PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED MAY 23, 2012

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 07-O-13691
	)	
WILLIAM THOMAS HAYS, JR.,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 135264.	)	
	)	

William Thomas Hays, Jr. was admitted to practice law in California in 1988, and has no prior record of discipline. He is seeking review of a hearing judge's disbarment recommendation based on his misappropriation of over $62,000 from a paraplegic client. Hays stipulated to the misappropriation, but challenges the hearing judge's finding that he lied to a State Bar investigator about his misconduct. Hays further asserts that he was denied due process when the hearing judge rejected his request for a continuance to subpoena records to impeach a witness and to show that the prosecutor committed misconduct in the trial below. Finally, he contends that disbarment is unduly harsh because the hearing judge did not properly evaluate his evidence in mitigation. The Office of the Chief Trial Counsel (State Bar) asks us to affirm the hearing judge's culpability findings and disbarment recommendation.

Upon our independent review (Cal. Rules of Court, rule 9.12), we conclude that the record supports the hearing judge's findings that Hays misappropriated over $62,000 and thereafter lied to the State Bar. We agree that he should be disbarred to protect the public, the courts and the legal profession.

I. FACTUAL AND PROCEDURAL BACKGROUND

Many facts stated herein are based on the parties' stipulation executed on the first day of trial. However, we have independently considered the disputed factual findings raised in Hays's brief. (Rules Proc. of State Bar, rule 5.152(C).)

In July 2002, Kory Lee Laird and his friend, Peter Flynn, were passengers in a single-vehicle accident. The driver was intoxicated, drove at an excessive speed and lost control of the vehicle. Laird and Flynn suffered severe spinal injuries that rendered Laird a paraplegic and Flynn a quadriplegic. At the time, Laird was in his early twenties and was working as a manager of three cell phone kiosks.

While Laird and Flynn were hospitalized, their mothers became acquainted. Flynn's mother persuaded Laird and his mother to meet with Hays, who was a close family friend. On December 18, 2002, Laird and his mother signed a retainer agreement with Hays that provided for a contingency fee of 37.5% of any gross recovery if the matter settled before trial. Hays filed three complaints in San Diego County Superior Court in January 2003 against the driver of the car and his father, General Motors, and an individual who owned the home where the driver had been served liquor. After conducting further investigation, Hays did not pursue the claims against any of these defendants except the driver of the car. On February 21, 2003, Hays settled Laird's personal injury claim with the driver's insurance company for the $100,000 policy limit and deposited the money in his client trust account (CTA).

Hays and the Laird family had differing views of what fee, if any, Hays was entitled to and when he would distribute the funds to Laird. Hays believed that he was entitled to $37,500 pursuant to the retainer agreement and therefore he was obligated to hold $62,500 in trust for Laird. Hays maintains that he intended to hold the funds for approximately six months to ensure payment of outstanding liens and after that, "whenever they wanted it, they could have it."

Laird and his mother's understanding of the arrangement with Hays was very different. They believed they signed the retainer agreement as a mere "technicality" to allow the settlement funds to be deposited in Hays's CTA. Laird and his mother further understood that Hays's services would be on a pro bono basis because the insurance payment was a *fait accompli* at the time they retained him. For this reason, they expected Hays to ultimately distribute the entire $100,000 plus interest to Laird, although they believed that Hays would retain the money in his CTA for four and a half years to protect the funds from lien attachments. In fact, when they signed the fee agreement, the only known lien was from the hospital for $719,319, and this lien was released when the matter settled. No other liens were ever filed.

Without question, Hays was required to maintain at least $62,500 in trust regardless of the difference of opinion about his fee. Hays admits he did not do this and that he withdrew Laird's funds to pay his law office expenses. By April 2004, his CTA balance was $26,416, and thereafter it fell below the required amount on at least 15 occasions, including:

Date	$ Balance
July 31, 2004	6,055.78
August 31, 2004	828.78
October 29, 2004	15,728.78
December 31, 2004	1,821.78
February 1, 2005	121.78
April 1, 2005	14,164.78
April 30, 2005	4,096.78
June 30 to September 12, 2005	19.78

Hays testified that he tried to distribute the settlement to Laird at least four times, but Laird "didn't want the money." Laird disputes this. He testified that he had no reason to refuse the settlement money since he actually needed it to buy a truck to drive to his rehabilitation and to obtain some independence. Laird borrowed approximately $23,000 from his grandfather to purchase the truck.

Laird, his mother and his grandfather began calling Hays well before expiration of the four and one-half years to confirm the funds were still available and would be distributed when the time had elapsed. On July 23, 2007, Laird's grandfather arranged a meeting at his house. Hays provided a cashier's check in the amount of $60,000. The Lairds were dissatisfied since they believed they should receive $100,000 plus interest. Laird's mother did not immediately deposit the $60,000 check because she feared that Hays would then claim that they had relinquished any right to the remainder of the settlement and interest. Instead, the Lairds met with Hays twice to demand that he pay them the settlement balance and accrued interest.

On September 21, 2007, Hays met with the Laird family and gave Laird a check for $2,500 to rectify his earlier miscalculation of his attorney fee.[1] The meeting was rancorous because the Laird family still expected the rest of the $100,000 settlement plus interest. At the end of the meeting, Hays signed a letter agreement dated September 21, 2007, acceding to Laird's demand that Hays pay the full amount of the settlement, plus 3.5% interest accruing from the date the settlement funds were deposited into his CTA, to be paid on or before October 5, 2007.

Hays did not pay Laird in October as promised. On December 31, 2007, the Laird family met with Hays, who then gave Laird a check from his general office account for $37,500, which represented the unpaid portion of the $100,000 settlement. Hays signed another agreement to pay the accrued interest on the entire settlement amount no later than January 20, 2008, with the interest to be "determined and compounded daily per standard accounting practices or the State Bar Rules from the date of receipt in [of the settlement funds] in 2002 [sic]."

After the January 20, 2008 deadline passed with no interest payment from Hays, Laird's mother deposited the $60,000 cashier's check and the $37,500 check into Laird's Smith Barney

[1] Hays had mistakenly calculated his fee at 40% instead of 37.5% but corrected the error by giving Laird the check for $2,500.

account. The $37,500 check did not clear. Hays testified he told the Laird family at the December 31, 2007 meeting that if "[t]hey want the fees, they cash it right away, or no deal." When they delayed depositing the check, Hays said he "made sure there wasn't [enough money]" in his general account to cover the check. Laird's mother denied that Hays had imposed a time restriction on depositing the check.

Laird filed a complaint with the State Bar in September 2007. In response to the State Bar investigator, Hays wrote that "I offered to give Kory Laird his money at least 4 times since the settlement. He refused." Hays also stated that "[a] year prior to my 9/13/07 letter to [Laird] I spoke to his grandparents and advised them he had 60K available."

The State Bar filed a three-count Notice of Disciplinary Charges (NDC) on December 27, 2010, alleging that Hays failed to maintain client funds in trust, misappropriated client funds and committed acts involving moral turpitude because he knowingly made misrepresentations to the State Bar. After a six-day trial beginning on April 15, 2011, the hearing judge found Hays culpable on each count and recommended that he be disbarred. At the time of the trial below, Hays had not paid the $37,500 to Laird or the interest on the $100,000 settlement as promised.

II. PROCEDURAL ISSUES

A. Hays's Due Process Claims

Hays contends the hearing judge denied him due process when he refused to grant a continuance to allow him to subpoena Laird's telephone, Medi-Cal and Social Security records. Hays sought the telephone records to impeach Laird's testimony that he repeatedly telephoned Hays but never reached him. He wanted the other records to establish Laird was involved in Medicare fraud.

The hearing judge has broad discretion to determine the admissibility and relevance of evidence. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499.) To

prevail on his claim of error, Hays must show both abuse of discretion and specific prejudice resulting from the judge's decision. (*In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 474.) Hays proved neither.

The telephone records Hays sought were available through proper discovery channels prior to trial. Hays was charged in Count Three with a violation of Business and Professions Code, section 6106[2] [moral turpitude] for misrepresenting to the State Bar that he had offered to distribute the funds to Laird on at least four occasions. Hays was specifically apprised of this issue in the NDC, and given notice by the State Bar's pretrial statement that Laird would be called as a witness. Hays should have anticipated the need for specific records of his communications with Laird about the funds, including Laird's phone records, Hays's own phone records and his written communications with Laird.

The Medi-Cal and Social Security records were marginally relevant to the issues under consideration since no one disputed that Laird was entitled to the settlement funds or that Hays misappropriated these funds after depositing them in his CTA.

"Continuances of disciplinary hearings are disfavored, and a request for continuance must be supported by a factual showing of good cause. [Citation.]" (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 791-792.) Given the pretrial availability and marginal relevance of the evidence, Hays did not establish good cause for the continuance. We conclude the hearing judge did not abuse his discretion in denying Hays's request.

B. Hays's Claims of Prosecutorial Misconduct

Hays contends that the State Bar prosecutor committed misconduct when he elicited trial testimony from Laird's grandfather that the prosecutor knew contradicted a prior statement made by the grandfather during the State Bar's investigation of this matter. The grandfather previously

[2] Unless otherwise noted, all further references to "section(s)" are to this source.

stated that he did not demand the money from Hays during a 2006 phone conversation because he did not think the money was his to demand and because he thought Hays needed to continue to hold Laird's money because of potential liens. Hays argues that Laird's grandfather perjured himself when he testified at trial that he asked Hays in the telephone conversation to pay Laird's $100,000 settlement with interest and Hays told him the money would be coming. Hays further argues that the prosecutor had a duty to advise the hearing judge of the prior inconsistent statement.

The prosecutor had provided the grandfather's prior statement to Hays's attorney *before* the grandfather testified at trial. Yet when Hays's attorney cross-examined the grandfather, he never questioned him about the prior inconsistent statement. Even so, Hays's attorney and the prosecutor subsequently agreed to place the substance of the grandfather's prior statement in the record. As a result, the hearing judge had the grandfather's differing statements before him. We find no prejudice in the manner in which the prosecutor or the hearing judge handled this matter. (*In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 649.) Nor can Hays now be heard to complain since he did not raise a claim of prosecutorial misconduct in the trial below, thus waiving the right to raise this issue on appeal. (*People v. Williams* (1997) 16 Cal.4th 635, 673.)

We also reject Hays's contention that the prosecutor improperly influenced Laird, his mother, and William because he met with them as a group before trial. Laird testified that he, his mother and grandfather met with the prosecutor before trial for about 30 minutes where they "spoke about this trial, and Bill Hays, and the recap of all the things." However, Laird testified that the prosecutor did not tell him what to say on the witness stand; he merely advised Laird to answer questions honestly. We do not find evidence of witness coaching or that the prosecutor in any way improperly steered the Laird family's testimony in a particular direction. (See, e.g.,

People v. Garrett (1938) 27 Cal.App.2d 249, 252 [record showed prosecuting witness was coached because witness had been told how to testify]; *compare* Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2011) ¶ 1:269, pp. 1-58 – 1-59 [counsel can remind witness of facts, but must avoid telling witness what to say; instructing witness to give false testimony constitutes crime].) We conclude that Hays did not prove prosecutorial misconduct. And again, he did not raise this issue at trial, thus waiving it on appeal. (*People v. Williams, supra,* 16 Cal.4th at p. 673.)

C. Hays's Motion to Seal the Record

Hays filed a motion in this court to seal his medical and psychiatric records. We deny the motion on two grounds: (1) Hays failed to provide specific facts showing how his protected interest outweighs the public interest; and (2) Hays improperly raised the issue for the first time on review. (Rules Proc. of State Bar, rule 5.12(B) [motion to seal must be supported by specific facts showing that statutory privilege or constitutionally protected interest exists that outweighs public interest in proceeding and such motion may not be made for first time on review].)

III. CULPABILITY

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

Rule 4-100(A) requires an attorney to deposit and maintain in trust "[a]ll funds received or held for the benefit of clients . . . ." Hays stipulated that he failed to maintain $62,500 in trust for Laird, and the record shows that the balance of the funds in Hays's CTA dipped far below the required amount on at least 15 occasions between April 2004 and September 2005. Rule 4-100 "is violated where the attorney . . . fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured. [Citation.]" (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.) The rule "leaves no room for inquiry into attorney intent. [Citation.]" (*Ibid*.) We accordingly find Hays violated rule 4-100(A).

Count Two – Section 6106 [Moral Turpitude – Misappropriation]

Hays is charged with misappropriation involving moral turpitude in violation of section 6106.[3] Not every misappropriation necessarily involves moral turpitude. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 ["not every misappropriation which is technically willful is equally culpable"].) However, Hays knowingly converted Laird's funds for his own purposes, and this clearly violates section 6106. (*Jackson v. State Bar* (1975) 15 Cal.3d 372, 382 [appropriating client funds for own use and benefit involves moral turpitude].)

Count Three – Section 6106 [Moral Turpitude – Misrepresentation]

The hearing judge found Hays culpable of moral turpitude as charged in Count Three because he misrepresented in a letter to the State Bar investigator that he offered to distribute the settlement funds to Laird on at least four occasions but Laird refused to take the money. The only evidence Hays offered to establish this was his own testimony. Hays provided no evidence to document his alleged offers to distribute the funds. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13 [when witness fails to corroborate testimony with evidence that one would expect to be produced, such failure is strong indication that witness's testimony is not credible].)

On the other hand, Laird's testimony that Hays did not offer to distribute the funds to him was corroborated by his grandfather, who testified that Laird needed to borrow money from him to buy a truck for transportation and to regain some measure of independence. The hearing judge found Laird's testimony credible that he would not have refused the money since he needed it. Such credibility determinations by the hearing judge, who had the opportunity to

[3] Section 6106 provides that an attorney's "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, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

observe the witness firsthand, are entitled to great weight. (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.) We thus adopt the hearing judge's finding that Hays violated section 6106.

However, we do not find clear and convincing evidence to support the hearing judge's additional finding of moral turpitude under Count Three. The State Bar alleged that Hays misrepresented to its investigator that he had spoken to Laird's grandparents in 2006 "and advised them he had 60 K available." The grandfather's testimony was consistent with this statement that Hays told him the funds were "available." There is no evidence that Hays did not have the funds available or that he ever misrepresented that the "available" funds were *in his CTA*.

IV. LEVEL OF DISCIPLINE

We determine the appropriate discipline in light of all relevant circumstances, including any factors in aggravation or mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must prove aggravating circumstances by clear and convincing evidence, while Hays has the same burden of proving mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)[4]

A. Aggravation

The hearing judge found two aggravating factors. We agree and find an additional factor of indifference. First, Hays committed multiple acts of misconduct. (Std. 1.2(b)(ii).) Second, his misconduct was followed by dishonesty and overreaching. (Std. 1.2(b)(iii).) Hays gave Laird a $37,500 check in settlement of his fee dispute, knowing that he would have insufficient funds in his account if Laird did not immediately cash it. Hays was blatantly dishonest when he intentionally "made sure" his account did not have sufficient funds to pay the agreed fee dispute settlement amount.

[4] Unless otherwise noted, all further references to "standard(s)" are to this source.

Moreover, it was unreasonable to expect that Laird, a paraplegic in his mid-twenties who had waited four and a half years to receive his settlement, would accede to negotiating a check within two or three days. Imposing such a condition on Laird under the circumstances constituted overreaching.

We also find an additional aggravating factor because Hays displayed indifference towards rectification for his misconduct. (Std. 1.2(b)(v).) He never honored his agreement to pay Laird the $37,500 settlement of their fee dispute, nor has he paid the promised interest on the insurance settlement accruing from the date of the initial $100,000 deposit into his CTA.

B. Mitigation

The hearing judge found two mitigating factors. We agree and find an additional factor in mitigation for cooperation.

First, the hearing judge found that Hays's 16 years of discipline-free practice is significant mitigation. (Std. 1.2(e)(i).) We agree. Even though the present misconduct is serious, the lack of a prior disciplinary record may be considered as a mitigating factor. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [many years of practice without prior record considered mitigating even if serious misconduct].)

Second, the hearing judge gave mitigating credit for Hays's good character declarations from five non-legal business professionals. (Std. 1.2(e)(vi).) We assign only modest weight to this mitigation evidence since it does not constitute "a wide range of references in the legal and general communities." (Std. 1.2(e)(vi); *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [character evidence from two judges and two attorneys is not wide range of references from legal and general communities and does not warrant substantial mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387

[character evidence afforded limited weight because testimony from three attorneys and three clients "hardly constituted" broad range of references].)

Additionally, we agree with Hays that he should receive mitigating credit for stipulating to facts and culpability to one count. (Std. 1.2(e)(v).) We do not agree with Hays that he has demonstrated good faith, lack of client harm or remorse. (Stds. 1.2(e)(ii), (iii) and (vii).)

We also reject Hays's assertion that the hearing judge improperly disregarded evidence of his emotional difficulties. Hays presented testimony from psychologist Dr. Vance B. Becker who interviewed Hays for a total of 4.25 hours between March and April 2011. After interviewing Hays, reviewing his medical records and administering psychological examinations, Dr. Becker formed the opinion that between 2003 and 2009, Hays suffered from major depression with generalized anxiety disorder and panic attacks with agoraphobia. His condition resulted from his mother's death in 2002, his 2003 motorcycle accident, a heart attack he suffered in 2004, and the reform of workers' compensation laws in 2004. According to Dr. Becker, Hays's major depression, generalized anxiety disorder and panic attacks were "substantial factors in causing his misconduct." Dr. Becker concluded that Hays no longer suffers from major depression.

The hearing judge found that "there was no clear and convincing evidence provided that [Hays] ever suffered from emotional or mental difficulties so debilitating as to cause him to convert the funds." We agree. Dr. Becker's diagnosis was made in 2011 for the period of 2003-2005. We observe that Hays misappropriated Laird's money on 15 occasions over a two-year period, yet was able during the same time frame to work full-time as an attorney, participate in activities such as scuba diving and off-road motorcycle racing, and renew his pilot's license. Hays never sought treatment for his depression nor obtained a medical diagnosis for mental health issues during the extensive time period of his misappropriation.

We thus find Hays failed to clearly and convincingly establish a nexus between his emotional difficulties and his misconduct, that he has completely recovered from his depression, and that untreated, it is not likely to recur. (*In re Naney* (1990) 51 Cal.3d 186, 197 [where little evidence established that marital problems or severe emotional distress were directly responsible for misconduct, neither factor considered mitigating]; *In re Lamb* (1989) 49 Cal.3d 239, 246 [before emotional difficulties can serve as mitigating circumstance, proof of complete, sustained recovery and rehabilitation must be established].)

C. Discipline Analysis

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession. (Std. 1.3.) We begin our analysis with the standards to determine the appropriate discipline and follow their guidelines "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11) to ensure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220 [standards given great weight].) Standard 2.3 calls for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) calls for disbarment for a misappropriation unless the amount of money is insignificant or the most compelling mitigating circumstances clearly predominate.[5] Although standard 2.2(a) is "a guideline rather than . . . an inflexible rule" (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1022), misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656 ["Misappropriation of client trust funds has long been viewed as a particularly serious ethical violation. [Citations.]")

We find no reason to depart from the guidelines of standard 2.2(a). Hays misappropriated over $62,000, which is a significant amount, and his mitigation is neither

[5] When multiple acts of misconduct call for different sanctions, standard 1.6(a) directs that we apply the most severe of them. The other applicable standard is standard 2.2(b), which calls for at least a three-month actual suspension for violating CTA rules.

compelling nor clearly predominating over the substantial evidence in aggravation. "[L]esser discipline [than disbarment] is warranted only where extenuating circumstances show that the misappropriation of entrusted funds was an isolated event." (*Kelly v. State Bar, supra,* 45 Cal.3d at p. 657.)

After misappropriating a large sum of money from his vulnerable client, Hays subsequently promised an additional payment to resolve his outstanding fee dispute. But he then made sure his account lacked sufficient funds if the client did not cash his check within two or three days. To date, he has failed to pay Laird the remaining $37,500 plus interest on the full settlement amount as promised. And he lied to the State Bar to conceal his misconduct. "An attorney who deliberately takes a client's funds . . . and answers . . . inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently . . . without acts of deception." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

Even though Hays has no prior record of discipline, the case law supports his disbarment. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment for misappropriating $29,000 and misrepresenting to State Bar that funds were for medical treatment despite mitigation for 11 years of discipline-free practice, payment of restitution, good character and emotional difficulties]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for misappropriating $7,898.44 and misrepresenting circumstances of theft to State Bar even though no prior discipline]; *Kelly v. State Bar*, *supra*, 45 Cal. 3d 649 [disbarment for $20,000 misappropriation, moral turpitude, dishonesty with no prior record and no aggravation]; *In re Abbott* (1977) 19 Cal.3d 249 [disbarment for misappropriating $29,500 in single client matter with 13 years of discipline-free practice and mitigation for emotional difficulties and remorse].)

V. RECOMMENDATION

For the foregoing reasons, we recommend that William Thomas Hays, Jr., be disbarred and that his name be stricken from the roll of attorneys. We further recommend that:

1. He must make restitution to Kory Lee Laird (or to the Client Security Fund to the extent of any payment from the fund to Laird, plus interest and costs, in accordance with § 6140.5) in the following amounts: (1) interest only in the amount of 10% per annum calculated from February 21, 2003, to July 23, 2007, on a principal sum of $100,000; (2) interest only in the amount of 10% per annum calculated from July 24, 2007, to September 21, 2007, on a principal sum of $40,000; (3) the principal amount of $37,500 plus 10% interest per annum calculated from September 22, 2007, and furnish satisfactory proof thereof to the State Bar's Office of Probation.

2. He 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 calendar days, respectively, after the effective date of the Supreme Court order herein.

3. Costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

VI. ORDER

The order that Hays be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective August 6, 2011, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.