complaints in either of the legal matters for which he was retained.

Count 15: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))

The court finds by clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation rule 3-110(A) by failing to do any significant legal work on either of Papagni's legal matters from January 25, 2006 until he returned her client file on or about July 20, 2007, and by informing Papagni that he had put the medical malpractice defendants on notice of intent to file litigation when he had not done so.

Count 16: Failure to Respond to Client Inquiries (Bus. & Prof. Code, § 6068, Subd. (m))

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 not responding to Papagni's e-mails, dated March 11, 2007, March 20, 2007, March 24, 2007, May 2, 2007, May 3, 2007, May 8, 2007, May 23, 2007, June 4, 2007, July 18, 2007,

and July 20, 2007, inquiring as to the status of her cases, respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of section 6068, subdivision (m).

G. The Chapman Matter (Case No. 07-O-13490)

On July 8, 2006, respondent was employed by Renee Chapman (Chapman) to review her file and provide his opinion as to the strength of the allegations in *Chapman v. LLUMC*, San Bernardino Superior Court case No. SCVSS124909, a wrongful death action for the death of her daughter. Respondent also was to consider whether he could substitute into the case. Chapman paid respondent an advance fee in the amount of \$500. She turned over her client file to respondent. The case was set for jury trial on or about January 22, 2007. But, from July 8, 2006, the date he was retained by Chapman, through July 10, 2007, the date Chapman requested a return of the fee she had paid him, respondent did not provide Chapman with the legal opinion he had been hired to render.

On July 21, 2006, Chapman telephoned respondent regarding the status of her case. Respondent's office took a message from Chapman requesting a call back. Respondent did not return Chapman's telephone call.

On July 27, 2006, Chapman telephoned respondent regarding the status of her case. Respondent's office took a message from Chapman requesting a call back. Respondent did not return Chapman's telephone call.

On August 3, 2006, Chapman telephoned respondent regarding the status of her case. Respondent's office took a message from Chapman requesting a call back. Respondent did not return Chapman's telephone call. Chapman also e-mailed respondent on August 3, 2006, referring to her telephone call and again requested the status of her case.

On or about October 20, 2006, Chapman telephoned respondent regarding the status of her case. Respondent's office took a message from Chapman requesting a call back. Respondent did not return Chapman's telephone call.

On June 11, 2007, Chapman sent respondent a certified letter (dated June 10, 2007), return receipt requested, complaining about the lack of communication regarding her case. In her certified letter, Chapman also requested that respondent refund the advance fee she had paid him and requested that respondent return her file. The letter sets forth respondent's failure to communicate and to perform the service for which he was employed. The court finds that Chapman's letter terminates the employment relationship. Respondent received the June 11, 2007 certified letter that Chapman sent to him. Respondent did not respond. Nor did respondent return Chapman's advance fee.

In the May 19, 2009 Stipulation as to Facts and Admission of Documents, the parties stipulated that Chapman retrieved her client file from respondent's office in or about November 2007. But, Chapman testified that she never received the files that she left with respondent.

Count 17: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))

Respondent was employed by Chapman to review her file and provide his opinion as to the strength of the allegations in *Chapman v. LLUMC*, San Bernardino Superior Court case No. SCVSS124909, a wrongful death action for the death of her daughter. The matter was set to go to trial on January 22, 2007. From July 8, 2006, the date he was retained by Chapman, through July 10, 2007, the date Chapman requested a return of the fee she had paid him, respondent did not provide Chapman with the legal opinion he had been hired to render.

The court finds by clear and convincing evidence that respondent recklessly failed to perform legal services with competence in willful violation rule 3-110(A) by failing to render

his opinion as to the wrongful death action for the death of Chapman's daughter, the legal service for which he had been hired.

Count 18: Failure to Respond to Client Inquiries (Bus. & Prof. Code, § 6068, Subd. (m))

By not responding to Chapman's telephone calls of July 21, 2006, July 27, 2006, August 3, 2006, October 20, 2006; her August 3, 2006 e-mail, and her letter dated June 10, 2007, respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of section 6068, subdivision (m).

Count 19: Failure to Return Client File (Rules Prof. Conduct, Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property.

By not promptly returning Chapman's file, despite her request, respondent willfully failed to promptly release to his client, upon termination of his employment, all of the client's papers and property, in willful violation of rule 3-700(D)(1).

Count 20: Failure to Return Unearned Fees (Rules Prof. Conduct, Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

Respondent willfully failed to promptly refund any part of the \$500 unearned fee, which had been paid in advance to his client, in willful violation of rule 3-700(D)(2).

H. The Shaw Matter (Case No. 08-O-10527)

On or about December 14, 2000, Troy Shaw (Shaw) employed respondent to represent him in a personal injury matter that resulted from an automobile accident on or about December 14, 2000. The one-year statute of limitations on Shaw's claim elapsed on or about December 14, 2001. Thus, respondent had until December 14, 2001, to file a lawsuit on Shaw's behalf. Respondent failed to file the lawsuit on Shaw's behalf on or before the December 14, 2001

expiration of the statute of limitations or at any time thereafter. As a result of respondent's failure to file a lawsuit on behalf of Shaw, Shaw lost his right to pursue and collect damages for his personal injuries.

At no time did respondent inform Shaw that respondent did not file a lawsuit on Shaw's behalf within the one-year statute of limitations. Although respondent knew in or about the end of 2001 that Shaw's case was not filed timely and was barred by the statute of limitations, from December 14, 2000, until in or about July 2004, respondent advised Shaw the he was working on Shaw's personal injury matter. Respondent never told Shaw anything about the expiration of the statute of limitations in Shaw's case.

In 2006, Shaw's wife called the insurance company and found out that that any claim that Shaw might claim was barred by the statute of limitations because respondent had failed to file a lawsuit on Shaw's behalf.

Count 21: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))

By not filing a lawsuit on behalf of Shaw within the one-year statute of limitations that was applicable to Shaw's case, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110-A.

Count 22: Failure to Inform a Client of a Significant Development (Bus. & Prof. Code, § 6068, Subd. (m))

Respondent failed to keep his client informed of significant developments in matters with regard to which he had agreed to provide legal services by failing to inform Shaw that: (1) respondent did not timely file a lawsuit on behalf of Shaw within the one-year statute of limitations; and (2) as a result of respondent's failure to file a lawsuit on behalf of Shaw, Shaw lost his right to pursue and collect damages for his personal injuries.

Thus, the court concludes, by clear and convincing evidence, that respondent willfully failed to keep his client informed of significant developments in matters with regard to which he had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 23: Misrepresentations and Concealment (Bus. & Prof. Code, § 6106)

Acts of moral turpitude include concealment as well as affirmative misrepresentations and no distinction can be drawn among concealment, half-truth, and false statement of fact. (*In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 808.)

By never informing Shaw that he had not filed a lawsuit on Shaw's behalf within the one-year statute of limitations, and by advising Shaw from December 14, 2001, until in or about July 2004, that he was working on Shaw's case, while knowing that it was barred by the statute of limitations, respondent concealed the truth and made misrepresentations to a client in willful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁸ stds. 1.2(e) and (b).)

A. Mitigation

The absence of a prior record over many years of practice coupled with present misconduct that is not deemed serious is a mitigating circumstance. (Std. 1.2(e)(i).) Respondent's misconduct, however, is serious. Thus, in light of the serious nature of respondent's misconduct, the court gives the approximately 37 years of practice of law without a prior record of discipline at the time of respondent's misconduct minimal weight as a mitigating factor.

⁸ Future references to standard(s) or std. are to this source

Although respondent testified to some good works that he has engaged in over the years and to contributions to the legal community, such as working as a judge pro tem, the court finds that respondent did not establish mitigation by clear and convincing evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing, which include misappropriation, misrepresentation, concealment, trust fund violations, failure to perform legal services competently, failure to communicate, failure to promptly release a client file, failure to return an unearned fee, and failure to cooperate with the State Bar. (Std. 1.2(b)(ii).)

In the Parra matter, respondent did not communicate to his client that the trial was set for December 5, 2005. Nor did respondent communicate that the court dismissed the case against Crown Valley “on or about December 5, 2005.” Respondent did not inform Parra that he did not appeal the summary judgment. And, respondent did not communicate that he agreed to allow the dismissal of the *Crown Valley* case in an exchange for a waiver of costs in the amount of \$11,755.55. Thus, the court finds respondent culpable of an uncharged act of misconduct by failing to keep his client in the Parra matter reasonably informed of significant developments in matters with regard to which respondent agreed to provide legal services, a willful violation of section 6068, subdivision (m). (Std. 1.2(b)(iii).)

Respondent’s misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) The Landrys were deprived of settlement funds for years; and Shaw lost his cause of action due to respondent’s failure to pursue Shaw’s personal injury matter.

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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6. and 2.10.)

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 Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although 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.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate, in which case the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of failing to communicate with a client must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar asserts that the appropriate discipline which should be imposed in this matter is disbarment. The court agrees, finding instruction in, among other cases: *Kaplan v. State Bar* (1991) 52 Cal.3d 1067; *Grim v. State Bar* (1991) 53 Cal.3d 21; and *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511.

In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his law firm. In mitigation, the attorney had no prior record of discipline in 12 years of practice of law and suffered from emotional problems. The court did not find these factors sufficiently compelling to warrant less than disbarment.

In *Grim v. State Bar* (1991) 53 Cal.3d 21, the attorney misappropriated over \$5,500 of client funds. The attorney did not return the funds to the client until almost three years later and only after the State Bar had initiated disciplinary proceedings and held an evidentiary hearing.

The Supreme Court did not find compelling mitigating circumstances to predominate and rejected his defense of financial stress as mitigation because his financial difficulties, which arose out of a business venture, were neither unforeseeable, nor beyond his control. Finally, the attorney intended to permanently deprive his client of her funds. The Supreme Court, therefore, did not find his cooperation with the State Bar and evidence of good character to constitute compelling mitigation in view of the aggravating factors.

In *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, the attorney was disbarred for misappropriating \$40,000 from a client's personal injury settlement funds and misled the client over a year as to the status of the money. The attorney had no prior disciplinary record in 15 years of practice of law.

Here, like the attorneys in *Spaith*, *Grim*, and *Kaplan*, respondent had misappropriated a large sum of client funds (approximately \$63,000). And, no compelling mitigation has been shown.⁹

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Here, respondent flagrantly breached his fiduciary duties to his clients in five client matters by misappropriating their funds.

The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (See *Grim v. State Bar*, *supra*, 53 Cal.3d 21.)

⁹ Aside from the alleged reimbursement of advanced funds to Chantiloupe, discussed *infra*, respondent's payments to his clients or on their behalf occurred after the December 12, 2008 filing of the NDC in this matter, and thus do provide evidence of mitigation

Respondent's misappropriation weighs heavily in assessing the appropriate level of discipline. Like the attorney in *Grim*, the "misappropriation in this case . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to his client[s]. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client of [his] funds." (*Grim v. State Bar, supra*, 53 Cal.3d at p. 30.)

Moreover, respondent's other misconduct, involving the failure to return unearned fees, the failure to promptly return a client file, the failure to perform legal services competently, and the failure to communicate with clients, extends to nearly every important aspect of the attorney-client relationship, and, thus, is deeply troubling to this court.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) While the court recognizes, based on respondent's testimony, that he had and continues to have many financial difficulties, his own financial difficulties do not outweigh his fiduciary duty to his clients. "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest." (*Grim v. State Bar, supra*, 53 Cal.3d at p. 31.) The court is seriously concerned about the possibility of a reoccurrence of similar misconduct to that of which respondent has been found culpable in this proceeding.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Based on the severity of the offense, the serious aggravating circumstances and the lack of any mitigating factors, the court recommends disbarment.

VI. Recommendations

Accordingly, the court recommends that respondent **Jerrold Arthur Bloch** 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 also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.¹⁰

It is further 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

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: August _____, 2009

PAT McELROY
Judge of the State Bar Court

¹⁰ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)