

Filed May 19, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 12-O-10043
	)	
A. EDWARD EZOR,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 50469.	)	
_____	)	

This case illustrates the dire consequences an attorney may face when he allows financial self-interest to override his fiduciary responsibilities to a client. A. Edward Ezor appeals a hearing judge’s decision that he be disbarred for willful misappropriation and for failing to maintain funds in trust for an elderly, disabled client. Ezor concedes he did not maintain the required balance in his client trust account (CTA), but denies he misappropriated the funds. He insists that a single accounting error caused the deficiency. The judge rejected his explanation, finding it lacked credibility and supporting proof. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we also reject Ezor’s explanation and find that he intentionally and dishonestly misappropriated \$37,247.22. We affirm the hearing judge’s disbarment recommendation.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

Ezor was admitted to the State Bar in 1972, and has no record of prior discipline. His misconduct arose out of his representation of Maxine Marx, a beneficiary of the estate of her late

¹ We base the factual background on a pretrial Stipulation as to Facts and Admission of Documents, trial testimony, documentary evidence, and the hearing judge’s factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) In particular, we give considerable weight to the findings based on credibility evaluations. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions “because [he] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand”].)

father, Chico Marx. Chico² was a member of the Marx Brothers comedy team, and his estate held royalty rights to two Marx Brothers' movies: "A Day at the Races" and "A Night at the Opera."

Ezor began representing Maxine in 1999. He collected the movie royalties from producer Warner Brothers Entertainment, Inc. (Warner Brothers), deposited them in his CTA, and then allocated them to Maxine and Chico's other beneficiaries. Maxine died in September of 2009 at the age of 91.

Brian and Kevin Culhane, Maxine's sons, were the sole beneficiaries of her will and co-executors of her estate. Shortly after her death, Brian and Kevin received a notice from the Internal Revenue Service (IRS) that she owed substantial back taxes on funds earned by Chico's estate. Maxine's sons were stunned; they were unaware of the royalty rights and believed their mother had died penniless. They located Ezor's phone number in Maxine's files, and Brian called him for an explanation of the unexpected taxes. Ezor told Brian about the royalty rights and that he was holding approximately \$20,000 on Maxine's behalf. For the next two years, Brian and Kevin sought information from Ezor about the royalties, his fees, and his retainer agreement with Maxine. Ezor either ignored the inquiries or provided incomplete, irrelevant, and insufficient responses. As a result, Brian ultimately reported Ezor to the State Bar.

The trial evidence revealed that, between February 2000 and December 2009, Ezor collected nearly \$200,000 in royalties from Warner Brothers on Maxine's behalf. He deposited them in his CTA, deducted his fees, and disbursed monies to pay Maxine's debts and expenses (such as legal fees for movie royalty rights litigation). Ezor admitted he and Maxine did not have a written fee agreement, and he produced no receipts, documents, or other records showing

² To avoid confusion, we refer to persons sharing the surname "Marx" and to Maxine's sons, Brian and Kevin Culhane, by their first names.

that Maxine had authorized the disbursements. However, the Office of the Chief Trial Counsel (OCTC) accepted Ezor's largely undocumented accounting of Maxine's funds.

The parties stipulated that, as of December 31, 2009, Ezor was required to maintain a balance of \$26,001.48 in trust on behalf of Maxine's estate, and failed to do so on the following occasions:

<i>Date</i>	<i>Balance</i>
1/29/10	\$6,981.17
2/8/10	\$1,208.58
11/1/10	\$1,141.62
12/17/10	\$1,008.28

In December 2010 and December 2011, Ezor received additional yearly royalties, which he deposited into his CTA. Ezor and OCTC further stipulated that, after deducting his fee, he was required to maintain \$41,399.48, as of February 12, 2012. Ezor admitted, and his bank account statements confirmed, that his CTA balance on February 12, 2012 was only \$4,152.26. After the State Bar contacted Ezor in January 2012, he repaid the bulk of the money he owed to Maxine's estate (in April 2012).³

On August 14, 2012, OCTC filed a two-count Notice of Disciplinary Charges (NDC) alleging that Ezor violated: (1) rule 4-100(A) of the Rules of Professional Conduct,⁴ by failing to maintain funds in his CTA on behalf of Maxine's estate; and (2) section 6106 of the Business

³ Ezor repaid \$40,925.10 with two checks, each dated April 26, 2012. The first was written from his business account for \$1,488.96. The second was for \$39,436.14 from his CTA, leaving a balance due of \$474.38. Ezor deposited personal funds into his CTA in order to write the larger check.

⁴ All further references to rules are to this source, unless otherwise noted. Under rule 4-100(A), "[a]ll funds received or held for the benefit of clients by a member . . . shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import"

and Professions Code,⁵ by “dishonestly and with gross negligence misappropriat[ing] funds from the Estate of Maxine Marx.” At trial, only Ezor and Brian testified.

II. EZOR ADMITS HE VIOLATED RULE 4-100 [Count One]

Ezor concedes he failed to hold funds in trust for Maxine’s estate, as required by rule 4-100. The hearing judge found him culpable, which Ezor does not challenge on review. We affirm this finding as supported by the evidence.

III. EZOR IS CULPABLE OF INTENTIONAL MISAPPROPRIATION [Count Two]

The hearing judge found Ezor culpable of moral turpitude in violation of section 6106 for *willfully* misappropriating \$37,247.22 (the difference between the \$41,399.48 Ezor was required to maintain as of February 12, 2012 and the \$4,152.26 balance in his CTA on that date). The judge, however, did not specify whether the misappropriation was grossly negligent or intentionally dishonest. (See *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26 [willful misappropriation occurs where level of misconduct rises to at least gross negligence]; *Jackson v. State Bar* (1979) 25 Cal.3d 398, 403 [attorney’s ongoing refusal to account to heirs of estate in face of repeated demands may justify finding of willful misappropriation].)

Ezor claims he did not misappropriate funds either intentionally or by gross negligence. Instead, he asserts he mismanaged his CTA through *simple negligence* by accidentally misallocating monies due to an accounting error. The hearing judge found Ezor lacked credibility and rejected his misallocation explanation. We too reject it because the record clearly and convincingly establishes that Ezor’s conduct, considered collectively and as detailed below,

⁵ All further references to sections are to this source. Under section 6106, “[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension.”

proves an intentional and dishonest misappropriation of \$37,247.22.⁶ (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 [dishonest use of money for attorney's own purposes where trust funds depleted over several years, repayment delayed until after State Bar contacted attorney, and explanations lacked credibility].)⁷

A. Ezor's Misallocation Explanation Is Not Credible

Ezor testified that after he learned of the State Bar's investigation, he contacted his long-time accountant, Kevin Antrobus, to review Maxine's records. He claimed that Antrobus discovered an August 9, 2006 accounting error, which led to a misallocation of funds and, ultimately, to the CTA deficiency. Ezor further asserted that a \$42,500 check he wrote from his business account on August 9, 2006, payable to the Estate of Alva Fleming Marx (also known as Susan Marx) was at the core of the accounting error. We find that the explanations for the alleged error were varied, inconsistent, convoluted and, as the hearing judge found, not credible.

Generally, Ezor claimed he held a bidding deposit for the painting "Lovers" for Susan's estate. When the painting sold, he disbursed the deposit to Susan's estate, but combined it with a payment, also to Susan's estate, for Maxine's litigation expenses (the combination equaling \$42,500). The records were erroneously updated, allocating an incorrect amount from Maxine's account. The details of this purported misallocation theory have changed over the course of these proceedings.

⁶ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

⁷ To begin, Ezor's admitted lack of a written fee agreement with Maxine is troubling. He claims he had an oral arrangement from 2000 to 2004 to receive five percent of all gross receipts earned, and that Maxine agreed orally in 2005 to increase his fee to 33-1/3 percent. This undocumented fee increase prompts significant concern because Maxine was 86 years old at the time and had moved into a nursing home due to her diminished capacity from a stroke.

At trial, Ezor claimed he combined an \$8,300 payment Maxine owed to Susan's estate for litigation expenses with a \$34,200 payment to Susan's estate for the "Lovers" painting. He then erroneously charged the full \$42,500 to Maxine's account, not just the \$8,300 portion she owed Susan's estate.

In his opening brief, Ezor claimed he issued a check for \$42,500 from his business account to the Estate of Alva Fleming Marx. He then mistakenly misallocated that \$42,500 from Maxine's account when it should have been allocated to Susan's estate. A later passage in the brief states, "Ezor distributed the proceeds of [the painting] sale, inadvertently writing the check for the sale of the painting, against Maxine's account instead of Susan Marx's Trust account funds. [Citation.] \$35,300 in legal fees payable to the law firm of Freund Brackey, and expenses that should have been charged against the trust funds of Alva Fleming Marx was [sic] mistakenly treated as being chargeable to Maxine."⁸

Aside from these shifting explanations, none of Ezor's misallocation theories leads to the \$37,247.22 missing from his CTA. Further, Maxine's estate did not have any interest in the "Lovers" painting, and Ezor failed to explain why he paid Maxine's debt to Susan jointly with the painting sale deposit. In addition, the August 9, 2006 check itself does not reflect any purpose other than the painting sale; the memo line merely states, "EST. SUSAN MARX / 'Lovers,' " with no reference to Maxine or to any litigation fees. Finally, Ezor did not explain why he would pay litigation expenses from his business account instead of from his CTA.

The only evidence of the misallocation claim is Ezor's testimony and a copy of the August 9, 2006 check. Ezor's accountant, Antrobus, passed away before trial, and Ezor did not submit documentation evidencing Antrobus's discovery of the alleged error. As the hearing

⁸ At oral argument, Ezor's counsel provided yet another explanation — that Ezor wrote the \$42,500 check as a combination of \$34,200 he believed Maxine owed Susan's estate for litigation fees, plus the "Lovers" bidding deposit. However, Maxine had already reimbursed Susan's estate for the full amount of the litigation fees.

judge noted, the fact that Antrobus “was purportedly able to identify the alleged misallocation” indicates Ezor “presumably had his 2006 CTA records on-hand,” yet he never explained why he failed to offer those records or any other documentary evidence showing the misallocation.⁹ Ezor’s failure to provide evidence to support his misallocation theory reinforces the hearing judge’s finding that it did not credibly explain the CTA deficiency.

B. Ezor Was Unresponsive to Maxine’s Sons

Ezor’s refusal to provide basic information to Maxine’s sons regarding her accounts further undermines his claim of an honest accounting mistake. Brian and Kevin, personally and through counsel, tried unsuccessfully to obtain information about the royalty funds and Ezor’s fee agreement with Maxine. Brian testified he “couldn’t even get a straight answer” to simple questions.

For example, in early March 2010, Brian and Kevin’s probate attorney, Jay Zeiger, sent Ezor a letter requesting: (1) a “statement as to the royalty payments that the Estate of Maxine Marx would be entitled to;” (2) a “schedule as to the manner in which the statement was prepared;” (3) “payment of the amount that the Estate is entitled to, as set forth in said schedule;” and (4) a “schedule of the payments that you made to Maxine Marx during these previous years prior to her death and the dates of said payments.” Ezor did not provide an accounting for more than seven months. When he finally sent it in late October 2010, it consisted of a one-and-a-half-page spreadsheet titled “MAXINE MARX RE: Marx Brothers Revenues and Disbursements, YEARS 2000 through 2009.” The spreadsheet contained vaguely identified credits and debits to and from Maxine without any explanations or supporting documentation,

⁹ See *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13 (respondent’s unexplained failure to substantiate his testimony with evidence that one would have expected to be produced is strong indication testimony is not credible); see also *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 311 (“attorney’s failure to keep adequate records or proper accounts is inherently suspicious and can support an inference that his testimony is untrue”).

and fell far short of the detailed accounting Brian and Kevin sought. (See *Walter v. State Bar* (1970) 2 Cal.3d 880, 889 [attorney's failure to keep proper books of account is suspicious circumstance that may support inference of conversion of client funds to personal use].)

On October 30, 2010, Brian emailed Ezor requesting:

- (1) proof of payments to Maxine, including,
 - (a) specific information about Ezor's arrangements for Chico's estate's income,
 - (b) with what financial institution,
 - (c) the dates and amounts of deposits, and
 - (d) the current balance;
- (2) copies of all relevant time sheets relating to the legal expenses in the spreadsheet;
- (3) an explanation of the spreadsheet's "Disbursements" column; and
- (4) information regarding lawsuits involving Chico's estate.

Brian also asked Ezor: "If you are working on the Estate's behalf, what has been your business arrangement and fee structure regarding Estate business? We would like copies of all pertinent business contracts." Brian further declared, "I do not want this process to be put on hold. I expect that you will immediately respond. I believe my brother and I have shown a good deal of patience with you, notwithstanding your accounting having taken nearly a year." On November 3, 2010, Ezor emailed back: "Do not treat me as an adversary. I am on your side."

Over the next few days, Brian sent several follow-up emails requesting prompt responses to his questions due to an upcoming meeting with the IRS. Ezor mailed him what Brian described as a "hefty packet" of law firm billings for the years 2000 through 2001, none of which mentioned Maxine's name or explained her involvement in any lawsuit. As for his retainer agreement, Ezor responded vaguely, "since I represented Susan Marx in the Harpo Marx Estate, Maxine confirmed that I should represent her in the Chico Marx Estate." Ezor did not answer Brian's other questions.

Brian sent another email, again requesting the same basic information Ezor had yet to provide, such as: "(1) who owns the film rights and what company is paying residuals; (2) what portion of the residuals benefits [Maxine's] estate; and (3) what your on-going specific terms of

service are for the Chico Marx Estate.” Brian continued, “Really, I think these three questions can be rather quickly answered in your next email.” He also pointed out that Maxine’s name appeared nowhere in the pile of law firm billings. Ezor emailed back days later, stating only that he would send Brian “the Settlement Agreement [for] the Federal lawsuit.” He otherwise ignored Brian’s questions.¹⁰

Maxine’s sons eventually hired a California lawyer, Steven Winters, because they believed they “might have to take [Ezor] to court to get him to actually come up with the information that [they] wanted and the money.” On June 1, 2011, Winters sent a certified letter (also signed by Brian and Kevin) informing Ezor that Maxine’s sons had engaged Winters to represent her estate and instructing him to transfer all relevant files to Winters. The letter further requested a full accounting of the estate monies in Ezor’s possession, copies of all payments and checks, a final accounting including all details about the source of royalties or other payments, the percentage due to Maxine, Ezor’s claimed expenses, and a final check payable to Brian and Kevin. Ezor refused the certified letter. Winters then emailed him a copy of the letter, but received no response. Ezor stipulated he did not open the email.

C. Ezor Falsely Represented the Funds He Was Holding for Maxine

In the limited information Ezor provided to Maxine’s sons, he made false statements about the CTA funds. The October 2010 accounting Ezor sent reflected a \$23,960.14 balance held on behalf of Maxine’s estate as of December 31, 2009.¹¹ That amount should have remained steady until December 20, 2010, when Ezor received Maxine’s 2010 royalty check.

¹⁰ At some point, Ezor provided the following additional limited information in an undated, unaddressed note: “The lawsuit billings were advanced in large part by the Harpo Marx Estate which got reimbursed by the Chico Marx Estate when there was liquidity,” and, regarding royalties, “Warner Bros. has exclusive distribution rights and the three brothers’ estate [*sic*] are revenue participants.” Brian confirmed he received the note, but could not recall when.

¹¹ A corrected accounting Ezor introduced at trial indicates he actually should have been holding \$26,001.48, for Maxine’s estate at that time; Ezor and OCTC so stipulated.

Yet Ezor's CTA balance fell significantly below \$23,960.14 on several occasions during 2010, and dipped as low as \$1,008.28 on December 17, 2010. During October 2010, the month Ezor sent the accounting, his CTA was consistently below \$23,960.14, with high and low balances of \$17,850.17 and \$1,141.62, respectively.

Ezor also falsely represented his CTA balance to the State Bar. In his February 16, 2012 letter response to the Bar's investigation, Ezor stated: "I am now, and have always been, ready, willing and able to turn over those funds in my possession to the Estate of Maxine Marx" He further stated that he was holding \$39,436.14 "on hand" for the benefit of Maxine Marx. However, Ezor's CTA records prove that its balance four days earlier, on February 12, 2012, was only \$4,152.26. Although Ezor made deposits between February 12 and 16 that increased the balance in his CTA, the monies were not for the benefit of Maxine's estate.¹²

IV. EZOR'S JUDICIAL BIAS CLAIM LACKS MERIT

Ezor argues the hearing judge was biased against him and denied him a fair trial. He asserts that he heard the State Bar's attorney say "bullshit" during a February 2013 telephonic status conference when the hearing judge granted Ezor's request for a trial continuance due to illness. Ezor alleges that the hearing judge responded, "yeah, I think it's bullshit too, but I'm not a doctor." He claims this proves the hearing judge was biased against him when he found Ezor's testimony lacked credibility. He filed a motion to disqualify the hearing judge, which was denied; Ezor did not seek interlocutory review.

We reject Ezor's claim of judicial bias and unfair trial as meritless. A party claiming judicial bias has the "burden to clearly establish such bias and to show how he was specifically prejudiced." (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 592;

¹² We reject Ezor's argument that he did not immediately disburse the funds because he honestly believed they were subject to government liens. Even if they were, the funds should still have been in his CTA.

see also *Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893.) Ezor has done neither. The record is inconclusive as to whether the hearing judge made the alleged comment; it is not audible in the recording of the status conference. Moreover, our review of the entire record shows Ezor received a fair trial as the hearing judge made balanced rulings throughout the proceedings.

V. AGGRAVATION OUTWEIGHS MITIGATION¹³

The hearing judge found two factors in aggravation (significant harm to Maxine and her heirs and indifference toward rectification or atonement) and two in mitigation (no prior record and cooperation with the State Bar).

A. Significant Aggravation

The hearing judge found aggravation for significant harm and indifference. We agree.

1. Significant Harm to Client and Heirs (Std. 1.5(f))

Ezor claims that “[n]o harm has come about as a result of the delayed payment” because he repaid the estate funds with interest. His argument is contrary to the evidence. Ezor’s misconduct undoubtedly caused significant financial harm to Maxine, an infirm elderly client who could have used the substantial misappropriated monies. Instead, she relied on Social Security benefits. Ezor also caused harm to Maxine’s sons who worked with counsel for over two years in attempting to recover the money Ezor owed. We assign substantial aggravating weight to this factor. (Std. 1.5(f) [aggravation for significant harm to client, public, or administration of justice].)

2. Indifference toward Rectification / Atonement (Std. 1.5(g))

Ezor has demonstrated indifference to the negative consequences of his misconduct. His continued assertion of “specious and unsupported [misallocation theories] in an attempt to evade

¹³ Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. All further references to standards are to this source. Under standard 1.6, Ezor is required to meet the same burden to prove mitigation.

culpability in this matter reveals a lack of appreciation both for his misconduct and for his obligations as an attorney.” (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.) Further, his delayed, inaccurate, and insufficient responses to Brian’s and Kevin’s requests for information, coupled with his failure to rectify the situation until he was subject to State Bar investigation, merit substantial aggravation for indifference.

B. Limited Mitigation

The hearing judge assigned reduced mitigation credit for no prior disciplinary record over many years, and for cooperation for entering into an extensive factual stipulation. We assign limited mitigation for cooperation and minimal credit for a lengthy discipline-free practice given the serious misconduct. We reject Ezor’s claims that lack of harm, payment of restitution, and good faith are also mitigating factors.

1. Cooperation with State Bar (Std. 1.6(e))

Neither party challenges the hearing judge’s finding that Ezor receive “some” mitigation for cooperating with the State Bar. We agree. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [factual stipulation merited some mitigation for cooperation].)

2. Lack of Prior Discipline (Std. 1.6(a))

The hearing judge assigned reduced mitigation for Ezor’s lengthy discipline-free practice (since his admission to the Bar in 1972), reasoning that “this mitigation is reduced somewhat because the underlying misconduct is serious.” (See std. 1.6(a) [mitigation for “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious”].) We agree. Where the misconduct is serious, as it decidedly was here, the lack of a prior discipline record is most relevant if the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) Ezor’s misconduct spanned several years, and he

“has shown a lack of insight by offering ill-founded explanations for his misappropriations. Consequently, we are not persuaded by [his lengthy] record of discipline-free practice that he will avoid future misconduct.” (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.) We therefore assign only minimal mitigating credit under standard 1.6(a) for his long discipline-free record.

3. No Mitigation for Good Faith (Std. 1.6(b)), Lack of Harm (Std. 1.6(c)), or Payment of Restitution (Std. 1.6(j))

Ezor seeks mitigation for his purported good faith, asserting “there is no evidence that [he] acted with corrupt motives of fraud when he withdrew [funds] from the Trust Account and caused the balance to drop. Nor is there any evidence of bad faith regarding [his] decision not to immediately release the funds to Maxine’s sons after her death, as he possessed a genuine and reasonable concern that IRS and Medicaid liens would attach to the funds upon distribution” We reject Ezor’s position, which is entirely at odds with our factual findings.

Ezor requests additional mitigation for lack of harm and payment of restitution. We reject this request because he did in fact cause significant harm to Maxine and her sons, and repaid the bulk of Maxine’s funds, with \$474.38 outstanding, *only after* the State Bar contacted him. (Std. 1.6(j) [mitigation where restitution made without threat or force of disciplinary proceedings].)

VI. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE¹⁴

Our disciplinary analysis begins with the standards (*In re Silverton* (2005) 36 Cal.4th 81, 91). Standard 2.1(a) is most apt because it deals specifically with misappropriation, and provides that disbarment is appropriate for intentional misappropriation “unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly

¹⁴ The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.1.)

predominate, in which case actual suspension of one year is appropriate.” Ezor intentionally misappropriated \$37,247.22, a significant amount. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of \$1,355.75 deemed significant].) Further, his mitigation (cooperation with the State Bar and lack of prior discipline) is neither compelling nor does it clearly predominate when weighed against his overall misconduct and two substantial aggravating factors (significant harm and indifference).

Although standard 2.1(a) is a guideline and not an inflexible rule (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022), misappropriation of client trust funds is “a particularly serious ethical violation” as it “breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) Accordingly, “misappropriation generally warrants disbarment” and “[e]ven a single ‘first-time’ act of misappropriation has warranted such stern treatment. [Citations.]” (*Id.* at pp. 656–657; see also *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38 [misappropriation is grave misconduct for which disbarment is usual discipline].)¹⁵ More specific to this case, where an attorney uses “undue influence to acquire a valuable asset from an aged and ultimately helpless client,” disbarment may be the proper remedy, even absent prior discipline. (*Eschwig v. State Bar* (1969) 1 Cal.3d 8, 18.) To protect the public, the courts, and the legal profession, we recommend that Ezor be disbarred for intentionally misappropriating \$37,247.22.

¹⁵ In similar cases where attorneys have taken advantage of clients by misappropriating entrusted funds, disbarment has been the proper discipline. (*Kelly v. State Bar*, *supra*, 45 Cal.3d 649 [disbarment for \$20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party with mitigation of no prior record and no aggravation]; *In re Abbott* (1977) 19 Cal.3d 249, 253-254 [disbarment for \$29,500 misappropriation in single-client matter with mitigation for 13 years’ discipline-free practice and emotional problems undergoing treatment]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for \$40,000 misappropriation, intentionally misleading client with mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar].)

VII. RECOMMENDATION

We recommend that A. Edward Ezor be disbarred and that his name be stricken from the roll of attorneys.

We further recommend Ezor be ordered to make restitution to Jay L. Zeiger, in trust for the Estate of Maxine Marx, in the amount of \$474.38 plus 10 percent interest per year from April 26, 2012 (or reimburse the Client Security Fund to the extent of any payment from the Fund to the Estate of Maxine Marx, in accordance with Business and Professions Code, section 6140.5).

We further recommend that Ezor must comply with rule 9.20 of the California Rules of Court and 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 matter.

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

VIII. ORDER

The order that A. Edward Ezor be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), will continue, pending the consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

McELROY, J.*

*Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.