PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed July 7, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of REGINALD PEREZ MASON, A Member of the State Bar, No. 243934.	)	Case Nos. 12-O-15089; 12-O-17147 (Cons.) OPINION AND ORDER

A hearing judge recommended that Reginald Perez Mason be disbarred for committing ethical violations in two client matters beginning two years after he was admitted to practice law. His most serious misconduct included misappropriating nearly $48,500 in one client matter and over $20,000 in another.

Mason appeals. He contests certain culpability findings and requests discipline less than disbarment. The Office of the Chief Trial Counsel of the State Bar (OCTC) also appeals. It supports Mason's disbarment, but urges us to: (1) find that the $48,500 misappropriation was intentional rather than grossly negligent, as the hearing judge found and as stipulated to by Mason; and (2) clarify the intentionality of the second misappropriation and find that Mason misappropriated a higher dollar amount than the hearing judge found.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings with some modifications, most notably that Mason intentionally misappropriated approximately $48,500 from one client and, with gross negligence, misappropriated over $20,000 from a second client. We adopt the disbarment recommendation.

I. PROCEDURAL BACKGROUND

Mason was admitted to the State Bar of California on August 17, 2006. He has no prior record of discipline. On April 26, 2013, OCTC filed a five-count Notice of Disciplinary Charges (NDC) in case number 12-O-15089 related to Mason's client, Juan Hastings (Hastings matter). On May 15, 2013, OCTC filed a four-count NDC in case number 12-O-17147 related to another client, Hazel Dean (Dean matter). On June 28, 2013, the two cases were consolidated.

A six-day trial was held on January 22 and 23, February 24 and 25, and April 10 and 18, 2014. During trial, the parties entered into a written stipulation as to undisputed facts and admission of exhibits. In addition, the parties orally stipulated to certain facts and culpability, including that Mason misappropriated more than $48,000 by gross negligence in the Dean matter.[1] On July 16, 2014, the hearing judge issued his decision, finding culpability on seven of the nine counts and recommending Mason's disbarment.

II. THE DEAN MATTER (12-O-17147)[2]

A. Intentional Misappropriation of Over $48,000

1. Facts

On September 17, 2007, Hazel Dean entered into a written agreement to hire Mason to represent her as the administrator of the estate of her mother, Elizabeth Hargis (the Estate). Their agreement confirmed that Dean engaged Mason "to provide advice and representation with respect to probating the Estate of Elizabeth Hargis" and stated that "[t]he scope of services contemplated herein involves preparing appropriate petitions and schedules for probating the Estate of Elizabeth Hargis." Per the agreement, Mason was entitled to $9,200 as legal fees when the probate closed. On October 27, 2007, Dean was appointed as the Estate administrator.

[1] The oral stipulations at trial included amending portions of the NDC in the Dean matter.

[2] We base the facts on the written stipulation, trial testimony, oral stipulations at trial, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

On November 29, 2008, Dean gave Mason a $48,500 cashier's check payable to "MASON & MASON LLP ESTATE TRUST ACCOUNT OF ELIZABETH HARGIS." Dean and Mason had met and determined that this was the approximate amount needed to pay the Estate's expenditures, which included a Medi-Cal bill, credit card bill, administrative fees, and a mortgage payoff on her mother's home in Los Angeles (the Estate Home). Dean obtained the funds by refinancing her own home. On December 4, 2008, Mason deposited the $48,500 in his client trust account (CTA), which contained $35.53, bringing the balance to $48,535.53.

Within one month, Mason had withdrawn the entire $48,500. On December 8, 2008, he withdrew $9,200 for his legal fees before the probate closed. And on more than 20 occasions between December 5 and 30, 2008, he issued checks and made online transfers unrelated to the fees and expenses of the Estate. These withdrawals depleted his CTA balance to $21.78.

2. Culpability

Count One: Rules of Professional Conduct, Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account][3]
Count Two: Business and Professions Code, Section 6106 [Moral Turpitude (Misappropriation)][4]

Count One alleges that Mason failed to maintain $48,478.22 in his CTA on behalf of the Estate in violation of rule 4-100(A). During trial, Mason stipulated to culpability, which the hearing judge adopted. We affirm, but assign no additional weight to this rule violation because the misconduct underlying the section 6106 violation in Count Two supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

[3] Rule 4-100(A) requires an attorney to deposit and maintain in a trust account "[a]ll funds received or held for the benefit of clients." All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[4] Section 6106 states in relevant part: "[t]he commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." All further references to sections are to the Business and Professions Code.

Count Two alleges that Mason violated section 6106 by misappropriating $48,478.22. The hearing judge accepted Mason's oral trial stipulation that he misappropriated this amount, through gross negligence, and found him culpable. OCTC, however, reserved the right to argue that the misappropriation was intentional. OCTC makes this argument on review, and we find the record supports it. Within one month of receiving the $48,500, Mason prematurely withdrew his $9,200 fee without a court order.[5] He also removed the remaining funds for purposes unrelated to the Estate without Dean's knowledge or authorization. Given the timing, frequency, and purpose of the withdrawals, we conclude that Mason's misappropriation was intentional.

Mason's claim that he withdrew the money as fees for legal work for Dean lacks evidentiary support. Dean testified that Mason knew the money was to be used for Estate expenses because together they had calculated that approximately $48,500 was needed for this purpose. The hearing judge found Dean's testimony credible, and we adopt this finding given Mason's lack of credible evidence to the contrary. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].)

Further, when Dean repeatedly requested the balance of the Estate's funds, Mason never informed her that he withdrew those funds as legal fees. If he believed he was entitled to the money, as he claims, he could, and surely would, have so informed Dean. And even if he were entitled to fees, which we do not find, he may not unilaterally determine the amount and then utilize trust funds to satisfy their payment. (*Brody v. State Bar* (1974) 11 Cal.3d 347, 350, fn. 5.)

[5] Rule 7.700 of the California Rules of Court provides that "the attorney for the personal representative must not receive statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment."

B. Misrepresentations and Failure to Pay Client Funds

1. Facts

During the probate of the Estate, which lasted more than four years, Dean sought to purchase her brother Eural Lauderdale's interest in the Estate Home. On August 3, 2012, Dean and Lauderdale entered into an agreement whereby Lauderdale would deed his interest in the Estate Home to Dean in exchange for $77,000. The escrow was to close in 60 days on October 2, 2012. Per the agreement, Dean made a $20,000 payment to Palm West Escrow (PWE) on August 22, 2012.

In the weeks that followed, Dean sought to close escrow early and repeatedly asked Mason to send the balance of the Estate's funds (after payment of expenses) to PWE.[6] She told him that she calculated that balance to be $17,347. The hearing judge agreed with Dean's calculation and found that, as of August 23, 2012, the Estate's funds in Mason's CTA should have been at least $17,347. In fact, his CTA held only $10.82, and remained at that balance until September 20, 2012. From late August until the first week of October 2012, PWE, Dean, and Lauderdale's counsel sent emails inquiring about the outstanding funds due to PWE. Mason responded with various explanations for his delay.

For example, on August 30, 2012, Mason sent Dean an email stating that a capital gains tax issue had arisen, and that escrow should close by September 21, 2012. A few days later, on September 5, 2012, Mason replied to Dean's email requesting that he send the $17,347 to PWE: "You and I are in agreement as to the balance. That is not an issue. I am waiting on the final estimate settlement statement so you will know how much you need to bring in." Then, after Dean delivered additional funds to PWE, an escrow officer asked Mason if the remaining

[6] The various Estate expenses (with the exception of Dean's administrator fee) were paid in full, although the source of those payments is unclear from the record.

amount, identified as $17,357.20, would be delivered before September 21, 2012. Mason replied the same day: "Got it. Yes." But Mason did not deliver the money.

On September 28, 2012, Lauderdale's counsel emailed Mason: "Escrow indicated that the 17k has not been wired. Everyone is getting concerned. Please advise if there is a problem." Mason responded: "Not a problem, wrapping everything up by Monday." Lauderdale's counsel questioned Mason: "Please tell me whether or not all of the funds necessary to close this escrow are still in your attorney client trust account?" He also warned Mason that his delay in paying PWE exposed Dean to various risks, including a "serious risk of liability." Mason eventually admitted to Lauderdale's counsel that he had not maintained adequate funds in his CTA to pay PWE.

On October 1, 2012, Dean again emailed Mason about the escrow balance. This time, Mason replied that there was a "[s]imple misunderstanding as to the close date." The hearing judge found this statement was not true and that Mason knew the closing date but did not have the funds to meet the deadline.

The escrow closing date was eventually extended. On October 4, 2012, Mason deposited $17,200 in his CTA and electronically wired it to PWE. This left $157.20 owing to escrow, which Dean paid. The hearing judge found that Mason's $17,200 payment reimbursed the Estate of all funds. Escrow closed on October 12, 2012.

2. Culpability

Count Three: Section 6106 [Moral Turpitude (Misrepresentation to Client)]

Count Three alleges that Mason committed an act of moral turpitude in violation of section 6106 by: (1) concealing from Dean that his CTA lacked the escrow balance of $17,347; (2) misrepresenting to Dean, Lauderdale's counsel, and PWE that he would deliver the funds to PWE before the close of escrow; and (3) misrepresenting to Dean that he had delayed sending

the funds to wait for the final settlement statement and due to a misunderstanding about the escrow closing date. The hearing judge found Mason culpable, and we agree.

In Mason's emails to PWE, Dean, and/or Lauderdale's counsel, he concealed the fact, even when directly asked, that he did not have $17,347 in his CTA to pay PWE. Instead, he offered excuses for the delay that amounted to misrepresentations. When it comes to moral turpitude, "[n]o distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]" (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315; accord *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 213.) Mason argues, without an evidentiary basis, that he did not make any misrepresentations. As noted, he made several false statements to hide the fact that he no longer held the Estate's funds, having misappropriated them almost four years earlier.

Count Four: Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly][7]

Count Four alleges that Mason violated rule 4-100(B)(4) by failing to deliver the Estate balance of $17,347 to PWE until on or about October 4, 2012, more than five weeks after Dean had asked him to do so. The hearing judge correctly found him culpable. (See *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [six-week delay in disbursing funds violated rule 4-100(B)(4) where client demanded payment, attorney made disbursements to himself, and no good reason for holding funds existed].) Mason argues that he promptly paid the funds to PWE by what he thought was the closing date, October 3, 2012. His argument lacks merit. Dean, PWE, and Lauderdale's counsel repeatedly asked him for the funds *before* the closing date to complete escrow early or at least on time. Mason failed to wire the funds to PWE when asked to do so, and thus did not deliver the money promptly, as the rule requires.

[7] Rule 4-100(B)(4) requires an attorney to promptly "pay or deliver, as requested by the client, any funds, securities, or other properties" in the attorney's possession that the client is entitled to receive.

III. THE HASTINGS MATTER (12-O-15089)

A. Facts

In 2009, a dispute arose between Juan Hastings and his roommate, Anthony Norris, over ownership of their apartment. Hastings retained Mason on February 27, 2009 to represent him in a partition lawsuit. Mason and Hastings entered into a written retainer agreement (retainer agreement) that capped Mason's fees at $15,000, and stated that it "may not be modified, except by a writing, signed by all of the parties hereto."

In March 2009, Mason filed a complaint in superior court on Hastings's behalf (partition action). During the dispute between Hastings and Norris, a fire damaged the apartment. Norris's insurance policy with Nationwide Insurance Company (Nationwide) covered the fire damage. Thereafter, an estate administrator[8] filed a complaint in intervention in the partition action (intervention cross-action),[9] and Nationwide filed an interpleader complaint to determine who should receive the $141,568.74 in settlement funds for the fire damage (interpleader action). Mason testified that he and Hastings orally agreed that Mason was entitled to $40,000 for representing Hastings in multiple matters, but they never modified the retainer agreement. Mason emailed Hastings that the other related actions "are adding additional costs and legal fees to the bill beyond what was contemplated in the retainer agreement."

Beginning in October 2010 and per Hastings's request, Mason also began representing Hastings's brother, Leonard Conner, in a medical malpractice case. Mason quoted Hastings a minimum fee of $50,000 due to the high-risk nature of the litigation. Hastings agreed that Mason would be paid for his legal fees from the partition action proceeds. Conner testified and

[8] The record does not make clear this party's connection to the partition action.

[9] The same estate administrator also filed a separate action—which Mason referred to as the "Fraud Action" and "fraud lawsuit"—related to the property at issue in the partition action. Details about this other matter and Mason's involvement therein are unclear from the record.

corroborated this arrangement. Hastings did not testify, nor did OCTC rebut this evidence. The hearing judge found that "Hastings agreed to assist his brother and expressly allowed [Mason] to take the funds out of the settlement check from the partition action."

In late November 2010, the partition action settled. Norris and Hastings agreed to accept equal portions of the Nationwide settlement funds from the interpleader action. In early December 2010, the superior court granted Nationwide's request and deemed the partition and interpleader actions to be related cases. On January 10, 2011, the superior court ordered the disbursement of the settlement funds: $69,284.37 to Hastings; $69,284.37 to Norris; and $3,000 to Nationwide's counsel as attorney fees. Soon thereafter, Mason received a $69,284.37 check payable to Hastings and him. Mason advised Hastings that he received the funds and deposited them into his CTA on January 21, 2011.[10] Before this deposit, Mason's CTA contained $5.68.

Immediately, Mason began to make unauthorized withdrawals from his CTA that were unrelated to the Hastings matter. Between January 21 and February 17, 2011, he withdrew all of the funds except $153.05.[11] Mason gave Hastings $10,000 from the amount he withdrew.

In September 2011, Hastings sought to recover his settlement money by filing a lawsuit against Mason for, among other things, fraud, breach of fiduciary duty, breach of contract, and professional negligence. On October 22, 2012, Hastings and Mason executed a confidential settlement agreement and mutual release. The hearing judge found that Mason paid Hastings the settlement funds in full.

[10] Mason's CTA records show that $69,287.37 (not $69,284.37) was credited as the amount of the check on January 25, 2011. The record does not establish whether the extra $3.00 was ever deducted.

[11] During this period, Mason made two deposits totaling $14,500, neither of which appear to be related to the Hastings matter.

B. Culpability

Count One: Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]
Count Two: Section 6106 [Moral Turpitude (Misappropriation)]

Count One alleges that Mason violated rule 4-100(A) by failing to maintain $54,131.32 of Hastings's settlement funds from the partition action in his CTA.[12] Count Two alleges that Mason dishonestly or grossly negligently misappropriated this amount and used the funds for his own purposes, in violation of section 6106.

The hearing judge found that Mason failed to maintain and willfully misappropriated $25,740 of Hastings's funds, not $54,141.32, as the NDC alleges. The judge calculated this amount by identifying specific withdrawals and/or payments by Mason that were unrelated to the Hastings or Conner matters, which the judge deemed "inappropriate." We disagree with the judge's method of calculation and the amount of the misappropriation he found. We also note the judge did not specify whether the misappropriation was intentional or due to gross negligence. As detailed below, the record establishes Mason misappropriated $20,101.32 through gross negligence.

The mere fact that Mason's CTA balance fell below $54,131.32 raises an inference of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [inference of misappropriation if attorney's trust account balance drops below amount attorney should maintain for client].) Thus, Mason must show that a misappropriation did not occur and that he was entitled to the fees he withdrew. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618 [once inference of misappropriation arises, burden shifts to attorney to prove no misappropriation occurred].) He offers three arguments for why he did not misappropriate Hastings's settlement funds.

[12] This total was calculated as follows: $69,284.37 (settlement proceeds) – $15,000 (fees provided in the retainer agreement for work performed on behalf of Hastings) – $153.05 (balance of Mason's CTA on February 17, 2011) = $54,131.32.

First, he argues that he had an oral understanding with Hastings authorizing him to withdraw $40,000 for the multiple matters in which he represented Hastings. We reject this argument. All of Hastings's matters were related to the partition action. They were therefore covered by the retainer agreement's terms, which capped Mason's fees at $15,000, absent written modification that Mason never obtained. Moreover, Mason failed to produce any reliable evidence, such as contemporaneous billing statements or an accounting of fees and costs, to support his argument. (See *Brody v. State Bar*, *supra*, 11 Cal.3d at p. 350, fn. 5 [attorney may not unilaterally determine own fee and withhold trust funds to satisfy it even if entitled to reimbursement for services].)

Second, Mason argues that his testimony established that he disbursed $10,000 to Hastings between January and February 2011. We credit his testimony as true; it was unrebutted.

Third, Mason argues that Hastings orally authorized him to use the settlement funds to represent Conner in the medical malpractice case. We agree. Failure to provide a written fee agreement generally renders an oral arrangement voidable but, even so, the attorney may collect a reasonable fee. (§ 6148, subd. (c); see also *Flannery v. Prentice* (2001) 26 Cal.4th 572, 589.) Though Mason violated rule 3-310(F) by accepting payment from Hastings for Conner's matter without Conner's informed written consent,[13] the hearing judge found that Hastings "expressly allowed" Mason to use his settlement proceeds for Conner's case. Given this finding, we conclude that Mason is entitled to reasonable attorney fees for Conner's case. Because the hearing judge did not determine the value of Mason's work or the amount Hastings agreed Mason could withdraw, we calculate the total fees Mason was entitled to receive for his work on Conner's case.

[13] We do not find additional culpability for this rule violation because this misconduct was not charged in the NDC.

Mason and Conner's unrebutted trial testimony and Mason's billing statement showed that Mason earned $24,030 on Conner's case through February 17, 2011.[14] Resolving all reasonable doubts in Mason's favor (*Alberton v. State Bar* (1984) 37 Cal.3d 1, 11), he was entitled to withdraw this amount from his CTA. Considering the $10,000 Mason disbursed to Hastings, Mason misappropriated $20,101.32.[15] We also clarify that the misappropriation was by gross negligence because Mason carelessly maintained his CTA records and did not have a written fee agreement for the Conner matter or a written modification to Hastings's retainer agreement. (See *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude for gross carelessness in failing to maintain trust account]; *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 54-56 [attorney who never documented consent he claimed client gave him misappropriated client's funds due to gross carelessness].)

Finally, we assign no additional weight to the rule 4-100(A) violation because the misconduct underlying the moral turpitude charge supports the same or greater discipline. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

Count Three: Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Funds][16]
Count Four: Section 6106 [Moral Turpitude (Misrepresentation to Client)]

OCTC does not challenge the hearing judge's dismissal of Count Three, which alleges that Mason failed to notify Hastings of the receipt of the settlement funds, or of Count Four,

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[14] This total was calculated (assuming a rate of $300 per hour) as follows: $12,000 (40 hours from October 2010 to January 1, 2011) + $3,090 (10.3 hours from January 1 to 31, 2011) + $8,940 (29.8 hours from February 1 to 17, 2011) = $24,030.

[15] This total was calculated as follows: $69,284.37 (settlement proceeds) – $15,000 (fees for work performed on behalf of Hastings) – $24,030 (fees for work performed on behalf of Conner) – $10,000 (amount Mason disbursed to Hastings) – $153.05 (balance of Mason's CTA on February 17, 2011) = $20,101.32.

[16] Rule 4-100(B)(1) provides that an attorney shall "[p]romptly notify a client of the receipt of the client's funds, securities, or other properties."

which alleges that Mason made a misrepresentation to Hastings in violation of section 6106. We affirm the dismissals as supported by the record.

Count Five: Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Count Five alleges that Mason willfully violated rule 4-100(B)(4) by failing to pay Hastings $20,101.32 in settlement funds until October 2012, or 21 months after Mason initially received them. The hearing judge found Mason culpable, and we agree. (See *In the Matter of Berg*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 735 [six-week delay violated rule 4-100(B)(4)].)

IV. MASON'S OTHER CHALLENGES LACK MERIT[17]

A. The Hearing Judge Properly Denied Mason's Counsel's Trial Continuance Request

The hearing judge denied Mason's counsel's oral request for a trial continuance because Mason was unavailable for one day of trial. We find no error of law or abuse of discretion in the judge's ruling. First, Mason was represented by counsel. Second, the trial dates had been set for over three months and Mason's counsel had previously received two continuances. Third, Mason suffered no prejudice because his counsel cross-examined the witnesses who testified that day, and Mason later testified to his version of events. (See *Jones v. State Bar* (1989) 49 Cal.3d 273, 287 ["Continuances are generally disfavored in disciplinary proceedings, and the [judge] has discretion to exercise reasonable control over the proceedings in order to avoid unnecessary delay. [Citations.]"]; State Bar Ct. Rules of Prac., rule 1131.)

B. OCTC Reserved the Right to Argue Misappropriation Was Intentional

Mason argues that OCTC was bound by the oral stipulation in the Dean matter that he misappropriated $48,478.22 by gross negligence. We reject his argument because OCTC specifically reserved the right to prove that Mason misappropriated the Estate's funds by a standard other than gross negligence, i.e., intentionally. Moreover, Mason conceded in his

[17] Having independently reviewed all arguments Mason raised, those not specifically addressed herein have been considered and are rejected as lacking merit.

opposition brief on review that "at trial, [OCTC] was given an opportunity to prove intentional and dishonest misappropriation by Mason."

C. Unsubstantiated Claims that OCTC Destroyed or Suppressed Part of Escrow File

Mason contends that OCTC destroyed or suppressed exculpatory emails that would have shown his statements to Dean about a capital gains tax issue were not misrepresentations. He alleges that these emails were missing or purposely omitted from PWE's escrow file. We reject his claim because Mason did not admit into evidence the allegedly missing emails. Moreover, even if he proved the capital gains tax issue was true, it does not change our finding that he made multiple misrepresentations to conceal that he had misappropriated the Estate's funds.

D. Meritless Claims Against OCTC Investigator and Counsel

Mason alleges that an OCTC investigator destroyed notes she took during a meeting with Mason and an OCTC counsel. The investigator, however, testified that she did not take notes at the meeting. Mason claims she lied, but presented no evidence to rebut her testimony. For lack of evidence, we reject Mason's allegations.

V. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[18] requires OCTC to establish aggravating circumstances by clear and convincing evidence.[19] Standard 1.6 requires Mason to meet the same burden to prove mitigation.

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[18] Effective July 1, 2015, the standards were revised and renumbered. Because these requests for review were submitted for ruling after the July 1, 2015 effective date, we apply the revised version of the standards. All further references to standards are to this source.

[19] 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. Aggravation

1. Multiple Acts of Wrongdoing

The hearing judge found that Mason's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).) We agree and assign significant weight given culpability on seven counts.

2. Significant Harm to Clients

The hearing judge correctly found that Mason's misappropriations caused significant harm to both clients. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) As to Dean, Mason delayed paying over $17,000 to PWE. Dean testified that Mason's failure to promptly pay escrow irritated her "real bad," exacerbated her stress of trying to resolve her mother's estate, and caused her to be "really upset." As to Hastings, although Mason deprived him of his settlement funds for more than a year, OCTC did not present evidence establishing any emotional or financial impact. Accordingly, we assign limited weight to the overall harm Mason caused both clients.[20]

3. Indifference

Unlike the hearing judge, we find that Mason displayed indifference and a failure to acknowledge his wrongdoing. (Std. 1.5(k) [indifference toward rectification or atonement for consequences of misconduct is aggravating]; *Weber v. State Bar* (1988) 47 Cal.3d 492, 506 [lack of remorse and failure to acknowledge wrongdoing are aggravating factors].) He stipulated to misappropriation by gross negligence of nearly $48,500 in the Dean matter, yet maintains he was entitled to the money as attorney fees. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct.

[20] We reject Mason's claim he is entitled to mitigation for lack of harm. (Std. 1.6(c).)

Rptr. 502, 511.) Mason has not done this. We assign moderate aggravating weight to his indifference.

B. Mitigation

1. No Mitigation for Lack of Prior Discipline

Mason was admitted to practice law in 2006. His misconduct began in 2008. The hearing judge properly declined to assign mitigation credit for Mason's two years of discipline-free practice. (Std. 1.6(a) [absence of prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur is mitigating]; *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [no mitigating credit where attorney had practiced for only four years prior to misconduct].)

2. No Mitigation for Extreme Emotional Difficulties

Mitigation is available for extreme emotional difficulties if: (1) Mason suffered from them at the time of his misconduct; (2) the difficulties are established by expert testimony as being directly responsible for the misconduct; and (3) the difficulties no longer pose a risk of future misconduct. (Std. 1.6(d).) The hearing judge assigned some weight to Mason's emotional and personal difficulties due to stress he suffered during the three years he spent trying to overturn a $1.1 million judgment against him. Mason testified that he was in a "continual fog" as a result of the judgment, and became suicidal, drank excessively, and experienced marital problems during the time of some of his misconduct. Ultimately, he sought treatment, attended Lawyer Assistance Program meetings, and relied on his faith.

We afford no mitigation credit because Mason did not establish a nexus between his difficulties and his misconduct. Mason's claim that he committed his misconduct because personal difficulties distracted him is inconsistent with his argument that he did not misappropriate Dean's Estate funds since he had earned them as legal fees. (See *In the Matter of*

Elkins (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigative credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].) Also, Mason did not prove he no longer poses a risk for future misconduct, given his failure to acknowledge even the grossly negligent misappropriation he stipulated to in the Dean matter. (*In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, 386 [no mitigation for extreme emotional distress where evidence fails to establish that difficulties are resolved or that respondent no longer poses risk].)

3. Cooperation with State Bar

The hearing judge found that Mason cooperated during trial by stipulating to facts and to certain culpability. (Std. 1.6(e) [mitigation for spontaneous cooperation to victims or State Bar].) We agree and assign this circumstance moderate mitigating credit. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more mitigating weight accorded when culpability and facts admitted].)

4. Good Character

Mitigation is afforded for extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct. (Std. 1.6(f).) The hearing judge properly assigned minimum weight for favorable testimony from Mason's four character references, who included a judge, a pastor, a legal clinic executive director, and a client. Though the judge testified that Mason has high integrity and good character (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"]), Mason's four references are insufficient to warrant more credit as they do not represent a broad spectrum of the community or establish extraordinary good character, as the standard requires. (See *In the Matter of Riordan* (Review Dept. 2007) 5

Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses afforded diminished weight in mitigation].)

5. Pro Bono Work and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Mason testified, and documentary evidence proved, that he encouraged his clients to contribute to the Feed the Children charity and that he volunteered in free legal clinics. The Executive Director of one clinic submitted a declaration stating that Mason was "a dedicated, sincere, and honest advocate, often going above the call of duty," and that his volunteerism "has and continue[s] to have a tremendous impact on our ability to provide and service as many people as we do in the community." We agree with the hearing judge that Mason's evidence about his community service merits mitigating credit.

6. No Mitigation for Remorse

The hearing judge accorded Mason some mitigation for recognizing his wrongdoing because he "expressed sincere remorse" during trial, eventually repaid all misappropriated sums, and claimed to have improved his office management practice. (Std. 1.6(g) [mitigation for prompt objective steps demonstrating spontaneous remorse, recognition of wrongdoing, and timely atonement].) We assign no credit. Mason did not take *prompt* objective steps demonstrating spontaneous remorse, as the standard requires. His expressions of remorse at trial on their own do not merit mitigation. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 [expressing remorse is "an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline"].)

7. No Mitigation for Restitution

Mason is not entitled to mitigation for repaying the misappropriated sums. He paid Hastings, but only after a lawsuit was filed. He also paid a significant portion of Dean's funds

into escrow but, again, only after weeks of urgent requests by Dean, PWE, and Lauderdale's counsel. (Std. 1.6(j); *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution under threat or force of disciplinary or civil proceedings not mitigating].)

VI. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE[21]

Our discipline analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Standard 2.1(a) is most applicable and provides that disbarment is appropriate for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[22]

In the Dean matter, Mason intentionally misappropriated $48,478.22, a significant amount. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 deemed significant].) Additionally, the misappropriation was surrounded by misrepresentations. Moreover, Mason's mitigation is not compelling nor does it predominate over his aggravation and his misconduct.

Misappropriation of client trust funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) "Even a

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[21] The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession; maintain high professional standards; and preserve public confidence in the legal profession. (Std. 1.1.)

[22] The following standards also apply: 2.2(a) (actual suspension of three months is presumed sanction for failure to promptly pay entrusted funds); 2.2(b) (suspension or reproval is presumed sanction for any other violation of rule 4-100); and 2.11 (disbarment or actual suspension is presumed sanction for act of moral turpitude, with degree of sanction depending on magnitude of misconduct, extent to which it harmed or misled victim, its impact on administration of justice, and extent to which it related to member's practice of law).

single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

Citing *Weller v. State Bar* (1989) 49 Cal.3d 670, as well as his mitigation evidence, Mason argues for discipline less than disbarment. *Weller* involved an attorney with two prior disciplines who misappropriated client trust funds and received a three-year suspension. We find *Weller* distinguishable because the Supreme Court gave mitigation credit to Weller for fully and voluntarily paying restitution (*id.* at pp. 675-676), while we assigned no mitigation for Mason's late restitution payment.

Further, we do not recommend a more lenient sanction than disbarment given Mason's culpability for moral turpitude, the harm he caused his clients, his limited mitigation, and the short time he practiced law before committing serious misconduct. (Stds. 1.2(i), 1.7(c) [lesser sanction than recommended in standard may be warranted where misconduct is minor, little or no injury to client, public, or profession, and attorney able to conform to ethical responsibilities in future]; see *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) Accordingly, disbarment is necessary to protect the public, the courts, and the legal profession.[23]

VII. RECOMMENDATION

We recommend that Reginald Perez Mason be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

[23] E.g., *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 (disbarment for $20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party, despite no prior record and no aggravation); *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarment for $27,000 misappropriation, even though 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm).

We further recommend that 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 days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Reginald Perez Mason be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective July 19, 2014, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.