

PUBLIC MATTER
FILED 
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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 15-O-16024-LMA
)	
SUSAN MARIE GRIFFIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 114882.)	ENROLLMENT
_____)	

Introduction¹

In this contested disciplinary proceeding, respondent Susan M. Griffin (Respondent) is charged with nine counts of misconduct: (1) failing to promptly notify a client about the receipt of client funds; (2) failing to maintain client funds in her client trust account (CTA); (3) commingling; (4) failing to maintain complete records of client funds; (5) failing to render an appropriate accounting to a client; (6) breaching her fiduciary duty; (7) misappropriation; (8) making false representations to a client; and (9) making false representations to a State Bar complaint analyst.

This court finds, by clear and convincing evidence, that Respondent is culpable of eight of the nine counts. In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that Respondent be disbarred from the practice of law in this state.

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.



The State Bar of California, Office of Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on May 23, 2017.² Respondent filed a response to the NDC on June 27, 2017.

On September 29, 2017, the parties filed a Stipulation as to Facts, Conclusions of Law, and Admission of Documents. The parties thereafter filed a First Amended Stipulation as to Facts, Conclusions of Law, and Admission of Documents on October 10, 2017. The court held a three-day hearing on October 16, 18 and 19, 2017. Deputy Trial Counsel Carla L. Cheung represented the State Bar. Jerome Fishkin represented Respondent.

This matter was submitted for decision on October 19, 2017.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar of California at all times since that date.

Facts

On February 20, 2013, Fannie Clarke (Clarke) hired Respondent to represent her as a plaintiff in a personal injury matter. Pursuant to the fee agreement between Clarke and Respondent, Respondent was entitled to receive legal fees equal to one-third of any net settlement proceeds. In addition to the attorney's fees outlined in the fee agreement, any settlement proceeds that Clarke would receive were subject to medical liens, including one for Medicare and one for the Rawlings Company, a subrogation department of Aetna Health Plans (Rawlings).

On September 10, 2014, and November 12, 2014, Respondent had telephone conversations with Sara Lewis (Lewis), a recovery analyst employed by Rawlings, regarding

² In the NDC, the State Bar misspelled Fannie Clarke's last name. Instead of "Clarke," it is spelled "Clark." On October 16, 2017, the court granted the State Bar's motion to conform the NDC to proof.

Clarke's medical lien. Respondent had no further contact with Rawlings regarding Clarke's medical liens until July 2016.

On February 3, 2015, Respondent settled Clarke's claim against Century-National Insurance Company (Century) for \$50,000, inclusive of the Medicare and Rawlings liens. At the time of settlement, the amount of the Medicare lien was \$8,545.19 and the Rawlings lien was \$944.29.

On March 20, 2015, Century issued a check to Respondent in the amount of \$41,454.81. Century issued a second check directly to Medicare in the amount of \$8,545.19. On March 22, 2015, Clarke signed a settlement release that Respondent had sent to her. Respondent also sent Clarke an authorization to endorse the \$41,454.81 settlement check, which Clarke signed on March 24, 2015.

On March 26, 2015, Respondent deposited the settlement check into her Client Trust Account (CTA) at Chase Bank (account ending #9337). When Respondent deposited the funds, Clarke was entitled to receive at least \$23,944.88. Respondent did not inform Clarke that she had received the settlement funds.

On April 8, 2015, Respondent issued a check from her CTA in the amount of \$5,000, payable to her law firm, Griffin & Sullivan. The check's memo referenced the Clarke matter. Thereafter, between April 14, 2015, and June 29, 2015, the balance of Respondent's CTA ranged from \$19,412.41 to \$1,538.54, resulting in a deficit in the funds held in trust for Clarke of \$4,532.47 to \$22,406.34.

On April 22, 2015, Rawlings sent Respondent a letter requesting payment of its lien. Respondent did not pay the lien, respond to the letter, or have any other contact with Rawlings, until she paid the lien on July 19, 2016.

On May 6, 2015, Clarke contacted Respondent by telephone and requested an accounting. Respondent informed Clarke that she was still negotiating the medical liens and would provide an accounting in two weeks. Respondent did not inform Clarke that she had received the settlement funds, did not provide Clarke with an accounting, and did not pay Clarke the funds held in trust on Clarke's behalf. On the same date Respondent spoke to Clarke, Respondent made a \$1,000 cash withdrawal from her CTA, resulting in a balance of \$11,534.41.

Even though Respondent did not have the full amount of Clarke's entrusted funds in her CTA, Respondent paid her law firm. On May 20, 2015, Respondent issued a check from her CTA in the amount of \$1,000, payable to Griffin & Sullivan. The check's memo referenced the Clarke matter.

On June 2, 2015, Clarke received the first indication that her matter had settled. Rawlings sent a letter directly to Clarke, stating in part: "The Rawlings Company, LLC is handling the above-referenced matter on behalf of Aetna Health Plans. It is our understanding that you have settled your claim with the responsible party." Shortly thereafter, Clarke contacted a representative at Century, who informed her that a settlement check had been issued to Respondent and that the check had been cashed.

Clarke contacted Respondent by telephone in early June, and again requested an accounting and payment of the settlement funds. Clarke requested that Respondent pay the settlement funds and provide the accounting by the end of that month. Respondent had not maintained Clarke's funds in her CTA, and she failed to create or maintain complete records of the funds she held on Clarke's behalf. Respondent did not provide Clarke with an accounting or pay Clarke the funds held in trust, as Clarke requested. In addition, Respondent told Clarke that she was still negotiating the amount of the medical liens.

On July 6, 2015, Clarke sent Respondent a letter demanding a copy of her file, a breakdown of the costs, and payment of the settlement funds. Clarke stated in her letter that if she did not hear from Respondent by July 15, 2015, she would send a complaint to the State Bar. Respondent did not provide a written response to Clarke's correspondence.

On July 14, 2015, Clarke contacted Rawlings' recovery analyst, Lewis. Lewis agreed to reduce the Rawlings lien amount to \$209.30.

Respondent did not maintain all of Clarke's funds in her CTA. Between July 28, 2015, and August 12, 2015, the balance of Respondent's CTA ranged from \$23,700.80 to \$16,379.15, resulting in a deficit in the funds held in trust for Clarke of \$244.08 to \$7,565.73.³ On August 12, 2015, the balance of Respondent's CTA was \$23,700.80.

On August 13, 2015, Respondent deposited \$2,000 of her personal funds into her CTA, bringing the balance to \$25,700.80. On the same date, Respondent met with Clarke and provided Clarke with an accounting of her settlement proceeds. The accounting listed the settlement amount of \$50,000, less deductions of \$16,666.67 for attorney's fees, \$843.26 for costs, \$209.30 for the Rawlings lien, and \$8,545.19 for the Medicare lien. The amount respondent owed Clarke was \$23,735.58. Clarke signed the settlement breakdown and Respondent provided Clarke with a check for \$23,735.58. Although Respondent's accounting included the \$209.30 Rawlings lien that Clarke had negotiated, Respondent had not paid that lien.

During the State Bar's investigation into the Clarke matter, on December 23, 2015, Respondent stated in writing to State Bar complaint analyst Denise Kattan that she had negotiated and reduced the Rawlings lien on Clarke's behalf, and that no funds had been commingled in respondent's CTA. Respondent also insinuated to the State Bar that it was

³ On June 30, 2015, Respondent deposited other entrusted funds totaling \$45,000 and made subsequent withdrawals.

Clarke's fault for the delay in the finality of her matter. Respondent knew that her statement that she had negotiated and reduced the Rawlings lien was not true.⁴ After the State Bar began investigating this matter, Respondent paid the Rawlings' \$209.30 lien on July 19, 2016.

Conclusions

Count One - (Rule 4-100(B)(1) [Notification to Client of Receipt of Client Property])

The State Bar charged Respondent with willfully violating rule 4-100(B)(1) by failing to promptly notify Clarke about the receipt of Clarke's settlement funds. Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds, securities, or other properties. Respondent received \$41,454.81 in settlement funds on behalf of Clarke by March 26, 2015, but in early June, Clarke learned that Respondent received the funds from Century. Respondent stipulated that by failing to inform Clarke about the receipt of \$41,454.81 in settlement funds from March 26, 2015 through June 2015, Respondent failed to promptly notify a client of Respondent's receipt of the client's funds, in willful violation of rule 4-100(B)(1). The Court finds that respondent is culpable of willfully violating rule 4-100(B)(1) as alleged in Count One.

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

The State Bar charged Respondent with willfully violating rule 4-100(A) by failing to maintain funds received on Clark's behalf in Respondent's CTA. 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 of March 26, 2015, Respondent was

⁴ Respondent testified that she thought she had negotiated the lien, but Respondent had not spoken to Rawlings in over one and a half years before she paid the company upon the State Bar's involvement. Moreover, Rawlings and Clarke provided credible evidence that Clarke had negotiated the reduction of the lien. Based on these facts, Respondent's demeanor at trial, and Respondent's convenient lack of memory on this issue that serves her self-interest, the court finds that Respondent's testimony was not credible.

required to maintain \$23,944.88 in her CTA, but between April 14, 2015, and June 29, 2015, Respondent's CTA balance fell as low as \$1,538.54. In addition, between July 28, 2015, and August 12, 2015, the balance in Respondent's CTA dipped as low as \$7,565.73. Respondent stipulated that by failing to maintain a minimum balance of \$23,944.88 in her CTA on behalf of Clarke, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A). The court finds that clear and convincing evidence exists establishing that Respondent is culpable of willfully violating rule 4-100(A).

Count Three - (Rule 4-100(A) [Commingling])

The NDC alleges that respondent willfully violated rule 4-100(A) by commingling personal funds in Respondent's CTA. Respondent stipulated that by depositing personal funds of \$2,000 into her CTA on August 13, 2015, she commingled funds into her CTA, in willful violation of rule 4-100(A). However, Respondent is not culpable of commingling. When Respondent deposited the funds into her CTA on August 12, 2015, her account balance was \$23,700.80. The \$2,000 deposit brought her account balance to \$25,700.80. On August 13, 2015, Respondent wrote a \$23,735.58 check to Clarke. The evidence clearly and convincingly establishes that Respondent deposited the funds into her CTA to cover the check she wrote to Clarke and to restore funds that were wrongfully withdrawn. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978-979 ["An attorney's restoration of funds wrongfully withdrawn from a trust account is not a further violation of the Rules of Professional Conduct as a prohibited 'commingling' of attorney and client funds."]) As such, Respondent is not culpable of willfully violating rule 4-100(A). Count Three is dismissed with prejudice.

Count Four - (Rule 4-100(B)(3) [Maintain Records of Client Property])

In Count Four, the State Bar charged Respondent with failing to maintain complete records of Clarke's settlement funds, in willful violation of Rule 4-100(B)(3). On March 20, 2015, Century issued a \$41,454.81 settlement check to Respondent on Clarke's behalf, which Respondent deposited into her CTA on March 26, 2015. Clarke and Rawlings were entitled to receive a total of \$23,944.88 of those funds. Respondent did not maintain complete records of Clarke's settlement proceeds. Respondent stipulated, and the court finds that Respondent willfully violated rule 4-100(B)(3) by failing create and maintain complete records of the funds held in trust for Clarke.

Count Five - (Rule 4-100(B)(3) [Render Appropriate Accounts])

The State Bar charged Respondent with willfully violating rule 4-100(B)(3) by failing to render appropriate accounts to Clarke regarding the settlement funds Respondent received on Clarke's behalf. Clarke requested an accounting of her settlement funds on May 6 and in early June 2015, but Respondent did not provide it until August 13, 2015. Respondent stipulated, and this court finds that by failing to provide an accounting of the settlement funds received and charges incurred in Clarke's matter upon Clarke's request on May 6, 2015, and in early June 2015, respondent failed to render appropriate accounts of client funds held in trust, in willful violation of rule 4-100(B)(3).

Count Six - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Respondent is charged with willfully violating section 6068, subdivision (a), by delaying the payment of the Rawlings lien. Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Because Respondent had notice of the Rawlings lien, Respondent had an obligation to pay Rawlings from

the funds held in her CTA on Clarke's behalf. (*Guzzetta v. State Bar, supra*, 43 Cal.3d 962 at p. 979; *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 633.) "An attorney holding funds for a person who is not the attorney's client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed. [Citations.]" (*In the Matter of Respondent P, supra*, 2 Cal. State Bar Ct. Rptr. at p. 633.) Those duties include the obligation to "[p]romptly pay or deliver to the client' on request the funds [she] held in trust." (*Guzzetta, supra*, 43 Cal.3d at p. 979.)

On March 26, 2015, Respondent deposited into her CTA the settlement funds received on Clarke's behalf. Respondent owed \$23,944.88 to Clarke and Rawlings, who held a medical lien. On April 22, 2015, Rawlings requested payment of the lien, but Respondent had no contact with Rawlings until July 19, 2016, when she satisfied the lien. Respondent's failure to promptly pay Rawlings' lien upon Rawlings' request is a willful violation of section 6068, subdivision (a).

The court notes that this 6068, subdivision(a), charge is more properly brought as a violation of rule 4-100(B)(4) because section 6068, subdivision (a), is a conduit to charge and discipline attorneys "for violations of other specific laws that are not otherwise made disciplinable under the State Bar Act" or Rules of Professional Conduct. (*In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487; see also *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 369.)

Count Seven - (§ 6106 [Moral Turpitude])

The State Bar charged Respondent with willfully violating section 6106 by misappropriating the funds Respondent held in trust on behalf of Clarke and Rawlings. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Respondent is culpable of willfully violating section 6106. When Respondent received \$41,454.81 on Clarke's behalf on March 26, 2015, the amount Clarke and Rawlings were entitled to receive totaled \$23,944.88. After receiving the settlement funds, Respondent did not pay Clarke or the Rawlings lien, but she paid herself. When Clarke spoke to Respondent and requested an accounting on May 6, 2015, Respondent concealed that she had received the settlement funds on Clarke's behalf. Moreover, during the period of April 14, 2015, and June 29, 2015, in addition to July 28, 2015, and August 12, 2015, the balance in Respondent's CTA repeatedly fell below the \$23,944.88 Respondent was required to maintain in her account. At its lowest, the amount of her CTA fell to \$1,538.54 on June 29, 2015. The facts clearly and convincingly demonstrate that Respondent intentionally misappropriated \$22,406.34, held on Clarke's and Rawlings' behalf, in willful violation of section 6106.

Count Eight - (§ 6106 [Moral Turpitude])

Respondent is charged with willfully violating section 6106 by intentionally or grossly negligently making false statements to Clarke about the Rawlings lien. The misrepresentations Respondent made to Clarke were intentional. Before Respondent settled Clarke's personal injury matter in February 2015, Respondent was aware that any settlement was subject to a medical lien held by Rawlings. On May 6, 2015, when Clarke requested an accounting, Respondent indicated that she was negotiating the medical liens, which was false. Respondent had not spoken to anyone at Rawlings about Clarke's medical liens since November 2014. When Respondent spoke to Clarke in May, Respondent only held \$11,534.41 in her CTA. Respondent again made the same false claim about negotiating the liens in early June 2015 when Clarke requested an accounting and payment of her settlement funds. At that time, Respondent's CTA balance was \$6,874.26. Respondent falsely represented to Clarke that she was negotiating Clarke's medical liens in response to Clarke's request of an accounting to obfuscate her

misappropriation. As such, the court finds Respondent is culpable of willfully violating section 6106, by intentionally misrepresenting to Clarke that she was negotiating the amount of the Rawlings medical lien, which was not true.

Count Nine - (§ 6106 [Moral Turpitude])

Respondent is charged with willfully violating section 6106 by intentionally or grossly negligently making false statements to a State Bar complaint analyst. On December 23, 2015, Respondent stated in writing to State Bar complaint analyst Denise Kattan that she had negotiated and reduced the Rawlings lien on Clarke's behalf, and that no funds had been commingled in Respondent's CTA. While it was true that Respondent had not commingled funds because she had used personal money to restore funds that were wrongfully withdrawn, it was Clarke who negotiated and reduced the Rawlings lien, not Respondent. Respondent had not communicated with Rawlings from November 12, 2014, until she paid them in July 2016. She knew that her statement about the Rawlings lien was false. Thus, Respondent is culpable of willfully violating section 6106, by intentionally misrepresenting to the State Bar that she had negotiated and reduced the Rawlings lien on Clarke's behalf, which was not true.

Aggravation⁵

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds two aggravating circumstances.

Multiple Acts (Std. 1.5(b).)

Respondent committed eight ethical violations in a single client matter. She failed to promptly notify Clarke of the receipt of settlement funds on Clarke's behalf, failed to maintain Clarke's funds in her CTA, failed to maintain record of Clarke's settlement funds, failed to provide Clarke with an accounting, failed to promptly pay the Rawlings lien, misappropriated

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.

\$22,406.34, and knowingly made false representations to Clarke and to the State Bar. As such, Respondent committed multiple acts of wrongdoing. This is a significant aggravating factor.

High Level of Victim Vulnerability (Std. 1.5(n).)

Respondent's misconduct is aggravated by the high vulnerability of Clarke. Clarke is an 82-year-old woman. She contacted Respondent to represent her after she was hit by a car while crossing the street. Clarke suffered fractured ribs and bruised hips as a result of the accident. Clarke testified that she did not expect to be taken advantage of just because Respondent was educated and she was not. The court assigns moderate weight to the high level of Clarke's vulnerability.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds Respondent has established five mitigating factors.

No Prior Record (Std. 1. 6(a).)

Respondent practiced law for over 30 years without a prior record of discipline before the current misconduct. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's practice of law for more than 10 years' worth significant weight in mitigation]). However, the mitigation is tempered due to the serious nature of the present misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.) Thus, the mitigating weight of Respondent's years of discipline-free practice is moderate.

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or

substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct.”

Here, Respondent testified that her son was experiencing mental health problems beginning in 2011. From 2011 through 2014 she was very concerned about her son who had been diagnosed with a bipolar disorder. Her son’s disorder was under control after 2014, but she continued to worry about him. In 2013, Respondent spiraled into a state of depression after she discovered her husband had been in an affair for many years. She and her husband went to counseling in December 2013, but the depression continued in 2014. Later, in July 2015, Respondent’s best friend ended their friendship.

In September 2015, Respondent had too much to drink and became extremely depressed so she drove to the Golden Gate Bridge and contemplated committing suicide. The police arrived at the bridge and took Respondent to a psychiatric hospital unit. While at the hospital, Respondent was advised to seek treatment in a program after she acknowledged that she drank every day. Respondent did not enroll in a program as suggested. In addition, Respondent chose to be discharged from the hospital, even though the hospital thought it would be best for her to remain to receive treatment. After she was discharged, Respondent sought treatment from Dr. Diane Donnelly who prescribed her Zoloft and Abilify. Respondent only saw Dr. Donnelly “three or four times” and chose to wean herself off of the prescribed medication without Dr. Donnelly’s approval.

Respondent hired Randall Smith, Ph.D. to evaluate her in anticipation of these disciplinary proceedings. His assessment was based on his four-hour meeting with her on September 28, 2017, which was two weeks before trial. Dr. Smith indicated that the abandonment of Respondent’s friend compounded Respondent’s issues and increased Respondent’s depression. Dr. Smith testified that currently Respondent is not depressed, but she

is not happy. She is able to look at her family problems and face them, but he does not believe her major depression is resolved. He also recommends that she resume psychotherapy to ensure continuity and stability.

Respondent's extreme emotional difficulties are afforded nominal weight in mitigation. Respondent offered her own testimony and the testimony of Dr. Smith to establish the nexus between her misconduct and her emotional difficulties and family problems. However, Respondent has failed to offer clear and convincing evidence that she no longer suffers from major depression or any other mental disorder, that she has gained the tools to manage her problems, or that she has undergone a meaningful and sustained rehabilitative period. (*Hawes v. State Bar, supra*, 51 Cal.3d. at p. 595.) Respondent only had three or four sessions with Dr. Donnelly and decided to wean herself off of the prescribed medications without Dr. Donnelly's guidance. Moreover, Respondent is no longer receiving treatment although Dr. Smith has recommended that she do so. Thus, the mitigating weight of Respondent's extreme emotional difficulties is nominal.

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

Respondent demonstrated cooperation with the State Bar by entering into a stipulation as to facts and culpability. Respondent entered into an extensive factual stipulation and stipulated to five of the nine ethical violations alleged. Respondent is afforded significant mitigation for this factor. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into a stipulation as to facts and culpability]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

Good Character (Std. 1.6(f).)

Respondent presented the testimony of eight character witnesses and declarations from three other individuals who attested to Respondent's good character. Three of the witnesses were attorneys; therefore, serious consideration is given to their testimony because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) The attorneys considered Respondent "compassionate" and a "fierce advocate." They also described her as straightforward, a good lawyer, and a person of good moral character. All of the witnesses testified to Respondent's good character, honesty and integrity and considered her a competent lawyer who is dedicated to her clients. Most of the witnesses described Respondent's passion and dedication to seeking marriage equality and assisting in the LGBTQ community. In addition, several members of Respondent's church described Respondent's devotion to the United Methodist Church where she became a deacon. Most of the witnesses were aware of the charges against Respondent after reading the NDC. Respondent's good character is a significant mitigating factor.

Community Service

Prior to 2014, Respondent was a member of many community service boards that included the California Council of Churches and the Resound Community Choir. Respondent was also on the regional Committee for Church and Society and participated in her church's bell group. Respondent's testimony, in addition to the testimony of her character witnesses, provides clear and convincing evidence of Respondent's community service endeavors, but her activities ceased in 2014. Thus, the court affords moderate weight for Respondent's community service because it occurred before she began the misconduct in this matter.

Overall, although not compelling, Respondent's mitigating factors outweigh the aggravating circumstances.

Discussion

The disciplinary analysis begins with the standards, which provide guidance and are intended to promote consistent application of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 91.) Initially, the court considers standard 1.1, which acknowledges that 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. Standard 2.1(a) is most applicable and provides that disbarment is the presumed sanction for intentional misappropriation “unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.”

Respondent’s case does not fall within the exceptions outlined in standard 2.1(a). She intentionally misappropriated \$22,406.34 from Clarke – a significant sum. Respondent’s mitigating factors of 30 years of discipline-free practice, emotional difficulties, cooperation, good character and community service predominate over the aggravating circumstances of multiple acts of misconduct and the high vulnerability of Clarke. But, those mitigating factors, while significant, are not compelling.

Although standard 2.1(a) is not an inflexible rule (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022 [noting that former standard 2.2(a) “should be viewed as a guideline”]), the court is mindful that “[i]n all but the most exceptional of cases, [willful misappropriation] requires the imposition of the harshest discipline.” (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29.) Severe discipline is especially warranted when an attorney “deliberately takes a client’s funds, intending to keep them permanently, and answers the client’s inquiries with lies and evasions.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

Respondent misappropriated over \$22,000 from her client. When Clarke requested information about the costs in her matter, Respondent had already received the settlement funds,

but she concealed that fact from Clarke. Moreover, in an effort to conceal her misappropriation, Respondent intentionally misrepresented to Clarke that she was negotiating the amount of Clarke's medical liens to avoid paying her. In similar cases where attorneys have taken entrusted funds, particularly where concealment or deceit is present, the result has been disbarment.⁶

The record does not establish any exceptional circumstances to depart from recommending the appropriate discipline of disbarment under standard 2.1(a). (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) In addition to the misconduct of misappropriation surrounded by dishonesty, Respondent failed to maintain records of Clarke's settlement money, failed to render an accounting to Clarke, failed to promptly pay the Rawlings lien upon request, and made false representations to the State Bar. Thus, to protect the public, the courts and the legal profession, the court recommends that Respondent be disbarred.

Recommendations

It is recommended that Respondent Susan Marie Griffin, State Bar Number 114882, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

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)

⁶ See, e.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarred for \$29,000 intentional misappropriation followed by deceit to victims and State Bar despite 12 years of discipline-free practice and emotional problems]; *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511 (disbarred for \$40,000 misappropriation and intentionally misleading client despite mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar); *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583 (disbarred for \$66,000 intentional misappropriation surrounded by deceit, lack of restitution, and multiple acts despite 14 years of discipline-free practice).

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.


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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November 29, 2017



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 29, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JEROME FISHKIN
FISHKIN & SLATTER LLP
1575 TREAT BLVD STE 215
WALNUT CREEK, CA 94598

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CARLA L. CHEUNG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 29, 2017.



Bernadette Molina
Case Administrator
State Bar Court