

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case No.: **11-O-18011-LMA**
)
BRUCE WALTER EBERT,) **DECISION**
)
Member No. 151576,)
)
A Member of the State Bar.)

Introduction¹

In this contested disciplinary matter, the State Bar of California, Office of the Chief Trial Counsel (State Bar) charges respondent Bruce Walter Ebert with two counts of misconduct, which stem from misuse of his client trust account. Respondent is charged with willfully violating rule 4-100(A) (commingling) and section 6106 (moral turpitude).

The court finds, by clear and convincing evidence, that respondent is culpable of violating rule 4-100(A) by commingling personal and business funds in his client trust account; but dismisses, for lack of clear and convincing evidence, the section 6106 charge alleging that respondent commingled personal and business funds in his client trust account in order to and with the intent of avoiding levies placed on his business account by the California Board of Equalization (BOE) and the Internal Revenue Service (IRS).

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

In view of respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, that he be placed on probation for one year and that he be actually suspended from the practice of law for four months.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 4, 2012. Respondent filed a response to the NDC on January 2, 2013.

The parties submitted a Stipulation as to Facts, Conclusions of Law and Admission of Documents (Stipulation) on April 22, 2013, which the court approved on that same date.

A three-day trial was held on April 22 - April 24, 2013. Deputy Trial Counsel Treva Stewart represented the State Bar. Attorney Jerome Fishkin represented respondent. On April 24, 2013, following the parties' closing arguments, the matter was submitted for decision.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 2, 1991, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the evidence, including the April 22, 2013 Stipulation and the testimony and documentary evidence presented at trial.

Facts

Background

Respondent is a sole practitioner. He also has a Ph.D. in clinical psychology and is a licensed psychologist in the State of California. He created the Mercer County Rape Crisis Center obtaining funding for it and doing the training. In addition to his law practice, respondent is currently a forensic psychologist, primarily working for the U. S. Department of Defense.

In 1999, respondent was appointed by a judge to evaluate a serial murderer, who had stabbed his lawyer. During the course of the evaluation, the prisoner attacked respondent and attempted to kill him, beating and strangling respondent. The injuries resulted in serious back injuries. As a result, respondent underwent four major surgeries, which took place in 2000, 2001, 2002, and June 2011. By 2009, respondent was working on a full-time schedule. But in 2011, respondent developed significant medical issues. It was determined that he had severe deterioration of the spine. Respondent was in chronic pain and developed Type 2 diabetes. In June 2011, respondent underwent hours of surgery. As a result of the chronic pain and medical condition, respondent became extremely depressed in 2011. Respondent testified that he never thought he would be depressed; but, the pain was so severe that he felt that he wanted to die. The pain affected respondent's judgment and he was diagnosed with major depressive disorder. Both before and after the 2011 surgery, respondent was disabled and unable to practice law or appropriately supervise his office.

In 2011, both the BOE and IRS levied respondent's business account at Wells Fargo Bank. The levies were made while respondent was incapacitated as a result of his health problems and back pain in 2011. The first levy occurred in March 2011. Wells Fargo Bank placed service charges on the business account for its handling of the levies, which resulted in the account being overdrawn. In December 2011, Wells Fargo Bank closed the account.

Respondent's wife Pamela Pfitzer, a licensed marriage, family and child counselor (MFCC), oversaw the non-legal aspects of respondent's office while her husband was incapacitated. Respondent and his wife arranged for a paralegal/assistant, Dianne Thatcher (Thatcher) to work part-time at the office to help with the functioning of the office. She did non-legal work. Eventually, Thatcher became respondent's full-time office manager. Junior counsel continued to work on legal matters.

Finally with medical interventions, consisting of, among other things, numerous medications, the pain was controlled. After 2011, respondent endured two more crises. In June 2012, respondent was in an automobile accident. He was taken to the hospital and treated for 10 days. He then went back to work and was able to deal with the work and the pain.

However, in February 2013, respondent sustained an injury resulting in a fracture to his hand. At the emergency room, when he was administered an intravenous antibiotic to which he was highly allergic, he went into shock and almost died. Nonetheless, as a result of the medical interventions, i.e., medications to control the pain and depression, as well as therapy, respondent was able to deal with the situation in a positive way and responsibly run his law practice.

Facts Based on the April 22, 2013 Stipulation and on Testimony and Documents

Between January 1 and December 31, 2011, respondent repeatedly deposited personal funds into his client trust account (CTA), caused electronic withdrawals to be made from the CTA, wrote checks from the CTA for personal and/or business obligations, and generally utilized his CTA as a personal and/or business account. Records of respondent's CTA for the period of January 1, 2011 through December 31, 2011, reflect that he utilized the account almost exclusively for business and personal use.

Respondent's CTA number for all times relevant to this matter was "x-xxx-xxxx-4409" (CTA).²

Respondent deposited personal funds in his CTA by making cash deposits, as follows:

Date	Amount
1/3/11	\$5,000
1/6/11	\$9,080

² The account number for respondent's CTA has been partially omitted to protect against identity theft.

1/6/11	\$9,500
2/2/11	\$5,000
2/11/11	\$5,772.50
2/22/11	\$4,000
3/2/11	\$5,250
3/14/11	\$9,219.50
3/23/11	\$5,000
3/25/11	\$3,000
4/7/11	\$1,500
4/11/11	\$4,025
4/25/11	\$5,500
5/2/11	\$4,000
5/9/11	\$5,350
5/13/11	\$300
5/16/11	\$10,000
5/31/11	\$1,500
6/1/11	\$2,400
6/8/11	\$9,507.50
6/8/11	\$6,500
7/15/11	\$1,000
7/15/11	\$2,500
8/1/11	\$748.02
8/1/11	\$3,780
8/1/11	\$5,120
8/1/11	\$2,940
8/3/11	\$1,000

8/5/11	\$4,000
8/10/11	\$800
8/10/11	\$50
8/10/11	\$36.70
8/18/11	\$2,500
8/22/11	\$2,583
9/19/11	\$2,000
9/20/11	\$2,500
9/22/11	\$2,100
9/22/11	\$12,009
10/6/11	\$5,000
10/7/11	\$750
10/13/11	\$300
10/17/11	\$5,000
10/19/11	\$175
10/19/11	\$100
10/19/11	\$50
10/19/11	\$5,000
10/19/11	\$18.26
10/21/11	\$2,500
10/24/11	\$2,782.50
11/1/11	\$100
11/1/11	\$18.26
11/1/11	\$2,000
11/8/11	\$500

11/8/11	\$931.50
11/8/11	\$50
11/10/11	\$500
11/17/11	\$3,187.50
11/28/11	\$100
12/6/11	\$7,964.84
12/6/11	\$2,500
12/8/11	\$50
12/8/11	\$4,250
12/8/11	\$7,550
12/8/11	\$167.30
12/12/11	\$2,000
12/12/11	\$2,012.50
12/15/11	\$6,912.50
12/15/11	\$18.26
12/22/11	\$500

Thus, for the period of January 1, 2011 through December 31, 2011, respondent made 69 deposits, totaling \$220,059.64.

Respondent authorized at least 20 electronic withdrawals from his CTA for personal and/or business expenses to DLX for Business, American Express, Comcast, USAA.com, Blue Shield, and Lexis Nexis, as follows:

Date of	Amount of	Payee
Electronic	Electronic	
Withdrawal	Withdrawal	
4/1/11	\$44.24	DLX for Business
5/31/11	\$4.95	American Express

6/6/11	\$43.50	American Express
7/28/11	\$79	American Express
8/8/11	\$572.29	Comcast
8/31/11	\$850.09	American Express
9/1/11	\$705.74	USAA.com
9/1/11	\$800	USAA.com
9/26/11	\$500	American Express
10/3/11	\$1,059	Blue Shield
10/5/11	\$1,500	Lexis Nexis
10/7/11	\$345.37	USAA.com
10/7/11	\$2,500	USAA.com
10/27/11	\$1,000	USAA.com
10/28/11	\$360.37	USAA.com
11/4/11	\$378.18	USAA.com
11/4/11	\$1,750	USAA.com
12/5/11	\$1,250	USAA.com
12/12/11	\$308.54	USAA.com
12/12/11	\$2,350	USAA.com

Respondent wrote at least 38 checks for personal and/or business expenses from his CTA

as follows:

Date of Check	Check number	Amount of Check	Payee
6/2/11	6604	\$336.88	CVS
7/1/11	6633	\$1,000	Spine & Neurosurgery
9/26/11	6667	\$200	Larry Massey, CPA
9/26/11	6668	\$220.92	City of Roseville
9/26/11	6669	\$622	J.P. Morgan Chase
10/7/11	6675	\$3,000	Larry Massey, CPA
10/13/11	6721	\$531.35	TDS
10/26/11	6499	\$649.44	Apple
10/31/11	6668	\$110.79	Office Depot
11/1/11	6685	\$300	Comcast
11/1/11	6687	\$135.43	City of Roseville
11/3/11	6690	\$2,580	MPD-Roseville
11/14/11	6565	\$27.50	Home Depot
11/17/11	6564	\$300	PG&E
11/17/11	6568	\$61.65	Office Depot
11/17/11	6569	\$4.65	Home Depot
11/21/11	6500	\$602.35	TDS Guns
11/25/11	6725	\$188.80	Office Depot
11/29/11	6319	\$238.04	Guitar Center
12/1/11	6731	\$115	City of Roseville

12/2/11	6566	\$125	NOVA
12/2/11	6726	\$64.22	Alhambra Water
12/2/11	6727	\$215	Comcast
12/2/11	6729	\$273.69	Radiological Assoc.
12/2/11	6732	\$300	Capital One
12/5/11	6728	\$50	Surewest
12/5/11	6735	\$200	FedEx
12/7/11	6730	\$2,580	Mammoth Properties
12/7/11	6736	\$350	American Express
12/8/11	6738	\$215	DMV
12/8/11	6740	\$170.76	Office Depot
12/12/11	6741	\$500	Paychex
12/19/11	6323	\$90.03	Office Depot
12/20/11	6324	\$200	PG&E
12/28/11	6326	\$360.45	Extra Storage
12/28/11	6329	\$30	I.S.E.
12/29/11	6734	\$1,000	Lexis Nexis
12/29/11	6744	\$1,000	Lexis Nexis

Respondent also wrote at least 28 checks from his CTA to pay his employees' salaries as follows:

Date of Check	Check number	Amount of Check	Employee
7/1/11	6607	\$3,044	Kathleen Rojas
7/1/11	6608	\$616.80	Arturo Gijon
7/15/11	6609	\$500	Arturo Gijon
7/15/11	6610	\$616.80	Kathleen Rojas
7/29/11	6663	\$450	Arturo Gijon
8/1/11	6665	\$2,203	Dianne Thatcher
8/2/11	6666	\$2,640	Kathleen Rojas
8/8/11	6691	\$964.81	Arturo Gijon
8/10/11	6349	\$816.80	Arturo Gijon
8/22/11	6351	\$600	Kathleen Rojas
8/25/11	6842	\$1,200	Dianne Thatcher
9/16/11	6847	\$500	Arturo Gijon
9/21/11	6670	\$1,365	Dianne Thatcher
9/21/11	6671	\$530	Arturo Gijon
10/3/11	6672	\$946.80	Arturo Gijon
10/4/11	6611	\$600	Kathleen Rojas
10/4/11	6612	\$639.58	Dianne Thatcher

10/18/11	6679	\$600	Arturo Gijon
10/20/11	6678	\$1,150	Dianne Thatcher
10/21/11	6680	\$36.80	Arturo Gijon
11/1/11	6689	\$1,006.80	Arturo Gijon
11/15/11	6570	\$1,026.80	Arturo Gijon
11/17/11	6567	\$1,320	Dianne Thatcher
11/30/11	6733	\$755.26	Arturo Gijon
12/1/11	6692	\$1,380	Dianne Thatcher
12/15/11	6321	\$1,395	Dianne Thatcher
12/15/11	6322	\$947.42	Arturo Gijon
12/27/11	6327	\$1,032.50	Dianne Thatcher

In addition, respondent wrote at least two checks from his CTA for personal obligations as follows:

Date of Check	Check Number	Amount of Check	Payee
11/1/11	6352	\$350	Brent Pfitzer
11/21/11	6500	\$1,150	Pamela Pfitzer

On September 15, 2011, the State Bar received a notice of non-sufficient funds activity in respondent's CTA as follows:

Date NSF fee posted	Check number	Amount of Debit	Payee	Action taken by bank	Negative balance in account after processing of transaction
9/2/11	6845	\$6,400	Bruce W. Ebert	Paid	-\$1,809.96

Records of Respondent's CTA reflect additional non-sufficient funds activity in his CTA on January 31, 2011, as follows:

Date NSF fee posted	Check number	Amount of Debit	Payee	Action taken by bank	Negative balance in account after processing of transaction
1/31/11	6572	\$4,750.00	Bruce W. Ebert	Paid	-\$2,860.72

Between December 2010 and December 2011, respondent maintained Wells Fargo Bank account number xxxxxx6174³, a general business account (respondent's business account or business account).

In March 2011, the BOE levied respondent's business account. In May, June and October 2011, the IRS began levying respondent's business account. These levies were for respondent's unpaid tax liabilities.

Between March 2011 and December 2011, respondent made numerous deposits into his business account. Some of the deposit activity was the result of automatic deposits, such as government paychecks or preauthorized debit reversals. However, there were numerous deposits which were "actual" deposits, i.e., they were not automatic government paycheck deposits or debit reversals, but, were cash deposits, check deposits or ATM deposits.⁴

On March 21, 2011, the BOE levied respondent's business account in the amount of \$426.45. Shortly thereafter, on March 23, 2011, an ATM check deposit in the amount of \$3,425 was made into respondent's business account. On March 29, 2011, two additional deposits were made into the business account – one deposit in the amount of \$2,000 and the second, an ATM check deposit for \$1,500. A third deposit in the amount of \$700 was made on March 31, 2011. (Exh. 15, pp. 19-20.)

Twelve deposits, including ATM deposits, were made into the business account in April 2011. (Exh. 15, pp. 25-26, 28.)

On May 17, 19, and 26, 2011, three deposits were made into respondent's business account. On May 27, 2011, the IRS levied respondent's business account in the amount of

³ The account number for respondent's business account has been partially omitted to protect against identity theft.

⁴ All deposits enumerated hereinafter are "actual" deposits, i.e., cash, check or ATM deposits (even where not explicitly described as such), as opposed to any form of automatic deposits or check reversals, which may not have been directly in respondent's control.

\$623.59. Four days later on May 31, 2011, an ATM check deposit was made into the business account in the amount of \$7,040. Another deposit into the business account in the amount of \$1,000 was made on June 3, 2011. (Exh. 15, pp. 32-34.)

Several deposits were made into the business account between June 8 and June 24, 2011. On June 24, 2011, the IRS levied respondent's business account in the amount of \$10,347.51 and a deposit in the amount of \$1,500 was made into the account on that same date. Four days after the account was levied, i.e., on June 29, 2011, an ATM check deposit for \$650 was made into the business account. (Exh. 15, pp. 38-40.)

No levies occurred in July 2011; and no deposits, other than preauthorized or automatic deposits, were made into respondent's business account.

Except for one deposit, which appears to be a paycheck deposit, all of the deposits made in August 2011, were "actual" deposits. (Exh. 15, pp. 48-49.)

From September 7 through October 5, 2011, "actual" deposits continued to be made into respondent's business account. (Exh. 15, pp. 54-55.) No levies occurred during this period.

From October 6 through November 3, 2011, several deposits were made. Respondent's business account was levied on October 14, 2011. Two of the deposits made between October 6 and November 3, 2011, were in fact made after the account had been levied.

Between November and December 14, 2011, the date on which Wells Fargo Bank closed the account, two deposits were made. No levies occurred during this time period. (Exh. 15, pp. 63-69.)

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Conclusions

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

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

As set for in the April 22, 2013 Stipulation which the parties entered and this court approved, respondent repeatedly deposited personal funds into his CTA, caused electronic withdrawals of funds for personal and business purposes, and wrote checks from the CTA for personal and/or business obligations, and generally utilized the CTA as a personal and/or business account. By so doing respondent deposited funds that belong to him or his law firm and otherwise commingled personal and/or business funds in his CTA in willful violation of rule 4-100 (A).

Count Two - (§ 6106 [Moral Turpitude])

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

In Count Two, the State Bar alleges that respondent deposited and maintained business and personal funds “in his CTA in order to avoid the IRS levies for his unpaid tax liabilities” and thus committed acts of moral turpitude.

It is the State Bar’s burden to “. . . establish a charge of unprofessional conduct by convincing proof and to a reasonable certainty. [Citation.] All reasonable doubts are resolved in favor of the attorney. [Citations.]” (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55.)

However, as stated, *ante*, the evidence offered in support of this claimed section 6106 violation is neither clear nor convincing. The State Bar’s theory is that respondent deposited

money in his CTA with the intent of preventing the IRS from levying funds from his business account. However, the evidence does not support that theory. Rather, it shows that respondent continued to deposit funds into his business account on numerous occasions, at times in significant amounts, and over a long period of time, even after the IRS had begun placing levies on respondent's business account. The fact that respondent also made deposits into his CTA during the same time period fails to demonstrate by clear and convincing evidence that he was avoiding or attempting to avoid IRS levies, since his continuing deposits into his business account could be levied and, in fact, were levied.

The State Bar has offered no cogent explanation as to why respondent continued making deposits month after month into his business account, even after the IRS started levying that account, if his intent was to avoid having his personal/business funds subject to levies.

Thus, resolving all reasonable doubts in favor of respondent as required, the court finds that the State Bar has not met its burden of establishing by clear and convincing evidence that respondent was acting with the intent to avoid the IRS levies for his unpaid tax liabilities.

Accordingly, Count Two is dismissed with prejudice.

Aggravation⁵

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Each improper withdrawal from or deposit into the CTA represents a separate act of misconduct in violation of respondent's duty not to commingle personal and/or business funds in his CTA. Respondent's many improper CTA withdrawals and deposits constitute multiple acts of misconduct. (*In the Matter of Song* (Review Dept., May 10, 2013, 11-O-11436) 5 Cal. State Bar Ct. Rptr. ____, [typed opn. at p. 7].)

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent was admitted to the practice of law on January 2, 1991 and has no prior record of discipline. Respondent's 20 years of discipline-free practice at the time of his misconduct in 2011, is a significant mitigating factor. (Standard 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

Lack of Harm (Std. 1.2(e)(iii).)

Respondent's misconduct did not cause any specific harm to the public, the courts or respondent's clients.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

Dr. Robert James Spensley, M.D. is a psychiatrist who treated respondent many years ago when respondent was suffering from stress and anxiety related to his position as chair of the Board of Psychology in California. Then treatment tapered off when it was no longer needed. But, in 2009, as respondent was struggling with back pain and depression, Dr. Spensley began seeing respondent every two or three weeks. Respondent's back pain worsened. In 2011, things became significantly worse. Respondent suffered more frequent depressions, and more intractable pain. Because his medication affected his cognition and alertness, respondent did not use it while working. Overall, respondent began to feel an increasing sense of helplessness and hopelessness.

Dr. Spensley also testified that respondent underwent very complex surgery in 2011. (See Exh. I.) Respondent suffered chronic unrelenting back pain and his recovery was a slow and irregular process.

After surgery, respondent's improvement was intermittent; but overall he steadily improved in terms of the frequency of the episodes of depression and depth of depression and his ability to function. He started to make good judgments. Before the surgery, there were apparent questions/issues regarding the reliability of certain employees. In 2009 through early 2011, it was clear to Dr. Spensley that respondent was not dealing with the behavior of his employees in an optimal way.

However, when respondent suffered an auto accident in June 2012, he did not revert back to old behavior. Although he had a concussion, memory issues, headaches, and initially was anxious about his ability to function and provide services to his clients, those anxieties went into remission after three to eight weeks.

According to Dr. Spensley, when respondent suffered yet another injury and went into shock and almost died as a result, he did not revert to his old ways. Rather, he was excited about being alive and hopeful about his future.

Now, respondent displays new coping abilities and has learned from his past errors. He has shown the ability to avoid his past errors. His depression and pain are now well-managed by medications and the treatment he receives from the doctors treating his back and from Dr. Spensley. Respondent's depression began to remit after his surgery in late 2011, and he currently no longer suffers from severe or incapacitating depression.

Moreover, based on Dr. Spensley's testimony, not only is it clear that respondent's extreme physical and emotional disabilities contributed to his misconduct, but that respondent is no longer suffering from the disabling disabilities, which contributed to his misconduct. It is Dr. Spensley's professional opinion that respondent has developed coping mechanisms to overcome the severity of his emotional and medical challenges and that the physical and emotional conditions that contributed to respondent's misconduct are now under control.

Therefore, the court finds that respondent's extreme emotional and physical disabilities warrant significant mitigation in this case.

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent is also entitled to mitigation for his cooperation with the State Bar by entering into a comprehensive Stipulation as to Facts Conclusions of Law and Admission of Documents. Respondent stipulated to all of the facts alleged in the NDC and to the conclusions of law relating to Count One, as well as to the admission of documents that the State Bar requested. The stipulation clearly assisted the State Bar in its prosecution of this case and shortened the time of trial. (Cf. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906.) Thus, the court finds that respondent's stipulation as to admission of documents and the stipulation as to facts and conclusions of law constitute a mitigating circumstance. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567.)

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

Respondent presented good character testimony from seven individuals in the form of in-person testimony at trial or in declarations submitted under penalty of perjury. The witnesses and declarants include a businessman, who is a close friend of respondent, and two lawyers – one of whom is a retired Chief Judge at the Air Force Court of Criminal Appeals and the other is an administrative law judge. Additional character witnesses include an associate director of the National Equity Project, who works with schools to bring educational equity to public schools, a psychiatrist with whom respondent worked, and a paralegal who was respondent's office manager before she retired. Respondent's treating psychiatrist, Dr. James Spensley, also addressed the issue of respondent's character in his testimony. All of the character witnesses and declarants indicated that they had the highest regard for respondent. All were provided with a

copy of the NDC and a letter which stated that respondent acknowledges that he commingled funds in his client trust account; but, that he denied that he did so in order to evade tax levies.

Brian Hubley is a businessman who is a personal friend of respondent. He testified that he read the NDC and is surprised by the charges – because the allegations do not sound at all like what he knows his friend to be. Hubley finds that respondent’s admitting to the facts and commingling charge as illustrative of respondent’s honesty. Hubley believes respondent to be an extremely honest and unselfish person, who helps others.

Barbara Goodwin, the retired Chief Judge of the Air Force Court of Criminal Appeals, the highest court in the Air Force, stated that she read the NDC and understood the charges. She described respondent as an “honest, dedicated and very hard-working individual.” She went on to say that “[i]ntentional misconduct and/or acts of moral turpitude would not be consistent with [respondent’s] character. My opinion is based upon my professional and personal relationship with [respondent] for the past 22 years.”

Dianne Thatcher, who worked as respondent’s office manager, until she retired in May 2012, because of family emergencies, acknowledged that due to respondent’s surgery and health issues and the many medications he was required to take, his judgment may have been clouded at times. However, she knows him to be a person of good character and good morals.

Gary L. Kennedy (Kennedy), a lawyer, who is now an administrative law judge, has known respondent since childhood. Respondent provided professional counseling to Kennedy who stated that he learned first-hand that respondent was a thoughtful, caring mental health professional. Kennedy is aware that respondent has spent “innumerable hours as a volunteer on suicide hot lines.” Now that Kennedy and respondent are both lawyers, they discuss trials and legal matters. Kennedy further described respondent as a person whose “life has been marked and defined by his service to others.”

Jay W. Weiss, M.D., worked with respondent when they were both assigned to the same Air Force Base in California. Dr. Weiss was the base psychiatrist and chief of the mental health clinic; respondent was the psychologist at the base. Dr. Weiss affirmed that he read the NDC and understands both the charges and respondent's position on those charges. Dr. Weiss explained that his opinion of respondent's character is based on the close and daily contact he had with respondent during their professional relationship. He found respondent to be honest, straightforward and trustworthy. Respondent was held in high regard by the legal office, his commanders, his colleagues and Dr. Weiss. Dr. Weiss stated that the governing rule and standard by which members of the Air Force must conduct themselves is simple and clear: "We do not lie, cheat, or steal, nor will we tolerate those among us who do." Respondent always lived up to those standards.

Dr. James Spensley testified as to respondent's character as well as his medical condition. Dr. Spensley has treated respondent since at least 1994. When asked about respondent's character, Dr. Spensley stated that respondent is one of the most ethical and idealistic people with whom he has worked.

Hugh Vasquez (Vasquez), an associate director of the National Equity Project, met respondent when they were both young counselors. They now keep in contact by phone and email, and get together with each other and their families on holidays. Vasquez knows respondent as a person who has very high morals. He also describes respondent as a strong voice for those who need it; he is an advocate of the people. Vasquez stated that respondent would never think of trying to deceive the IRS and does not believe that it is in respondent's character to intentionally try to deceive the IRS. Vasquez also firmly believes that respondent would not intentionally do anything legally or morally wrong. When asked if respondent should be held responsible if the court finds that respondent did intentionally avoid tax levies, Vasquez said he

should. But, then Vasquez reiterated that he does not see the “intentional” element as something respondent would have done.

The court finds that the testimony of respondent’s seven character witnesses warrants moderate consideration in mitigation.

Community Service (Std. 1.2(e)(vi).)

Service to the community is a mitigating factor. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799)

Respondent’s service as a member of the air force, as a psychologist, and as a lawyer serves as testimony to his dedication to public service. Respondent has a history of serving the underrepresented and those in need, both in his role as a psychologist and as an attorney. He received a certificate for his outstanding volunteer service to Project Head Start. (Exh. K.) He also received commendations for his outstanding contributions to the profession of psychology. (*Id.*) He served as a member and as president of the California Board of Psychology, which is the regulatory board for psychology in California. He has dedicated himself to a career in public service working with prisoners and advocating for veterans. As noted in the declarations and testimony of his character witness, respondent performed pro bono services and volunteered hours of his time on a suicide hot line. He established the Mercer County Rape Crisis Center by obtaining funding for it and doing the training. He testified to being part of the County Veterans Stand Down for Placer County, where organizations provide food, clothing and shelter and offer legal services to veterans. Respondent testified to representing hundreds of veterans over the years. As testified to by several character witnesses respondent has given selflessly of his time, services, and money to help others, especially those in need.

Respondent’s long and outstanding service to his community warrants considerable weight in mitigation. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989)

49 Cal.3d 646, 665; *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305 [10-15 hours per month of volunteer community and church work, counseling people in crisis.]; *In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent has demonstrated his recognition of wrongdoing. He not only stipulated to the facts in this case, but stipulated to the conclusion of law as to Count One, thereby acknowledging his wrongdoing. And, although the severe pain and medications that respondent took clouded his judgment during the time of his misconduct, respondent now recognizes the need for remedial action on his part. He acknowledged the need to pay attention to the “signals” that would warn him that he was headed for another severe episode of depression. He knows he must manage his law office, which includes being responsible for employing and supervising competent personnel, without allowing personal feelings to cloud his judgment. He acknowledges that he must have a contingency plan in place in the event that he is unable to supervise his office. In short, respondent recognizes that in addition to his physical and emotional disabilities, his own shortcomings lead to his misconduct.

Respondent’s recognition of wrongdoing warrants some consideration in mitigation.

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 1085, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(b) provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In the present proceeding, the applicable sanction for respondent's misconduct is found in standard 2.2(b), which provides, “Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.”

In the instant matter, the court finds *In the Matter of Koehler, supra*, 1 Cal. State Bar Ct. Rptr. 615, 628-630 to be helpful in determining the level of discipline to be recommended. In

Koehler, the attorney repeatedly misused his trust account as a personal account, twice failed to return unearned advanced costs promptly, and failed to perform services competently in one matter. The gravest aspect of the misconduct was Koehler's violation of the rule governing trust accounts and client funds, which warrants at least a three-month suspension. Koehler's misconduct was aggravated by a prior record of discipline and a finding of uncharged misconduct. In balancing the aggravating and mitigating circumstances, the court determined that aggravating circumstances predominated. The Review Department further determined that a three-year stayed suspension, a five-year monitored probation, and a six-month actual suspension would be the appropriate discipline to recommend.

In the instant matter, respondent like the attorney in *Koehler* repeatedly misused his trust account as a personal/business account. In the instant matter, however, respondent's misconduct is not as extensive as that of the *Koehler* attorney. Moreover, in the instant case, the court finds that in balancing the aggravating and mitigating circumstances, the mitigating circumstances predominate.

Despite the large sum of personal funds that were deposited and withdrawn from respondent's CTA, the court concludes that in light of respondent's compelling mitigation, which predominates, a longer period of actual suspension from the practice of law would not further the objectives of attorney discipline and would be punitive in nature. Accordingly, the court believes that a four-month period of suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

Recommendations

It is recommended that respondent Bruce Walter Ebert, State Bar Number 151576, be suspended from the practice of law in California for two years, that execution of that period of

suspension be stayed, and that respondent be placed on probation⁶ for a period of one year subject to the following conditions:

1. Respondent Bruce Walter Ebert is suspended from the practice of law for the first four months of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.⁷

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.

Dated: July _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court

⁷ 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.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)