

Filed October 18, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 12-O-11055
)	
STEELE LANPHIER,)	OPINION
)	
A Member of the State Bar, No. 146163.)	
_____)	

Respondent Steele Lanphier erroneously designated his law firm’s operating account as a client trust account (CTA). He used this account solely for personal and business needs. He also maintained a second CTA, which he reserved for entrusted client funds. Lanphier kept the two CTAs segregated and did not intermingle their funds, although he wrote several checks with insufficient funds (NSF) against his operating account.

The hearing judge found Lanphier culpable of commingling, in violation of rule 4-100(A) of the Rules of Professional Conduct,¹ and recommended that he be suspended for 30 days. The Office of the Chief Trial Counsel (State Bar) appeals and is seeking a 90-day suspension. It argues that the record does not justify a departure from standard 2.2(b) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct,² which prescribes a minimum of three months’ actual suspension for violations of rule 4-100(A). Lanphier acknowledges his culpability and does not dispute the recommended discipline.

Based on our independent review of the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge’s culpability finding of trust account mismanagement, but we modify the

¹ All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

² All further references to standards are to this source.

findings in aggravation and mitigation as discussed below. We also increase the hearing judge's discipline recommendation to include a 90-day period of actual suspension because we do not find support in the record for deviating from standard 2.2(b). Of particular concern is Lanphier's failure to take corrective action with respect to the management of his CTA after the State Bar advised him to do so.

I. FINDINGS OF FACT AND PROCEDURAL HISTORY

Lanphier was admitted to practice law in June 1990 and has no prior record of discipline. He is the principal of Lanphier & Associates, where he focuses on bankruptcy law.

Lanphier stipulated to many of the facts and admission of documents establishing his culpability. Approximately 12 years ago, he opened an operating account at Bank of the West for his law firm and designated the account as a CTA (BOW CTA). His intention in opening this CTA was "to make sure that the funds were separated" from another CTA at Bank of America (BofA CTA), where he maintained all client funds. At all times, Lanphier kept his client funds in the BofA CTA segregated from his non-client funds in the BOW CTA. There is no evidence that he intended to deceive or defraud anyone when he opened the BOW CTA; he maintains he was unaware of the trust account rules that proscribe the use of a CTA for business or personal purposes.

In early 2011, the State Bar was notified that Lanphier had issued NSF checks drawn against the BOW CTA. After he provided a written explanation, the State Bar wrote to Lanphier on April 27, 2011, to advise him: "Although we are closing our file in this case without an investigation, we have a concern that you may need to give greater attention to the management of your trust account." The letter also suggested that he review rule 4-100 and the State Bar's Trust Account Record-Keeping Standards "to assist [him] in avoiding future reports of insufficient funds checks."

Notwithstanding the State Bar's cautionary letter, Lanphier wrote an additional 16 NSF checks against his BOW CTA during the month of December 2011, and Bank of the West again notified the State Bar about these additional NSF checks. This prompted another investigation that resulted in the State Bar's discovery that Lanphier had been using his BOW CTA to deposit personal funds and to pay personal and office expenses. The State Bar did not seek to discipline Lanphier for the NSF checks, but instead filed a Notice of Disciplinary Charges (NDC) in May 2012, alleging two counts of commingling funds in his CTA from September 1, 2011 through February 29, 2012, in violation of rule 4-100(A).

Prior to the trial in this matter, Lanphier stipulated that he made numerous deposits of non-client funds, for a total of \$64,300, into his BOW CTA between September 1, 2011, and February 29, 2012.³ During the same period, he repeatedly paid personal and business expenses, for a total of about \$45,500, from the BOW CTA. The hearing judge found that Lanphier commingled funds in his BOW CTA, in violation of rule 4-100(A). The judge further found this misconduct was aggravated by Lanphier's indifference toward rectification and by uncharged misconduct for failing to deposit filing fees received from his clients into his true BofA CTA. After considering Lanphier's mitigation of more than 20 years of practice without discipline, lack of harm, and good character, the hearing judge recommended a 30-day actual suspension.

³ Lanphier testified that he opened the BOW CTA in 2000, but the only records of this account admitted at trial were from September 2011 to April 2012, which is coextensive with the period of misconduct charged in the NDC.

II. CULPABILITY

Count One: Commingling (Rule 4-100(A))

Count Two: Commingling (Rule 4-100(A))⁴

Rule 4-100(A) provides in relevant part: “All funds received or held for the benefit of clients by a member or law firm . . . shall be deposited in one or more identifiable bank accounts labelled ‘Trust Account,’ ‘Client’s Funds Account’ or words of similar import No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith”

Lanphier used his BOW CTA exclusively for business and personal purposes. He did not deposit client funds into or withdraw client funds from this account; therefore, personal and client funds were not intermingled. However, the State Bar correctly points out that rule 4-100(A), by its express language, is violated when an attorney merely deposits non-client funds into a CTA. As the Supreme Court has instructed: “The rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.) Lanphier’s misuse of his BOW CTA as an operating account violated rule 4-100(A).

III. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence,⁵ while Lanphier has the same burden to prove mitigating circumstances. (Std. 1.2(b) & (e).)

⁴ Counts One and Two charged violations of rule 4-100(A) based on the same misconduct but for different time periods. The hearing judge properly treated the two counts as one count alleging a continuous course of conduct for discipline purposes.

⁵ 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.)

A. Two Aggravating Factors

The hearing judge found two aggravating factors – indifference toward rectification and uncharged misconduct. We find indifference but do not find the State Bar provided clear and convincing evidence of uncharged misconduct. However, we find additional aggravation due to multiple acts of misconduct.

1. Indifference toward Rectification (Std. 1.2(b)(v))

The hearing judge found that Lanphier had stopped using his BOW CTA at the time of trial, yet failed to close it. Lanphier testified that he was waiting for the outcome of these proceedings before closing the account because he might utilize the account if he formed a professional corporation. His testimony does not justify his refusal to close a CTA that violated rule 4-100(A). “[S]ubsequent efforts by the attorney to correct the condition that precipitated the misconduct may demonstrate that the conduct will not likely recur.” (*Baker v. State Bar* (1989) 49 Cal.3d 804, 822, fn. 7.) Such is not the case here.

More importantly, Lanphier did not discontinue issuing NSF checks against the BOW CTA even after the State Bar had contacted him about the problem. We find this is additional evidence of Lanphier’s indifference and is a serious aggravating factor.

2. Multiple Acts of Misconduct (Std. 1.2(b)(ii))

Between September 1, 2011 and February 29, 2012, Lanphier made at least 20 deposits of personal funds into the BOW CTA. During the same period, he made more than 95 payments for personal and business expenses from the BOW CTA. Such repeated misuse of his trust account constitutes multiple acts of misconduct and is a significant factor in aggravation. The State Bar argues that Lanphier’s trust account violation involves a pattern of misconduct that lasted for “at least 12 years.” Although Lanphier testified that he opened the BOW CTA 12 years ago, the only evidence of its use for personal and business purposes are the bank

statements for September 2011 through February 2012. This evidence does not clearly and convincingly support a finding of a pattern of misconduct, which is limited to the ““most serious instances of repeated misconduct over a prolonged period of time.’ [Citation.]” (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217; *Garlow v. State Bar* (1988) 44 Cal.3d 689 [pattern of misconduct found where on several occasions over nine-year period, attorney made false statements to courts, failed to communicate and perform legal services, failed to return client documents and property, and induced others to testify falsely].)

3. No Uncharged Misconduct (Std. 1.2(b)(iii))

The hearing judge found that Lanphier committed an uncharged violation of rule 4-100(A) by making eight payments for court filing fees using checks drawn on his BOW CTA from personal money Lanphier had advanced. The judge determined that the payments for the filing fees Lanphier received from clients should have been deposited in and withdrawn from the BofA CTA, not the BOW CTA. However, Lanphier testified that he would deposit a client’s check in payment of filing fees into his BofA CTA, but if the deadline for paying the fee occurred before the check cleared, he advanced the fees using personal funds from his BOW CTA and then reimbursed himself with the client’s funds once the check cleared his BofA CTA.

Lanphier did not violate his ethical duties by advancing filing fees for his clients. A check received from a client must be deposited into the CTA and cleared before it is paid out. (The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2013) § V, p. 15.) Thus, it would be improper for Lanphier to pay the bankruptcy court filing fees from his BofA CTA before his client’s check cleared. But, to protect his clients’ interests, Lanphier advanced filing fees from his personal funds held in his BOW CTA. Advancing costs is not prohibited by the rules. (See rule 4-210(A)(3) [member not prohibited from advancing costs].)

The State Bar seeks additional uncharged misconduct for a violation of rule 4-100(B)(3), arguing that Lanphier failed to maintain ledgers, journals, and records required by the rule. The State Bar did not offer evidence of Lanphier's financial records; the only evidence about record-keeping is brief testimony by Lanphier. When asked if he kept "ledgers," Lanphier responded that he kept "accounts." When asked if he kept "journals," he responded that he kept "notes on each of the cases." Lanphier elaborated: "The accounting notes we keep, or the records we keep, show when payments were made. So I'd have to look at the accounting records we keep, which are very cursory. . . . It's [the client's] name and then a series of payment schedules or one payment in full." We find that this cursory testimony is not clear and convincing evidence establishing an uncharged violation of rule 4-100(B)(3).

B. Four Mitigating Factors

The hearing judge found three mitigating factors – no prior record of discipline, lack of client harm, and good character. We adopt these findings, as modified below, and give additional mitigative credit for Lanphier's stipulation to the material facts establishing his culpability.

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

The hearing judge afforded Lanphier significant mitigation credit for 20 years of practice with no discipline record. The State Bar contends that the weight of the mitigation should be diminished because Lanphier's misconduct began at the time he opened his BOW CTA, which was about 10 years after he was licensed to practice. Even if we were to consider only the first 10 years of discipline-free practice, that is still a significant mitigating factor. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice before first act of misconduct given significant weight].)

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

The hearing judge determined Lanphier was entitled to mitigation credit because there was no client harm. We agree. Lanphier offered the records of his BofA CTA to establish that no NSF checks were written against that account during the relevant time period nor had there been any commingling or other mismanagement of that account. Those records, along with uncontradicted evidence that at all times he kept his client funds segregated from his business and personal funds, demonstrate that no harm resulted from his misconduct.

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

Two attorneys who were bankruptcy trustees and two staff attorneys working for other trustees attested to Lanphier's good character. The attorneys established that Lanphier has a good reputation with judges and trustees in the small Sacramento bankruptcy community, and he represents his clients well. He was described as "honest" and a "consistently good" attorney who produces "high quality work." Although standard 1.2(e)(vi) calls for character attestations "by a wide range of range of references in the legal and general communities," we give serious consideration to the attorneys' 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). Thus, we afford modest mitigation for Lanphier's good character evidence. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [attorney entitled to "some mitigating weight" for good character evidence from two judges and two attorneys who did not represent wide range of references in legal and general communities].)

4. Candor and Cooperation (Std. 1.2(e)(v))

Lanphier has exhibited candor and cooperation during these proceedings. He stipulated to all of the material facts establishing his culpability. Although these facts were for the most part easily proved, the stipulation was the primary evidence upon which the State Bar relied and

it facilitated the trial of this matter. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].) We thus assign some mitigative weight to Lanphier's cooperation.

IV. DISCIPLINE ANALYSIS

The purpose of a State Bar disciplinary proceeding is not to punish the attorney, but to protect the public, to preserve confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3.) When considering the appropriate level of discipline, we look first to the standards as guidelines. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 775, fn. 5.) Our Supreme Court has instructed that we should follow them "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and give them great weight to "promote the consistent and uniform application of disciplinary measures" (*In re Silvertown* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted).

Standard 2.2(b) applies to violations of rule 4-100(A) and suggests that trust account mismanagement constitutes serious misconduct since it calls for "at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances." We therefore take into consideration Lanphier's misconduct in light of the purpose of rule 4-100(A), which is "to provide against . . . the danger in all cases that such commingling will result in the loss of clients' money." [Citation.]" (*Heavey v. State Bar* (1976) 17 Cal.3d 553, 558.)

Lanphier's conduct involved more than the mere mislabeling of an operating account as a CTA. Rather, the record establishes a prolonged obliviousness of the trust accounting rules and his ongoing disregard for those rules once he was informed about them. Not only did Lanphier fail to close the BOW CTA after being advised of the applicable trust accounting rules, he failed to heed the State Bar's warning about writing NSF checks and wrote 16 more checks against insufficient funds. This is no trifling issue. The practice of issuing NSF checks has long been

considered a breach of “the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.” (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.)

We acknowledge that Lanphier segregated his personal funds from those of his clients by placing them in two separate trust accounts. And there is no evidence that he misappropriated client funds or utilized the BOW CTA to engage in unlawful or improper activities. Most significantly, he has committed no other misconduct in more than 20 years of practice.

But it is Lanphier’s burden to demonstrate that a lesser sanction than that prescribed by standard 2.2(b) is warranted. (*In re Silverton, supra*, 36 Cal.4th at p. 92.) Notwithstanding Lanphier’s significant mitigation, we simply cannot overlook the breadth and duration of the mismanagement of his CTA or his conscious disregard of the importance of the trust accounting rules. Therefore, we conclude that a deviation from the 90-day suspension prescribed by standard 2.2(b) is not justified. Furthermore, this discipline recommendation is consistent with our prior decisional law. (See, e.g., *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 [90-day suspension pursuant to std. 2.2(b) for repeated and protracted misuse of trust account and issuance of NSF checks constituting moral turpitude for attorney with no prior discipline, aggravated by indifference].)

V. RECOMMENDATION

For the foregoing reasons, we recommend that Steele Lanphier be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for a period of two years with the following conditions:

1. He must be suspended from the practice of law for the first 90 days of the period of his probation.
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. He must comply with the following reporting requirements:
 - a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:
 - i. he has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and
 - ii. he has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.
 - b. If he does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he need not file the certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

7. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
8. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School

and State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

9. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Steele Lanphier be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VII. RULE 9.20

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

VIII. COSTS

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

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.