

FILED FEBRUARY 7, 2012

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 09-O-12766
	)	
PATRICIA A. GREGORY,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 226239.	)	
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Respondent Patricia A. Gregory seeks review of the hearing judge’s recommendation that she be disbarred based on her misappropriation of over \$112,000 from two clients. Gregory stipulated to failing to properly maintain client funds in trust in each of the matters. However, she denies misappropriating any funds and argues disbarment is excessive. Gregory asserts all funds were earned and properly collected as her attorney fees, the former clients lack credibility, and she is entitled to more mitigation than found by the hearing judge. The Office of the Chief Trial Counsel of the State Bar (State Bar) asks that we affirm the hearing judge’s culpability findings and disbarment recommendation.

Following our independent review (Cal. Rules of Court, rule 9.12), we conclude the record supports the hearing judge’s findings that Gregory misappropriated over \$112,000 from two clients and that her misconduct was surrounded by significant aggravating factors, including dishonesty. We agree that she should be disbarred to protect the public, the courts, and the legal profession.

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On review, the hearing judge's findings are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) The appellant must reference the record to specify the particular findings of fact that are in dispute and any factual error that it is not raised is waived. (Rules Proc. of State Bar, rule 5.152(C).) We find that the factual findings and culpability determinations of the hearing judge are supported by clear and convincing evidence, which we adopt and summarize below.

### **A. The Luwain Ng Matter (09-O-12766)**

In May of 2006, Luwain Ng employed Gregory to represent her in a marital dissolution case. On May 30, 2006, Gregory filed a petition for dissolution of marriage on behalf of Ng in the San Diego County Superior Court (Ng Case). Ng did not sign a written retainer agreement, but paid a \$1,500 "retainer" and understood that she would pay Gregory \$175 per hour based on invoices for the legal services performed. Gregory sent Ng seven invoices, totaling \$12,876, which Ng paid in full.

During the pendency of the Ng case, Ng and her husband sold their family residence. On August 24, 2007, pursuant to the parties' agreement, \$188,325 was deposited by wire in Gregory's client trust account at Washington Mutual Bank (CTA). These funds were deposited in the CTA with the restriction that they would "be held in trust for the benefit of the parties by [Gregory] as an officer of the court, and that no funds will be withdrawn without a prior written agreement of the parties of counsel or an order of the court expressly requiring the withdrawal."

After Gregory received the \$188,325 on behalf of Ng and her husband, and without authority to do so, Gregory repeatedly transferred sums from her CTA to another account that was not a designated client trust account. By March 3, 2008, Gregory had withdrawn approximately \$85,046 for her personal use, leaving the CTA balance at \$103,278.91.

On March 3, 2008, pursuant to a court order, Gregory disbursed \$94,162.50 from the CTA to Ng, representing Ng's half of the proceeds of sale of the family residence. In its order granting the disbursement, the court noted that "[t]he balance of the funds is to be held in trust for further disposition at a later date." After March 3rd, Gregory's CTA should have held \$94,162.50; however, the balance was \$9,116.41. Gregory continued to make unauthorized withdrawals, and on April 23, 2008, the CTA balance was approximately \$239.30.

On August 1, 2008, the court ordered Gregory to disburse the remaining \$94,162.50 as follows: \$79,162.50 to Ng as her sole and separate property, and \$15,000 to Ng's former husband's attorney, William Henrich. On August 27, 2008, Gregory paid Henrich \$15,000 from legal fees she earned in other client matters and not from the Ng funds she was required to hold in trust. On September 11, 2008, although she should have held at least \$79,162.50 on behalf of Ng, the balance in Gregory's CTA was \$167.90.

In September 2008, Gregory told Ng for the first time that she no longer had \$79,162.50 in her CTA. Gregory lied to Ng about what happened to the funds, falsely claiming that after they were transferred to Gregory's business account, they were seized to pay her outstanding student loans. On September 18, 2008, Gregory sent an e-mail to Ng acknowledging the fact that the money was no longer in trust and agreeing to send a promissory note the following day. Gregory told Ng "I unconditionally owe you the sum of \$93,000 less the \$15,000 already paid to [your former husband's] attorney." Shortly thereafter, Gregory signed a "Promissory Note" in favor of Ng that states:

"I, Patricia Gregory, owe Luwain Ng the sum of \$79,162.50 as of 09/01/08. This total amount plus interest at a rate to be determined by Ms. Ng is due and payable on October 1, 2008."

On September 29, 2008, Gregory sent another e-mail to Ng, discussing the various options she was pursuing to repay the amount owed. Commencing in October 2008, when

Gregory was unable to repay Ng in full as previously promised, Gregory began making monthly interest payments of approximately \$1,300 on the outstanding principal. From October 2008 through April 2009, the parties exchanged many e-mails about the funds Gregory was seeking for repayment. Gregory continued to have problems raising money to repay Ng.

After nine months of waiting, and after discovering Gregory lied about one potential source for repayment, Ng was concerned she would not be repaid. On May 7, 2009, Ng sent a letter to Gregory demanding payment, and she also filed a State Bar complaint. On May 10, 2009, Gregory replied to Ng by e-mail begging her not to file a complaint with the State Bar, stating “If I am turned [in to] the State Bar my life is over ... If the State Bar is involved I will be disbarred.”

On June 14, 2009, Gregory told Ng by e-mail that she had received a letter from a State Bar investigator, and would not make any further interest payments. Gregory stated: “If you wanted to punish me, you have succeeded. I am destroyed. You have \$20,000, a ridiculously low legal bill and my obligation to pay the \$80,000. I have nothing. Seems a bit unfair, no? But you did get your revenge. Hope it was sweet.”

From October 2008 to June 2009, Gregory paid Ng approximately \$1,300 a month for interest payments (total of nine payments) and one payment of \$5,000 towards the principal. Gregory has not made any further payments to Ng on the remaining \$74,162.50 she misappropriated.

**Count One – Rule 4-100(A), Rules of Professional Conduct<sup>1</sup> [Failure to Maintain Client Funds in Trust Account]**

**Count Three – Section 6103, Business and Professions Code<sup>2</sup> [Failure to Obey Court Order]**

Gregory stipulated to violating counts one and three at trial, and these violations are clearly supported by the record. As to count one, Gregory failed to maintain \$188,325 in trust and repeatedly made unauthorized withdrawals from her CTA in willful violation of rule 4-100(A). As to count three, despite the court's February 2008 order that Gregory disburse \$94,162.50 from the CTA to Ng and maintain the balance in trust for disposition at a later date, Gregory disregarded the order and continued to make unauthorized withdrawals in willful violation of section 6103. We adopt both culpability determinations.

**Count Two – Section 6106 [Moral Turpitude – Misappropriation]**

Section 6106 provides that an attorney's "commission of any act involving moral turpitude . . . 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." The hearing judge found that Gregory removed at least \$85,046 from her CTA without permission, and in doing so, misappropriated the funds and committed an act involving moral turpitude. We agree.

Like the hearing judge, we reject Gregory's after-the-fact attempt to characterize the misappropriated funds as her attorney fees. First, the parties agreed and then the court ordered that the funds remain in trust. In addition, Ng paid in full all invoices she received from Gregory

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<sup>1</sup> Rule 4-100(A) requires an attorney to deposit and maintain in trust "[a]ll funds received or held for the benefit of clients. . . ." Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

<sup>2</sup> Section 6103 provides, in pertinent part, that a willful violation of a court order in the course of an attorney's profession, which he or she ought in good faith to do, constitutes cause for disbarment or suspension. Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

for legal services rendered. Gregory withdrew at least \$85,046 as early as March 2008, without reference to any outstanding bills or services rendered. Finally, by September 2008, Gregory *admitted* she owed Ng \$79,162.50, and signed a promissory note agreeing to repay her.

Although Gregory confessed she no longer had the money, she gave Ng a fabricated story to conceal her theft. Gregory then spent the next nine months promising to repay her. It was only after Ng filed a complaint with the State Bar that Gregory claimed she performed more services than she billed for and that she had an oral agreement with Ng to collect her supplemental fees once the case had been resolved. The hearing judge rejected this implausible testimony, as do we.

We conclude that Gregory violated section 6106 because she intentionally misappropriated for her personal use at least \$85,046 held in trust for Ng. Although Gregory paid \$15,000 to Henrich from a different source, and ultimately paid \$5,000 to Ng, she still owes Ng at least \$74,162.50. Gregory's misappropriation constitutes moral turpitude. (*Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381 [appropriating funds without client consent clearly supports finding attorney misappropriated funds in violation of § 6106].)<sup>3</sup>

**B. The Denise Doll Matter (09-O-18149)**

On July 26, 2007, Denise Doll employed Gregory to represent her in various legal matters. The “attorney consultation and fee contract” (fee contract) between Gregory and Doll provided that “[a]t the time of each billing, the amount of legal services and expenses billed by the Attorney shall be disbursed from the Attorney’s Trust Account to the Attorney’s Operating Account.” The fee contract provided for a \$175 hourly rate and required any changes to be in writing. Although Gregory claimed that she and Doll *orally* agreed subsequently to change some

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<sup>3</sup> Although Gregory violated both rule 4-100(A) and section 6106, for our discipline analysis, we assign no additional weight to the rule violation because the misconduct underlying the rule and the code violation is the same, and the code violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

of the cases to a contingency fee, and to increase the hourly rate to \$200 on the remainder, Doll denied these modifications. Despite any proposed changes, Gregory was required to send Doll a bill for her legal services *before* withdrawing funds.

On April 28, 2008, Gregory negotiated a settlement in the sum of \$27,500 with Doll's former insurer, USAA, for property loss Doll incurred during moving and storage. On April 30, 2008, Gregory deposited the \$27,500 received on behalf of Doll in her CTA. In April 2008, Gregory received notice from Jeffrey Schwartz, Doll's prior attorney, that he was asserting a lien for attorney fees against the USAA settlement.

On June 30, 2008, the balance in Gregory's CTA was \$7,861.40. On July 30, 2008, the balance in the CTA fell to \$583. On August 30, 2008, the balance in Gregory's CTA was \$1,013.90. Between July 26, 2007 (the date of the fee contract) and August 30, 2008, Gregory had not sent Doll any bills for her services.<sup>4</sup> Gregory did not notify Doll or receive her consent before withdrawing the funds from her CTA. Shortly after August 2008, Gregory advised Doll that she could not disburse the funds to her because of Schwartz's lien on the funds. At the time of this representation, Gregory had already withdrawn most of Doll's money from the CTA for her personal use.

Between December 2008 and August 2009, Gregory wrote letters misrepresenting the status of Doll's funds. She wrote at least three letters on behalf of Doll to potential landlords, stating that she was holding over \$24,000 in trust for Doll to cover at least a year of rent, and another letter stating she would guarantee \$14,100 for Doll's benefit based on funds she was holding in trust for Doll that exceeded that amount. When she made these statements, Gregory no longer held the money in trust.

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<sup>4</sup> Before May 2008, Gregory sent Doll's former boyfriend some invoices for her services rendered on behalf of Doll, which he paid. After Doll filed her State Bar complaint, Gregory created additional bills from her notes.

On September 17, 2009, Doll demanded in writing that Gregory disburse the \$27,500 to her. Gregory informed Doll that she could not do so because both she and prior counsel Schwartz were asserting liens on the funds. In fact, as noted above, Gregory had already withdrawn the funds.

On October 21, 2009, Doll filed a State Bar complaint against Gregory. In response, Gregory claimed that she had earned all the money as attorney fees and owed Doll nothing. Gregory has not paid Doll any of the \$27,500 received on her behalf.

**Count Five – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]<sup>5</sup>  
Count Six – Section 6106 [Moral Turpitude – Misappropriation]**

We adopt the hearing judge’s culpability findings that Gregory violated both rule 4-100(A) by failing to maintain \$27,500 in her CTA on behalf of Doll, and section 6106 by misappropriating those funds for her own use.<sup>6</sup>

Gregory devotes much of her argument on review to attacking the credibility of Doll, and arguing that she was entitled to all the money as her attorney fees and was authorized to withdraw the money pursuant to the fee contract. Even if we accept that the fee contract legitimately authorized Gregory to withdraw the funds, she was required to bill Doll for her services prior to the withdrawals. The only bills submitted by Gregory for this time period were prepared after the fact from her notes, and were provided after Doll filed the State Bar complaint.

Within three months of the deposit, Gregory had withdrawn over \$26,000 without her client’s consent and without reference to any outstanding bill or services. After she had withdrawn most of the money, Gregory falsely stated she could not release it because of Schwartz’s lien. As late as August 2009, Gregory continued to conceal her misconduct by

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<sup>5</sup> At trial, the parties stipulated to dismissing count four.

<sup>6</sup> For our discipline analysis, as in the Ng case, we assign no additional weight to the rule violation because the code violation supports the same or greater discipline. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)



sending letters to potential landlords on behalf of Doll, asserting that she was holding the money in trust. When Gregory finally told Doll she thought was entitled to all the money as her attorney fees, Doll disputed the claimed fees. But it was too late; Gregory had misappropriated the money.

In the absence of client consent, an attorney may not unilaterally withhold entrusted funds even though he may be entitled to reimbursement. (*Most v. State Bar* (1967) 67 Cal.2d 589, 597; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358.) Withholding and appropriating client funds without client consent clearly supports a violation of section 6106. (*Jackson v. State Bar, supra*, 15 Cal.3d at pp. 380-381; see also *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [depriving client of rightful and timely access to funds by withholding them without authority represents clear and convincing proof of § 6106 violation].) To the extent Gregory earned the money as attorney fees, she was required to bill for her services and resolve any fee dispute with Doll prior to withdrawing the funds. Her decision to unilaterally withdraw the funds constitutes misappropriation in violation of section 6106. (*Brody v. State Bar* (1974) 11 Cal.3d 347, 350 fn. 5 [attorney may not unilaterally determine own fee and withhold trust funds to satisfy it even if entitled to reimbursement for services].)

## II. LEVEL OF DISCIPLINE

The State Bar must establish aggravating circumstances by clear and convincing evidence, while Gregory 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).)<sup>7</sup>

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<sup>7</sup> Unless otherwise noted, all further references to “standard(s)” are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**A. Aggravation**

The hearing judge found three factors in aggravation and we agree. First, Gregory committed multiple acts of misconduct in two client matters over several years. (Std. 1.2(b)(ii).) Second, her acts of misconduct were surrounded by or followed by bad faith, dishonesty, concealment, and overreaching. (Std. 1.2(b)(iii).) Gregory lied to Ng about the reason the funds were missing; misled Doll by stating she could not disburse the funds because of an attorney's lien when the funds were already gone; misrepresented to Doll's potential landlords that she held funds in trust; and ultimately made misrepresentations to the court when she claimed a right to Ng's funds as attorney fees even though she previously admitted her obligation to repay Ng. Gregory's dishonesty is a serious aggravating factor. Finally, she significantly harmed her clients. (Std. 1.2(b)(iv).) Gregory caused both of her clients to suffer substantial financial harm and has not repaid the amounts owed to date.

**B. Mitigation**

The hearing judge found that Gregory cooperated with the State Bar by entering into an extensive stipulation, which reduced the trial time. (Std. 1.2(e)(v).) Gregory argues that she is entitled to more mitigation for her good character, pro bono work and discipline-free record. We agree with the hearing judge that Gregory proved, by clear and convincing evidence, only her cooperation with the State Bar.

As to her good character, Gregory submitted nine declarations, including eight clients and her son. None of the declarants mentioned any awareness of Gregory's pending discipline matters. There is no evidence of the impact, if any, the serious culpability findings against Gregory would have had on the declarants' opinions of Gregory's character. Since Gregory chose to offer the character testimony only by declaration, the witnesses were not subject to cross-examination on this important issue and their testimony does not satisfy the basic

foundational requirement of this mitigating standard. (Std. 1.2(e)(vi) [references who are aware of full extent of member's misconduct].) Further, we do not consider Gregory's clients and her son to constitute a "wide range of references in the legal and general communities." (*Ibid.*) Consequently, the declarations do not constitute clear and convincing evidence of good character for purposes of mitigation. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 support letters not "significant" mitigation because witnesses unfamiliar with details of misconduct]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges was entitled to limited mitigation because not broad range of references].)

As for her pro bono work, there is insufficient evidence regarding the nature or extent of it as only Gregory testified to her efforts in the most general terms. And finally, Gregory was admitted in August 2003 and had been practicing only five years when her misconduct started; such a short discipline-free time period is insufficient for mitigation. (*In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years of practice prior to misconduct not mitigating].)

### **C. Discipline Analysis**

We start with the standards in determining the appropriate discipline to recommend. According to standard 1.6(a), we should consider the most severe discipline provided by the various standards applicable to the misconduct. Standard 2.2(a) is the most severe,<sup>8</sup> and calls for disbarment for misappropriation unless the amount of money is insignificant or the most compelling mitigating circumstances clearly predominate. Neither exception applies here. Gregory misappropriated over \$112,000, a significant amount, and she failed to establish

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<sup>8</sup> Other relevant standards include: 2.2(b), at least three-month actual suspension for violating CTA rules; and 2.6, disbarment or suspension for violating a court order, depending on gravity of the offense or harm, if any, to the victim, with due regard to the purposes of discipline.

compelling mitigation that clearly outweighs the serious factors in aggravation, particularly her dishonesty.

While we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994), there is no reason to depart from standard 2.2(a) in this case. The facts in the Ng case alone are egregious enough to justify Gregory's disbarment. Not only did she steal a significant amount of money, she lied to Ng about the reason the funds were missing and then lied to the court to defend against her reprehensible conduct. Gregory's extensive dishonesty significantly aggravates her misconduct. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128 ["fraudulent and contrived misrepresentations to the State Bar may perhaps constitute a greater offense than misappropriation"].) Finally, her refusal to accept responsibility for her wrongdoing despite the overwhelming evidence, compels us to recommend her disbarment to protect the public from future misconduct.

To promote consistency, we look to prior cases to determine the level of discipline proportionate to an attorney's misconduct. The decisional law involving intentional misappropriations clearly supports disbarment as the discipline proportionate to Gregory's misconduct. (*Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for over \$10,000 misappropriation from multiple clients and failure to return files with no priors in five years]; *In re Kelley* (1988) 45 Cal.3d 649 [disbarment for \$20,000 misappropriation and failure to account with no priors in seven years].)

### **III. RECOMMENDATION**

For the foregoing reasons, we recommend that Patricia A. Gregory be disbarred and that her name be stricken from the roll of attorneys. We further recommend that:

1. She must make restitution to Luwain Ng in the amount of \$74,162.50 plus 10% interest per annum from April 23, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Ng, plus interest and costs, in accordance with section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation.
2. She must make restitution to Denise Doll in the amount of \$27,500 plus 10% interest per annum from July 30, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Doll, plus interest and costs, in accordance with section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation.<sup>9</sup>
3. She 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.
4. 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.

#### **IV. ORDER**

The order that Gregory be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective March 19, 2011, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.

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<sup>9</sup> Gregory is entitled to credit for any payments made to Ng or Doll, upon proof that is satisfactory to the Office of Probation.