

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED MARCH 3, 2011

**STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT**

In the Matter of)	Case No. 06-O-13508
)	
JAMES FRIEND JORDAN,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 74606.)	
_____)	

BY THE COURT:¹

Respondent, James Friend Jordan, appeals from a decision of a State Bar Court hearing judge that he be disbarred. The most serious finding is that Jordan knowingly and intentionally misappropriated over \$200,000 of settlement funds of his client, Joel Castillo, whom Jordan represented after Castillo was seriously injured in a 2001 traffic accident. Jordan was admitted to practice in 1977, and has been disciplined three times between 1992 and 2010.

Most of Jordan's appeal grounds are procedural. The State Bar's Office of the Chief Trial Counsel (State Bar) supports the hearing judge's findings and disbarment recommendation.

We have independently reviewed Jordan's claims (Cal. Rules of Court, rule 9.12), and we reject them. Also, we find ample support for the hearing judge's findings. When we evaluate the lack of mitigation against the extremely grave nature of Jordan's offenses and prior discipline, we are guided unhesitatingly to uphold the disbarment recommendation.

¹ Before Remke, P. J., Epstein, J., and Purcell, J.

I. KEY FINDINGS

Although Jordan has repeatedly sought to inject trust law complexities into this case, the relevant facts are straightforward and established largely by documentary evidence supplemented by testimony of witnesses. While participating in the hearing, Jordan chose not to testify.

Very simply stated, these are the facts: Joel Castillo lived in California's Coachella Valley, having traveled from Mexico in 1953. He worked in agriculture as a tractor driver and had been retired for several years when he was seriously injured in 2001 in an automobile accident. The accident was nearly fatal to Castillo, involving extensive hospital treatment and convalescence for brain and head injuries.

In December 2001, Castillo hired Jordan to seek damages arising from the accident. Joseph Jordan, respondent's half-brother and a pastor, knew the Castillo family from religious activities and had recommended respondent. At the time of this retention, Jordan and Castillo executed a contingency fee retainer agreement, entitling Jordan to one-third of any recovery in the event the matter was settled before a lawsuit was filed. A few months later, Castillo agreed to a \$739,043.72 settlement with the defendant's insurer.²

In April 2002, Jordan received the settlement funds and deposited them into a client trust account (CTA) earmarked for this case. In September 2002, Jordan paid Castillo \$238,507.81 as his share of the settlement. These are the only funds that the Castillo family ever received. Jordan never gave Castillo an accounting of funds, despite repeated requests, including requests from successor counsel hired by Castillo after terminating Jordan's services in 2006.

² Around this time, Jordan created the Castillo Family Trust for Castillo and his wife. The temporary trustee was Castillo's adult son, Juan. On February 15, 2002, Jordan succeeded Juan Castillo as trustee, per the terms of the trust agreement. There is no evidence that any funds were ever held in or transferred to the Castillo Family Trust, and thus, Jordan's repeated discussion of the trust is little more than a red herring.

Pursuant to the fee agreement, as there is no evidence indicating that Jordan filed an action before reaching this settlement, Jordan was entitled to one-third of the settlement, or \$246,348. Deducting the \$238,507.81 paid Castillo, the balance was about \$254,188. It is undisputed that this remaining sum was to be held in the CTA for Castillo's medical expenses. Per the settlement agreement, Castillo was obligated to pay all medical expenses.³

Initially, Jordan persuaded Castillo to resist satisfying Desert Medical Group's demands for payment of Castillo's medical bills with the remaining settlement funds. In the fall of 2002, Castillo agreed to Jordan's offer to negotiate with Desert Medical Group over the amount of reimbursement.

Jordan never paid any medical provider any of the \$254,188 he was required to hold in the CTA for this explicit purpose. Instead, he depleted the settlement funds gradually, starting in December 2002. By January 2010, only \$9,041 remained in the CTA. Jordan's last withdrawal of \$5,000 occurred in September 2009, two days after the State Bar filed the formal charges starting this disciplinary matter.

The table below shows the CTA balance at about the end of each relevant year starting in November 2002, prior to the depletion of Castillo's funds:

³ Castillo's medical insurance covered most of his treatment but required him to reimburse the insurer upon recovering funds from others responsible for the accident. The insurer's rights were assigned to Desert Medical Group, which actually provided most of Castillo's treatment.

Date	Trust Account Balance
11/29/2002	\$269,245.81
12/31/2002	\$239,637.61
12/31/2003	\$218,079.43
12/31/2004	\$104,116.22
12/30/2005	\$22,545.34
12/29/2006	\$17,767.58
12/31/2007	\$17,965.80
12/31/2008	\$14,014.19
12/31/2009	\$9,039.75

The record contains almost no details of the purposes for which Jordan made the disbursements from Castillo's funds. However, Jordan did convert some of these funds to a real estate investment in an entity, Western States, that Jordan used to purchase realty. Although he mentioned to Castillo the possible investment of the settlement funds, Castillo never authorized these funds to be invested.

In the summer of 2003, Desert Medical Group sued Castillo for the \$274,304 it believed was available to settle his medical bills. In June 2004, Jordan filed a cross-complaint on behalf of Castillo. During this litigation, Juan Castillo called Jordan monthly to ask about progress in resolving the medical expense dispute. Each time, Jordan told Juan that he was working on it. By 2006, Juan Castillo found it increasingly difficult to reach Jordan and asked Joseph Jordan to

intervene. Joseph spoke to Jordan about Juan Castillo's concerns but was rebuffed. Joseph then suggested to Juan that Castillo should seek other counsel in place of Jordan.⁴

In 2006, Castillo terminated Jordan's legal services and hired new counsel, Michael Kaiser, to represent him in the Desert Medical Group litigation as well as to secure an accounting, obtain the remaining settlement funds from Jordan and discharge Jordan as trustee of the Castillo Family Trust. Kaiser was unsuccessful in seeking Jordan's substitution out of the litigation and was required to seek a court order to force that substitution. Despite repeated requests, Jordan also failed to send his file to Kaiser and neither furnished an accounting nor tendered the balance of the settlement funds. Jordan was removed as trustee of the Castillo Family Trust and Juan Castillo was appointed successor trustee.

Kaiser succeeded in resolving the Desert Medical Group litigation by Desert's agreement to accept \$162,000 of any funds recovered from Jordan. However, as noted, no funds have ever been recovered from Jordan. The CTA records in evidence showed that the account balance at the time of the settlement was only about ten percent of the amount Desert had agreed to accept.

From these findings, the hearing judge concluded, and we agree, that Jordan willfully: violated rule 4-100(A) of the Rules of Professional Conduct⁵ by failing to maintain Castillo's funds in trust (Count 2); violated section 6106 of the Business and Professions Code by engaging in acts of moral turpitude by intentional and repeated misappropriation of funds (Count 3); failed to render Castillo an appropriate accounting as required by rule 4-100(B)(3) (Count 5); and failed

⁴ Leading up to 2006, Joseph Jordan had experienced several incidents with Jordan involving business dealings between the two of them that caused Joseph to conclude that Jordan had lied to him. Joseph felt badly for the Castillos as his 2001 recommendation prompted Castillo to hire Jordan. By 2006, Joseph Jordan felt that he didn't "trust [Jordan] as far as he could throw him" and communicated that to Juan Castillo.

⁵ Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

to release Castillo's file when Castillo terminated Jordan's representation, as required by rule 3-700(D)(1) (Count 6).⁶

Recommending disbarment, the hearing judge found no mitigating circumstances surrounding Jordan's misconduct, but in aggravation considered the significant harm to Castillo, Jordan's lack of insight and remorse, and most notably, Jordan's three prior records of discipline.⁷ We also adopt these findings as they are amply supported by the record.

II. DISCUSSION

A. Culpability

Jordan argues broadly that the evidence fails to support the hearing judge's findings, particularly as to the misappropriation of Castillo's funds. Jordan's chief argument here is that the hearing judge failed to properly consider the effects of the law of trusts and that Castillo agreed to place the funds at issue in his irrevocable family trust. Jordan's claims are without merit and patently misinterpret his fiduciary duties to Castillo.

⁶ The hearing judge dismissed, on the State Bar's initiative, Count 1 (commingling of trust funds with personal funds) and Count 4 (misrepresentation of facts to Castillo).

⁷ Jordan's first discipline was a 1992 public reproof, pursuant to stipulation, for his failure in one matter to pay medical providers promptly, as required, from client funds he had withheld for that purpose and for his withdrawal from employment in another matter without promptly furnishing or distributing trust funds he was holding.

In 2004, Jordan was suspended for a year, fully stayed on conditions of a two-year probation, and ordered to make restitution to a client. That discipline, also based on stipulated facts, showed Jordan's failure to pay two medical bills on one client's behalf until four years after Jordan received the funds and only after the client had complained to the State Bar. In another matter, Jordan had delayed between eight and 12 months in paying three of the client's medical bills for which he held funds. At the time of the discipline, Jordan still owed this client \$1,700 in trust funds.

Finally, in January 2010, Jordan was suspended for two years, stayed on conditions of a three-year probation and 90 days of actual suspension, for willfully disobeying two superior court orders in 2004 and 2005, respectively. As some of his misconduct occurred while on probation for his 2004 suspension, Jordan was also found to have violated that earlier probation.

Jordan was Castillo's attorney in representing him in the accident, in holding over \$200,000 of undistributed funds admittedly in CTA for Castillo, and in drafting the Castillo family trust agreement. As such, Jordan owed Castillo the ultimate duty of good faith and fidelity in whatever capacity Jordan acted, including when he acted as trustee of the Castillo Family Trust. These principles have been established in this state for decades. (E.g., *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146-147; *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156, and cases cited [attorney who received money for benefit of third-party in other than attorney-client relationship held to fiduciary duty to beneficiary]; *Marsh v. State Bar* (1930) 210 Cal. 303, 307 [breach of basic duty of fidelity owed to client can constitute act of moral turpitude].)

More narrowly, Jordan's arguments citing the law of trusts are unavailing for two reasons. First, the settlement funds held by Jordan for Castillo were never included in the Castillo Family Trust. Second, this is not a private civil proceeding to decide whether the parties fulfilled their duties under a trust agreement, but is an official proceeding to decide whether Jordan complied with his duties as an attorney and is entitled to practice. (E.g., *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

There is clear and convincing evidence that Jordan is culpable of failing to ever provide an accounting of funds to Castillo or Castillo's new counsel, despite repeated requests, and of failing to release Castillo's file to new counsel on request. The bank records establish beyond dispute that the funds that Jordan conceded he held in the CTA for Castillo were depleted starting in December 2002. Testimony of Castillo and his new counsel established that they were never able to acquire these funds from Jordan. The bank records established a prima facie case of Jordan's failure to comply with rule 4-100(A), and misappropriation of the settlement funds held. It is well settled that once Jordan's CTA balance fell below the required amount, an inference of misappropriation arose, and the burden shifted to Jordan to show that no

misappropriation occurred. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618; see also *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474.) Jordan chose silence and has thus failed to rebut the strong evidence, including the testimony that neither Castillo, successor counsel, nor Desert Medical Group ever received any of these substantial funds. Accordingly, we adopt the hearing judge's findings and conclusions.

B. Procedural Claims

Jordan levies a number of procedural claims. First, he urges that we should reverse the hearing judge's order enrolling him as an inactive member of the State Bar incident to the disbarment recommendation. (Bus. & Prof. Code, § 6007, subd. (c)(4).) He also asks that we consider and examine his deposition taken by the State Bar, which was admittedly not "affirmatively used or admitted." We considered both of Jordan's requests on an interlocutory basis shortly after Jordan filed his opening brief on review and we denied them in an order filed September 3, 2010. We see no facts justifying a different result and we decline to vacate or modify our earlier order.

The reason Jordan seeks to have us consider his deposition is to bolster his highly generalized and unsubstantiated claim that the State Bar threatened criminal proceedings against him, causing him to decide not to testify in his defense. According to an offer of proof Jordan includes in his brief, he was entirely willing to testify in his defense until, he claims, the State Bar threatened to bring criminal charges against him based on the Castillo matter. For several reasons, Jordan's claims must fail.

First, there is no evidence to show any threats were made to Jordan by the State Bar. Moreover, since 1988, state law has placed a *duty* on the State Bar to disclose to criminal law enforcement authorities even confidential information concerning a member of the State Bar who allegedly commits a crime in the practice of law or such that the attorney's client was a victim.

(Bus. & Prof. Code, § 6044.5.) Thus, the State Bar would have been required to report the facts in the Castillo matter to law enforcement authorities had it determined that those facts formed the basis of criminal charges.

To the extent that Jordan seeks to justify or excuse his failure to testify in defense of the hearings, or claim that unfairness occurred because of it, his claims are without any merit. It is well settled that an accused attorney in a disciplinary proceeding may invoke the privilege against self-incrimination in response to specific questions if his testimony may jeopardize him in criminal proceedings; but, that attorney has no general immunity from testifying before the State Bar Court as would a defendant in a criminal trial. (*Black v. State Bar* (1972) 7 Cal.3d 676, 688.) As Jordan chose to completely decline to testify, he cannot now complain of error after the hearing judge has rendered his decision.

Jordan's claim that his counsel acted incompetently in defending him at trial is also without merit. Not only is Jordan's claim highly generalized and unsupported, it is at odds with our independent review of the record which shows counsel's vigorous defense of Jordan's interests while counsel represented Jordan below.⁸

C. Degree of Discipline

Whether we look at the Standards for Attorney Sanctions for Professional Misconduct,⁹ (standards) or decisional law, it requires little research and discussion to recommend that Jordan's misconduct calls for disbarment. Even if Jordan had had no prior discipline, it is well established that his misappropriation of over \$200,000 of funds warrants disbarment, absent clearly extenuating circumstances. (Std. 2.2(a) [willful misappropriation of entrusted funds shall

⁸ All other procedural claims raised by Jordan have been considered and are rejected as without merit.

⁹ Unless otherwise noted, all further references to "standard(s)" are to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

result in disbarment unless insignificant amount or compelling mitigation]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [no prior discipline; law firm funds misappropriated]; *Chang v. State Bar* (1989) 49 Cal.3d 114 [no prior discipline].) On this record, there are no extenuating circumstances, but several highly aggravating factors.

Jordan's three prior records of discipline not only support a disbarment recommendation in this proceeding on their own (std. 1.7(b)), but do so emphatically because two of the three priors show misconduct as to Jordan's failure to properly pay out trust funds to or on behalf of clients. (*Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 551.) We thus find a recurring and most troublesome theme of misconduct. Additionally, we are presented with the aggravating factors of harm to a seriously injured client of modest education coupled with Jordan's clear indifference to rectification and lack of understanding of an attorney's most basic ethical duties to a client.

This proceeding is not to punish Jordan, but is primarily "to protect the public, to preserve public confidence in the legal profession, and to maintain high professional standards." (*Harford v. State Bar* (1990) 52 Cal.3d 93, 100; see also std. 1.3.) We agree with the hearing judge that previous, lesser degrees of discipline have been ineffective to prevent the grievous misconduct found here. Indeed, some of Jordan's current misconduct occurred while he was on probation in his second disciplinary proceeding, while his third proceeding was pending and just after this fourth proceeding had started. The Supreme Court's conclusion in a similar case, *Greenbaum v. State Bar, supra*, 43 Cal.3d 543, in which the attorney had been disciplined twice before for similar misconduct involving client funds, is fully apt here: ". . . [W]hile still on probation, [Greenbaum] commingled thousands of dollars and repeatedly refused to provide an accounting. These funds are still unaccounted for. We do not believe [Greenbaum's] assertion that these funds were legitimately spent. . . . In light of [Greenbaum's] prior and perpetual

misconduct, and in light of the severity of the instant offense, we conclude that [Greenbaum] should be disbarred.” (*Id.* at p. 551, original italics.)

III. FORMAL RECOMMENDATION

We recommend that James Friend Jordan be disbarred from the practice of law in this State and that his name be stricken from the roll of attorneys.

Within 30 days of the effective date of the discipline herein, Jordan must make restitution to Joel and Ofelia Castillo in the amount of \$254,188, plus 10 per cent per annum from April 13, 2002 (or reimburse the Client Security Fund to the extent of any payment from the Fund to the Castillos, in accordance with Business and Professions Code, section 6140.5) and must provide satisfactory proof to the State Bar.

We further recommend that he be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the Supreme Court order herein.

Finally, we recommend that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code, section 6140.7, and as a money judgment.

IV. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered that Jordan be involuntarily enrolled as an inactive member of the State Bar as required by Business and Professions Code, section 6007, subdivision (c)(4). The hearing judge’s order of inactive enrollment became effective on May 8, 2010. Jordan has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.