PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED DECEMBER 06, 2012

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	**Case Nos. 08-O-10684; 08-O-13867**
	)	
LON BARRY ISAACSON,	)	**OPINION AND ORDER**
	)	
A Member of the State Bar, No. 64838.	)	
	)	

This is respondent Lon Barry Isaacson's fourth disciplinary proceeding. In this matter, the hearing judge found that Isaacson was culpable of willfully violating rule 4-100(A) of the Rules of Professional Conduct[1] because he failed to maintain over $88,000 of his client's settlement funds in his client trust account (CTA). The hearing judge further found that Isaacson misappropriated these funds and that this conduct involved moral turpitude in violation of section 6106 of the Business and Professions Code.[2] The hearing judge recommended Isaacson's disbarment and Isaacson appeals.

Isaacson challenges the hearing judge's culpability determinations. He argues that there has been no misconduct because he maintained adequate funds for all of his clients in several trust accounts, which he treated as one "umbrella" trust account. It was his practice to deposit funds belonging to his various clients into one or more CTAs and then transfer the funds to other trust accounts without maintaining the identity of the funds. The hearing judge was unable to

[1] Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

[2] Section 6106 of the Business and Professions Code prohibits an attorney from committing any act that involves moral turpitude, dishonesty, or corruption. Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

trace the funds among the various trust accounts because Isaacson did not produce "credible and complete bank records."

Isaacson also contends that the hearing judge erred in finding that he provided "knowingly false" testimony during the disciplinary hearing. He asks us to dismiss this entire proceeding. The State Bar does not seek review but proposes that we affirm the disbarment recommendation.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that Isaacson violated rule 4-100(A) by failing to maintain in trust over $88,000 belonging to one client. We also agree that Isaacson's misconduct involved moral turpitude due to the grossly negligent manner in which he managed his trust accounts and that Isaacson knowingly gave false testimony in these proceedings. Given the absence of compelling mitigating circumstances, we conclude that Isaacson's prior record, together with the seriousness of his present misconduct and his dishonesty before this court, warrant his disbarment as provided by the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standards 1.7(b) and 2.2(a).[3]

I. FACTUAL AND PROCEDURAL HISTORY

Josef Maatuk hired Isaacson to represent him in a legal malpractice matter against attorneys Brian Glicker and Bruce Guttman. Isaacson and Maatuk agreed to a 50% contingency fee. On November 14, 2006, Isaacson deposited a partial settlement payment of $750,000 from

[3] Standard 1.7(b) provides that an attorney with two or more prior disciplines shall be disbarred unless the most compelling mitigating circumstances clearly predominate. Standard 2.2(a) also calls for disbarment when an attorney willfully misappropriates entrusted funds unless the amount is insignificantly small or the most compelling mitigating circumstances clearly predominate.

Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Glicker in his trust account at California Bank & Trust (CB&T 6761). During the course of his representation of Maatuk, Isaacson also made numerous deposits into and withdrawals from CB&T 6761 on behalf of other clients.

On April 19, 2007, Isaacson deposited an additional $45,000 into CB&T 6761 on behalf of Maatuk, which represented the final payment from Glicker, bringing Maatuk's total settlement in the Glicker matter to $795,000. Isaacson disbursed $146,836 as a partial payment to Maatuk and withdrew $347,200 as his attorney fees, leaving a balance of $300,964. Isaacson retained a portion of Maatuk's settlement funds in trust to pay for the costs of ongoing litigation against Guttman.[4] On April 19, 2007, Isaacson closed CB&T 6761 and transferred the entire balance of that account into CB&T 7221. He wrote another check for $50,000 to himself from CB&T 7221 as additional fees owed to him in the Maatuk case, making the total amount of fees collected $397,200. As of June 30, 2007, Isaacson was required to hold a minimum of $88,477 in trust for Maatuk.[5] But, each month through January 2008, the amount in CB&T 7221 fell below the required minimum, often in significant amounts. Set forth below are examples of the shortfalls:

Date	Amount Held in Account CB&T 7221
June 30, 2007	$84,659.10
August 10, 2007	$22,166.28
August 30, 2007	$43,637.76
September 18, 2007	$ -6,460.33
November 6, 2007	$67,620.62
December 6, 2007	$75,977.84
December 10, 2007	$35,977.84
December 31, 2007	$31,032.08
January 4, 2008	$55,532.08

[4] In a later trial, a jury found Guttman liable for malpractice, but awarded no money damages. Isaacson appealed, but ceased representation of Maatuk in January 2008. Maatuk's successor attorney was unsuccessful with the appeal.

[5] On appeal, the parties agree that Isaacson was obligated to hold at least $88,477 in trust for Maatuk and the hearing judge made a finding to this effect. However, we find no evidence in the record to corroborate this amount.

Ultimately, Isaacson paid the remaining $88,477 to Maatuk by a series of checks written between January 23 and March 11, 2008 from his general operating account. Isaacson testified that he instructed one of his associates to make the payments from his general operating account since Maatuk was in a hurry to obtain the settlement proceeds and Isaacson was unavailable to sign checks from CB&T 7221. Subsequently, Isaacson wrote reimbursement checks to himself for the $88,477 from CB&T 7221. The payments to Maatuk occurred prior to the date when the State Bar contacted Isaacson about this matter.

The State Bar filed a Notice of Disciplinary Charges (NDC) on May 25, 2011, alleging two counts of misconduct: (1) a violation of rule 4-100(A) for failing to maintain sufficient funds in his CTA; and (2) a violation of section 6106 for acts of misconduct involving moral turpitude.[6] Isaacson responded to the charges on July 1, 2011. The parties entered a Stipulation as to Facts and Admission of Documents, much of which we have incorporated into our factual and legal analysis. A seven-day trial commenced on September 27, 2011, and the hearing judge filed his decision on February 6, 2012.

II. CULPABILITY

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

Rule 4-100(A) provides that an attorney shall properly maintain all funds received or held for the benefit of a client in a trust account. Isaacson was required to maintain $88,477 on behalf of Maatuk, yet between June 30, 2007 and January 8, 2008, the balance in the CB&T 7221 account fell below this amount on 14 occasions, including a negative balance of more than $6,000. Isaacson argues that under rule 4-100(A), an attorney may deposit client funds into "one

[6] The State Bar also alleged in a second client matter (Case No. 08-O-13867) that Isaacson acquired an ownership interest adverse to a client and withdrew disputed client funds. The hearing judge dismissed both counts with prejudice, finding insufficient evidence to support culpability. The State Bar does not contest the dismissal of these counts. We see no grounds to disturb the dismissal and will not discuss these counts further.

or more identifiable bank accounts" and that is precisely what he did when he maintained multiple CTAs and treated them as one umbrella account. Specifically, Isaacson testified that he held Maatuk's funds in CB&T 7221 and in an account at UBS Financial Services (UBS 16151/19638)[7] where he maintained a balance of $800,000. Isaacson further testified that he relied on funds in the UBS account to cover any shortfall in the CB&T 7221 account.

However, according to two declarations by Isaacson filed in unrelated litigation, the $800,000 in UBS 16151/19638 represented a settlement on behalf of the plaintiffs in a lawsuit against the Archdiocese of Los Angeles arising from claims of childhood sexual molestation. Those funds were held solely for the plaintiffs' benefit, together with an unspecified amount attributable to Isaacson's attorney fees in the Archdiocese litigation.[8] The hearing judge thus correctly rejected Isaacson's testimony. The hearing judge further found that Isaacson produced no other credible evidence that traced Maatuk's funds among Isaacson's various CTAs. We agree.

We also do not find support for Isaacson's argument that *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, provides authority for his use of multiple CTAs. The attorney in *Hagen* maintained two types of trust accounts -- a non-interest bearing checking account and an interest bearing savings account, and he occasionally deposited money from more than one client in the same trust account. (*Id*. at p. 158.) The attorney treated all of the accounts as a whole, disbursing funds without regard to their source, although balancing all of the accounts at the end of each month. (*Ibid*.) We did not reach the issue in *Hagen* of whether the

[7] On April 16, 2007, the assets in UBS 16151 were transferred to UBS 19638, but this did not change the value or the character of the assets held in that account.

[8] Isaacson failed to offer an explanation as to why he did not withdraw his fees in the Archdiocese litigation while the funds were held in the UBS account. (See Rule 4-100(A)(2) [fees must be withdrawn "at the earliest reasonable time after the member's interest in that portion becomes fixed" unless the client disputes the fee].)

attorney was permitted to maintain multiple CTAs because we concluded that the manner in which he maintained the accounts was grossly negligent and constituted moral turpitude. (*Id*. at pp. 166, 169.) We reach the same conclusion in this case in our analysis of Count Two, *infra*.

We thus find that Isaacson is culpable under Count One of willfully violating rule 4-100(A) because he failed to properly maintain Maatuk's settlement funds in his CTAs. The fact that Isaacson ultimately repaid Maatuk does not affect our culpability determination. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [rule governing management of CTA violated where attorney fails to deposit or manage funds in CTA in "the manner designated by the rule, even if no person is injured"].)

Count Two – Moral Turpitude (§ 6106)

The hearing judge found that Isaacson was culpable of misappropriating Maatuk's funds and that such misappropriation involved moral turpitude. We agree. The mere fact that the balance in the CB&T 7221 account fell below $88,477 raises an inference of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [inference of misappropriation if CTA balance drops below amount attorney should maintain for client].) The burden of proof then shifted to Isaacson to show that a misappropriation did not occur. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618 [once there is an inference of misappropriation, burden shifts to attorney to prove no misappropriation occurred].)

Isaacson failed to rebut this presumption. Indeed, his records were woefully inadequate to prove that he properly maintained Maatuk's settlement funds. Under rule 4-100, attorneys must manage their CTAs in a manner that preserves the identity of the funds. It is axiomatic that complete and accurate recordkeeping for every trust account is essential so that attorneys "know exactly how much of the money [they] are holding for clients belongs to each individual client." (State Bar of Cal., Handbook on Client Trust Accounting for Cal. Attys. (2011) § II, p. 2

hereafter "Handbook.") To that end, the Board of Trustees of the State Bar has promulgated standards found in rule 4-100(C) that describe in detail the minimum record keeping that shall be maintained for the proper management of trust accounts. These standards are "binding on all members." (Rule 4-100(C).) The State Bar has provided additional guidance on managing CTAs in its Handbook. The Handbook explains that an attorney must maintain a separate written ledger for each client with sufficient detail to allow the identification of each client's funds held in each separate client trust account. (Handbook, § III, p. 5.)

Isaacson did not keep complete and accurate records and therefore failed to rebut the strong inference that he misappropriated the $88,477 belonging to Maatuk. Despite having several bookkeepers, who Isaacson claims prepared monthly trust reconciliations, Isaacson could not locate any original documentation recording such reconciliations. And instead of providing contemporaneous documentation, Isaacson presented only reconstructed records that were prepared within the year prior to trial. Many of those records were incomplete or inaccurate. Furthermore, Isaacson failed to monitor his account statements on a regular basis and instead improperly delegated this responsibility to his office staff. (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 680 [review of account statements non-delegable].)

Isaacson's lackadaisical recordkeeping and failure to supervise his staff are evidence that he grossly mismanaged his CTAs resulting in the misappropriation of client funds. Such gross negligence constitutes moral turpitude in violation of section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033 [attorney culpable of misappropriation involving moral turpitude due to failure to produce adequate documentation of source of funds]; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude for gross carelessness in failing to maintain trust account]; *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 712 [attorney

culpable of violating section 6106 due to gross negligence in allowing staff to oversee payments to medical providers without supervision, resulting in misappropriation of $20,000].)

III. AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)), while Isaacson has the same burden of proving mitigating circumstances. (Std. 1.2(e)).

A. AGGRAVATING FACTORS

The hearing judge found two factors in aggravation: Isaacson's prior discipline and his lack of candor. We agree with both findings.

1. Prior Record of Discipline (Std. 1.2(b)(i))

Isaacson has three prior records of discipline.

In 1986, Isaacson was publically reproved for failing to promptly return unearned fees. There were no aggravating or mitigating circumstances.

In 1993, Isaacson received a one-year stayed suspension and was placed on two years' probation with a 60-day actual suspension. He stipulated to 16 counts of misconduct including: failure to render appropriate accounts to clients (six counts); failure to obey bankruptcy courts orders to promptly return excess fees (five counts); failure to report court-ordered sanctions to the State Bar (two counts); failure to promptly return client files (two counts); and failure to preserve client confidences. The misconduct occurred while Isaacson managed a high-volume bankruptcy practice where he neglected to implement appropriate office procedures. Isaacson's misconduct was aggravated by his prior record of discipline and multiple acts of misconduct. He received mitigating credit for acting in good faith, lack of client harm, cooperation with the State Bar, recognition of wrongdoing, the considerable passage of time since the misconduct, and proof of subsequent rehabilitation.

In 1995, Isaacson received a one-year stayed suspension and was placed on probation for one year. Isaacson stipulated that he failed to comply with his probation conditions in the second matter. Specifically, he failed to timely file his first quarterly report, a report by a certified public accountant, and a report by a law office management consultant. His misconduct was aggravated by his prior records of discipline, but tempered by his cooperation with the State Bar.

We find Isaacson's prior disciplinary history is a serious aggravating factor.

2. Lack of Candor (Std. 1.2(b)(vi))

The hearing judge found that Isaacson lacked candor when he testified that he could rely on the $800,000 held in the UBS account to ensure the safety of Maatuk's settlement funds once they were depleted from CB&T 7271. We give great deference to the hearing judge's candor determination. (*Dixon v. State Bar* (1985) 39 Cal.3d 335, 344 [Supreme Court defers to review and hearing department's candor determinations].) Moreover, the State Bar offered impeachment evidence that clearly showed Isaacson knowingly lied about the availability of those funds. Standard 1.2(b)(vi) provides it is an aggravating factor if an attorney "displayed a lack of candor . . . to the State Bar during [the] disciplinary investigation or proceedings." We find Isaacson's lack of candor in these proceedings is a considerable aggravating factor.

B. MITIGATION

The hearing judge found two mitigating factors: Isaacson's good character and his pro bono activities. We do not agree that Isaacson is entitled to mitigation for good character, but the record does support a finding of minimal mitigation for Isaacson's pro bono activities.

1. Good Character (Std. 1.2(e)(vi))

Isaacson presented four witnesses who testified about his good character. They included Isaacson's two personal trainers, and two "golfing buddies" who belonged to Isaacson's country club. Each witness had known him for at least 18 years. Isaacson never represented any of the

witnesses, but he represented a relative of each golfing buddy. The witnesses described Isaacson as trustworthy, honest, and generous. Isaacson's personal trainer testified that if he needed an attorney, Isaacson "would be the only person [he] would call."

We find that the testimony of Isaacson's witnesses does not rise to the "extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities" as the standard requires. (Std. 1.2(e)(vi).) Isaacson presented too few witnesses, and evidence from members of the legal community is absent. Moreover, the quality of the testimony does not establish clearly and convincingly that he is of good character. Thus, we do not afford any mitigating credit for good character. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 879 [no mitigation for testimony from two character witnesses comprised of attorney and law clerk]; *In the Matter of Hagen*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 171 [no significant weight for character testimony from judge, attorney, and client because three witnesses did not represent "wide range of references"].)

2. Pro Bono Activities

The hearing judge gave Isaacson "some" mitigation credit for handling pro bono cases, but we find that the weight to be afforded to these activities is minimal. Isaacson's secretary testified that Isaacson handled from one to three pro bono cases per year, which involved bankruptcy, family law, personal injury, and unlawful detainers. However, she "did not specify the extent of his involvement" and there is no other evidence in the record about Isaacson's pro bono cases. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little mitigation weight given to attorney who offered minimal testimony regarding pro bono activities].) The vague testimony offered at trial does not demonstrate the "zeal in undertaking pro bono work" that constitutes a mitigating factor. (See, e.g., *Rose v. State Bar* (1989) 49 Cal.3d 646, 665-667 [numerous pro bono actions seeking to advance rights of handicapped

people, lecturer for California Continuing Education of the Bar, guest lecturer at Loyola of Los Angeles School of Law, recipient of certificate for outstanding contributions, etc.].)

IV. LEVEL OF DISCIPLINE

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; std. 1.3.)

Our analysis begins with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citations omitted.) Standard 1.6(a) provides that when multiple acts of misconduct call for different sanctions, we apply the most severe. We focus on standards 1.7(b) and 2.2(a), both of which propose disbarment absent the most compelling mitigating circumstances that clearly predominate.[9]

Under both standards the critical issue is whether Isaacson proved that compelling mitigating circumstances clearly predominate. (*In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 196.) Isaacson's mitigation evidence is neither compelling, nor does it clearly predominate over the serious aggravating factors – his three prior disciplines and his lack of candor in these proceedings. We find no basis in this record to depart from the presumptive discipline of disbarment provided by standards 1.7(b) and 2.2(a).

Isaacson was grossly negligent in performing his trust accounting duties, delegating the management of his complicated arrangement of multiple CTAs to his office staff, whom he

[9] Other applicable, but less severe, standards include standard 2.2(b), which provides for a minimum three-month suspension for trust account violations under rule 4-100, and standard 2.3, which provides for a range of discipline from actual suspension to disbarment for acts of moral turpitude.

failed to adequately supervise. As a consequence, his records were either inaccurate or went missing. The purpose of keeping proper accounting records is " 'to be prepared to make proof of the honesty and fair dealing of attorneys when their actions are called into question, whether in litigation with their clients or in disciplinary proceedings and it is a part of their duty which accompanies the relation of attorney and client . . . .' [Citations.]" (*Clark v. State Bar* (1952) 39 Cal.2d 161, 174, superseded on other grounds in *Black v. State Bar* (1962) 57 Cal.2d 219.) As a result of his poor recordkeeping, Isaacson could not trace the funds in his multiple trust accounts to ensure he had preserved his client's settlement.

Isaacson's poor supervision of his office staff and his careless monitoring of his CTAs echo the shortcomings that resulted in his prior discipline. As a condition of his probation for his prior discipline, Isaacson was required to utilize the services of a consultant to review his law office practices. And he was required to complete the State Bar Client Trust Account Record-Keeping course. Yet, office management issues persist. Given his extensive experience with the discipline system, Isaacson should have taken the utmost care in meeting his professional obligations. "Each of [the prior] disciplinary orders provided him an opportunity to reform his conduct to the ethical strictures of the profession." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

Isaacson's actions clearly violated his "personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. [Citations.]" (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.) After considering the facts unique to this case, the standards, and the decisional law, we conclude that disbarment is appropriate. (*Barnum v. State Bar* (1990) 52 Cal.3d 104 [disbarment under std. 1.7(b) imposed on attorney with three prior disciplines where no compelling mitigation]; *Morales v. State Bar* (1988) 44 Cal.3d 1037 [attorney with two prior records of discipline disbarred after misappropriating $3,000 and breaching his fiduciary duty]; *Gary v. State Bar* (1988) 44 Cal.3d

820 [pursuant to std. 1.7(b), attorney with alcohol problems who failed to perform competently disbarred because of three prior disciplines and no substantial mitigating factors].)

V. RECOMMENDATION

For the foregoing reasons, we recommend that Lon Barry Isaacson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

We further recommend that he 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.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. ORDER

When the hearing department recommended disbarment, it ordered Isaacson involuntarily enrolled as an inactive member of the State Bar as required under section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1). The involuntary inactive enrollment became effective on February 9, 2012. Isaacson has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.