PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed September 23, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 09-O-16850 (11-O-18668)
	)	
DANIEL HOOMAN AFARI,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 237832.	)	
	)	

Respondent Daniel Hooman Afari appeals a hearing judge's disbarment recommendation after finding Afari culpable of six ethical violations in two matters. In one client matter, he: (1) misappropriated $9,815 through gross negligence; (2) failed to maintain client funds in trust; (3) failed to competently perform; (4) failed to promptly pay client funds; and (5) failed to cooperate with the State Bar's investigation. In the second matter, he failed to cooperate with the State Bar's investigation. The hearing judge found two factors in aggravation (multiple acts and harm) but gave Afari only minimal mitigation for entering into a stipulation of facts and no mitigation for paying full restitution to his client or for his mental health problems.

Afari raises four primary issues on appeal: (1) his misappropriation did not involve moral turpitude; (2) he did not commit multiple acts of misconduct in aggravation as many charges and supporting facts are duplicative; (3) he is entitled to mitigation credit for paying restitution and for his mental health problems; and (4) disbarment is excessive in light of his misconduct and mitigation. The State Bar's Office of the Chief Trial Counsel (State Bar) urges us to adopt the disbarment recommendation.

Based on our independent review (Cal. Rules of Court, rule 9.12), we find less culpability and aggravation and more mitigation than the hearing judge. In particular, as additional

mitigating factors, we consider Afari's mental health problems that coincided with his misconduct, his full payment of restitution, and his cooperation. Since Afari's most serious misconduct is a single instance of misappropriation by gross negligence, and in light of the added mitigating circumstances, we consider the disbarment recommendation excessive and unsupported by comparable case law. Under the facts unique to this case, we conclude that the goals of attorney discipline will best be met by a one-year actual suspension that continues until Afari proves his rehabilitation, present fitness, and learning and legal ability under the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).[1]

I. FACTS AND CULPABILITY

The parties filed a factual stipulation. We summarize the factual findings based on this stipulation and the trial evidence.

A. General Background

Afari was admitted to the Bar on October 15, 2005. Shortly thereafter, he started a law practice known as Beverly Hills Law Firm (BHLF). He opened and was responsible for the firm's client trust account (CTA). Two law school friends, Richard Pourgol and Mosafar Morovati, worked at the firm under his supervision while they waited to pass the Bar exam and become licensed. Once Pourgol and Morovati became licensed in 2006, they joined Afari as partners of BHLF, and at least Morovati became a signatory on the firm's CTA.

In July 2008, Morovati terminated his relationship with BHLF, although not all financial issues between the partners were resolved. Morovati remained a signatory on the CTA after his departure. Then, in about December 2008, Afari stopped practicing law and closed the law firm due to his debilitating depression. His depression and related problems permeate his misconduct.

[1] All further references to standards are to this source.

B. Case Number 09-O-16850 – Farshadmand Matter[2]

In 2006, Shahram Farshadmand hired Afari to represent him in a civil action. Afari obtained a default judgment for him, and negotiated a $33,000 settlement of that judgment in November 2007. Part of the settlement was to be paid directly to Farshadmand in 26 installments. Between December 2008 and August 2009, Farshadmand lost track of the installments, and tried to reach Afari. By that time, Afari had stopped practicing law and BHLF was closed. Unable to reach him, Farshadmand filed a State Bar complaint in August 2009.

In July 2011, the State Bar closed its investigation of Farshadmand's complaint. However, it reopened Afari's file in January 2012. Afari then received two letters from a State Bar investigator in January and February 2012. He stipulated that he did not respond to the letters until after formal charges were filed.

Count 3 – Failure to Cooperate (Bus. & Prof. Code, § 6068, subd. (i))[3]

Section 6068, subdivision (i), requires an attorney to "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself." Given Afari's stipulation that he did not timely respond to two State Bar letters, we adopt the hearing judge's finding that Afari failed to cooperate.

C. Case Number 11-O-18668 – Gonzalez-Velasquez Matter

In February 2006, Josephina Gonzalez-Velasquez hired Afari to represent her in a personal injury matter arising from an automobile accident in which she incurred over $10,000 in

[2] Count 1 (failure to respond to client inquiries) was dismissed by the hearing judge for insufficient proof, and Count 2 (failure to render accounts of client funds) was dismissed by motion of the State Bar. Since neither dismissal is challenged on review, and both are supported by the record, we will not discuss these counts further. The sole remaining violation in this matter is Afari's failure to cooperate in the investigation.

[3] All further references to sections are to the Business and Professions Code.

medical bills. Morovati had primary responsibility for this case once he became a licensed attorney and a BHLF partner in December 2006.

In August 2007, Morovati wrote to Gonzalez-Velasquez's insurance carrier requesting payment of her medical bills. Between October and November 2007, the insurance carrier sent nine checks totaling $9,815.55 to Gonzalez-Velasquez and BHLF as medical reimbursement. Afari deposited the final insurance check into the firm's CTA in February 2008.

When Afari closed BHLF in December 2008, no payments had been made to Gonzalez-Velasquez or her medical providers. He should have retained $9,815.55 in the firm CTA, but the balance fell to $1,056.82 in February 2009 when Afari withdrew money from the CTA believing that all client funds had been disbursed and any remaining amount constituted earned fees. He was unaware that Gonzalez-Velasquez and her medical providers had not been paid, and assumed that Morovati had finalized that matter. He also admits that he did not maintain the required CTA records and failed to reconcile the monthly CTA balance. This misconduct occurred during the time that Afari was suffering from depression. As a result, he failed to properly manage the firm, and ultimately closed the practice. However, he did not close the CTA, and retained control over it.

In early 2009, Afari's former partners, Pourgol and Morovati, claimed they were owed attorney fees from past cases. In March 2009, Afari deposited $19,725 of his own money into the CTA to cover any potential discrepancy. The following month, Morovati surreptitiously transferred $9,750 from the CTA into the firm's operating account, which was also still open.[4] Afari did not discover the unauthorized transfer due to his failure to reconcile and properly close the CTA. The CTA balance remained relatively unchanged until December 2009, when Afari

[4] Morovati then wrote a check on the operating account to obtain the funds for himself. His effort was unsuccessful because the account had been modified to require two signatures after he left the firm.

paid another client from the account, reducing the balance to $1,631.82. This amount remained until April 2010 when the account was closed and all funds were removed by an IRS levy against the CTA.

In January 2010, Afari placed himself on voluntary inactive status with the State Bar due to his ongoing mental health problems. It was not until October 2010 that Gonzalez-Velasquez learned her medical bills were unpaid when she received a collection notice. Unable to reach Afari, she filed a State Bar complaint. Afari received two letters from a State Bar investigator in January and February 2012. But he did not open them as he felt emotionally unable to face the consequences of terminating his law practice. Afari stipulated that "he never provided a substantive response to the allegations in this matter."

When the State Bar filed charges against Afari on May 15, 2012, he discovered for the first time that Gonzalez-Velasquez's funds had not been properly distributed. In July and August of 2012, Afari sent letters to her to resolve the outstanding funds issue, but she did not respond. On September 7, 2012, five days before trial, Afari sent Gonzalez-Velasquez $13,175 representing the funds he should have been holding on her behalf plus 10% interest.

Count 4 – Moral Turpitude Misappropriation (§ 6106)[5]

The State Bar charged Afari with committing an act involving moral turpitude, dishonesty or corruption because he misappropriated Gonzalez-Velasquez's funds. The hearing judge concluded the misappropriation involved moral turpitude because Afari's prolonged failure to properly supervise his CTA was grossly negligent. Afari contends he was not grossly negligent in managing his CTA. Alternatively, he contends that even if he were, his gross negligence did not rise to the level of moral turpitude. We find neither argument persuasive, and adopt the hearing judge's culpability finding.

[5] This section makes it a cause for disbarment or suspension when an attorney commits "any act involving moral turpitude, dishonesty or corruption . . . ."

Afari admits he "was negligent in supervising the CTA transactions and failing to reconcile the CTA during the latter part of 2008 . . . ." However, his neglect of his CTA continued beyond 2008 for well over a year until the IRS levied against the account in April 2010, and thereafter closed it. Afari further failed to properly audit the CTA or remove Morovati from the account when he left the firm in 2008. Then in March 2009, Afari failed to conduct an audit despite realizing that he had improperly withdrawn funds and despite depositing $19,750 of his own money to "be safe." And even after making that deposit, Afari failed to notice that Morovati had improperly transferred $9,750 from the CTA.

In sum, Afari's failure to properly supervise his CTA for nearly a year and a half resulted in repeated failures to maintain the required balance. This clearly and convincingly establishes moral turpitude through gross negligence. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409-411 [attorney's failure to properly supervise CTA for nine months resulting in misappropriations in two client matters constituted moral turpitude through gross negligence]; *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 714-715 [attorney's reckless law office management and CTA oversight for more than two years resulting in misappropriation of over $25,000 constituted moral turpitude through gross negligence]; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 [attorney's improper CTA supervision for one year resulting in repeated inadequate CTA balances constituted moral turpitude through gross negligence].)

Count 5 – Failure to Maintain Client Funds in Trust (Rules Prof. Conduct, rule 4-100(A))[6]

The State Bar charged Afari with failing to maintain in his CTA the funds he received on behalf of Gonzalez-Velasquez. At the end of trial, Afari stipulated to culpability on this charge. The hearing judge found Afari culpable since he did not maintain a minimum of $9,815.55 in his CTA on at least two occasions. However, the judge also correctly concluded this count is based on the same underlying facts as Count 4, and gave it no weight in determining discipline. As it is duplicative of Count 4, we dismiss this charge with prejudice. (See *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1307 [although filing duplicative charges are proper if supported by evidence, duplicative finding of misconduct is nevertheless dismissed when identical facts underlie multiple allegations of misconduct].)

Count 6 – Failure to Perform with Competence (Rule 3-110(A))[7]
Count 7 – Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))[8]

The State Bar charged Afari with violating rules 3-110(A) and 4-100(B)(4) "[b]y failing to pay Gonzalez-Velasquez's outstanding medical bills, and by failing to honor the medical liens for Kaiser Permanente and Pasadena Health Center . . . ." The hearing judge found Afari culpable of both counts. However, Afari correctly points out that Counts 6 and 7 rely on the same factual allegations. We find that his misconduct is more aptly charged as a failure to pay client funds promptly. (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct.

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[6] Rule 4-100(A) provides "All funds received or held for the benefit of clients . . . shall be deposited in one or more identifiable bank accounts . . . . No funds belonging to the [attorney] or the law firm shall be deposited therein or otherwise commingled . . . ." All further references to rules are to the Rules of Professional Conduct of the State Bar unless otherwise noted.

[7] Rule 3-110(A) prohibits an attorney from "intentionally, recklessly, or repeatedly fail[ing] to perform legal services with competence."

[8] 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 possession of the member which the client is entitled to receive."

Rptr. 622 [failure to ensure payment of medical lien better addressed by failure to properly pay entrusted funds than failure to perform].) Therefore, we find Afari culpable of Count 7, but dismiss Count 6 with prejudice as duplicative.

Count 9 – Failure to Cooperate (§ 6068, subd. (i))[9]

The State Bar charged, and Afari admits, that he never provided a substantive written response to the misconduct allegations as requested by the State Bar investigator. Accordingly, we adopt the hearing judge's culpability finding of a violation of section 6068, subdivision (i), under this count.

II. MITIGATION OUTWEIGHS AGGRAVATION

The offering party bears the burden of proof for aggravating and mitigating factors. The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)), while Afari has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. Aggravation

The hearing judge found two aggravating factors: (1) multiple acts of misconduct; and (2) significant client harm. On review, the State Bar urges us to also find that Afari committed an additional misappropriation of another client's funds. However, it concedes that this additional misappropriation was neither charged nor raised at trial. We find the record supports only a finding of multiple acts of misconduct in aggravation.

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

Afari contends his misconduct did not involve multiple acts since it arose from the mishandling of a single client settlement. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [two counts of misconduct arising from one transaction did not constitute multiple acts of misconduct].) We disagree. Afari failed to cooperate in two State Bar

[9] The Notice of Disciplinary Charges did not have a Count 8.

investigations involving separate client complaints. Under these circumstances, Afari's four ethical violations in two matters sufficiently establish multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) However, based on the limited nature of the multiple acts, we give this factor minimal weight in aggravation.

2. No Significant Client Harm (Std. 1.2(b)(iv))

The hearing judge found that Afari delayed distributing Gonzalez-Velasquez's medical reimbursement for more than four years. He concluded this delay harmed Gonzalez-Velasquez by: (1) depriving her of the use of the funds; and (2) subjecting her "to the emotional upset of threatened collection efforts." We do not find clear and convincing evidence of these findings in the record.

The funds Afari misappropriated were intended to reimburse medical providers, not compensate Gonzalez-Velasquez directly. In the absence of evidence that she had to pay her medical providers with her own money, her inability to use these funds does not constitute cognizable harm. And the State Bar provided no evidence that Gonzalez-Velasquez suffered emotional distress or that her credit was damaged as a result of her unpaid medical bills. At trial, she confirmed that no lawsuits were ever filed against her for these medical bills. More significantly, Gonzalez-Velasquez never testified that she suffered emotional distress from any collection efforts. For these reasons, we do not adopt this factor in aggravation.

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

The State Bar argues that the record supports a finding that Afari misappropriated other funds based on his $9,300 payment to Peyman Ebrahimian in December 2009. It contends that Afari was required to maintain the $9,300 in the CTA as early as February 2009 when the CTA balance dropped to $1,056.82. The State Bar concedes this allegation was neither charged nor

even discussed at trial. (See Rules Proc. of State Bar, rule 5.44(C) [court may permit amendment to notice to include matters proven, but respondent must have reasonable time to respond and to prepare defense if he objects to evidence].) Consequently, Afari did not have an opportunity to object or respond.[10]

The record on this issue is virtually nonexistent. Morovati agreed to finalize Ebrahimian's personal injury case after Afari closed the law office. The case had settled and Morovati was to negotiate the medical payments but apparently he never did. After Afari was contacted by Ebrahimian in late 2009, Afari reviewed the file and paid him the balance that was reflected on a ledger. There is no evidence as to the basis for the amount paid. We do not know how much the case settled for, whether the settlement funds or any portion of the funds were deposited into the firm's CTA or whether any portion had previously been paid out to or on behalf of Ebrahimian. We must resolve all reasonable doubts in favor of Afari. (*Alberton v. State Bar* (1984) 37 Cal.3d 1, 11.) On this record, we decline to find an additional uncharged misappropriation in aggravation.

B. Mitigation

In mitigation, the hearing judge found only that Afari cooperated with the State Bar during these proceedings. We agree that he cooperated. But we also find that Afari is entitled to nominal mitigation for paying restitution and for his emotional difficulties. The hearing judge correctly denied Afari mitigation for having no prior discipline as he has practiced law for only a few years. Finally, we reject Afari's claim that his good faith in the Gonzalez-Velasquez matter is entitled to mitigation.

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[10] The State Bar did not seek review and raised this issue for the first time in its responsive brief. (*In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 635, fn. 2 [we "seek to discourage the obviously unfair practice of requesting review in a responsive brief of issues not raised by the appellant"].) Under the circumstances, the State Bar's belated request for a finding of uncharged misconduct raises concerns of due process and fairness.

1. Afari Cooperated in this Proceeding (Std. 1.2(e)(v))

Two weeks before trial, Afari entered a stipulation admitting material facts. This aided the State Bar's prosecution of the case and mitigates his misconduct. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [attorney afforded limited mitigation for entering belated stipulations that mostly concerned easily provable facts].) Therefore, Afari deserves mitigation under this factor, but we reduce its weight due to his earlier failure to cooperate during the investigation.

2. Afari Made Restitution (Std. 1.2(e)(vii))

The hearing judge found that Afari's payment of restitution is not mitigating because he did so only after the State Bar filed charges against him. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 708-709 [restitution under threat or force of disciplinary proceedings is not properly considered to have any mitigating effect].) But the judge also found that Afari "testified credibly that he had been unaware prior to receiving [the State Bar's January 2012 investigation letter] that the funds of Gonzalez-Velasquez had not previously been paid." Because Afari admitted he did not open the investigator's letters (for which he has been found culpable), he did not learn of the misappropriation until after formal charges were filed in May 2012. Soon thereafter, he wrote to Gonzalez-Velasquez to resolve the matter, and when she did not respond, he paid her in full in September 2012. In this situation, Afari is entitled to nominal mitigation for his restitution efforts.

3. Afari's Emotional Difficulties Are Relevant (Std. 1.2(e)(iv))

The hearing judge rejected Afari's emotional problems as a mitigating factor under standard 1.2(e)(iv).[11] The judge found that Afari did not establish through expert testimony the

[11] This standard provides mitigation for extreme emotional difficulties if expert testimony establishes the difficulties were directly responsible for the misconduct and the member no longer suffers from such difficulties.

nexus between his emotional difficulties and his misconduct, and he failed to sufficiently prove rehabilitation. We find that the evidence proves Afari's depression, its causal connection to his grossly negligent conduct, and his subsequent efforts at rehabilitation. However, based on the nature and limited extent of the evidence, we consider his emotional difficulties but only provide minimal weight in mitigation. (*In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation is afforded to evidence of attorney's illness despite lack of expert testimony].)

Afari started to suffer from depression in 2008. His symptoms included sadness, difficulty sleeping and eating, and problems coping with normal life. It reached the level where he stopped practicing law and closed the law firm in 2008, and ultimately placed himself on voluntary inactive status in 2010. He remained inactive two years later at the time of trial. Afari sought professional treatment in May 2009, participated in regular treatment sessions, and was placed on antidepressant medication. He testified that his depression is now under control. The State Bar did not rebut Afari's testimony.

While Afari's mental health issues are not a defense to his culpability, we find that they are mitigating and relevant to determine the appropriate degree of discipline. Of primary concern is whether someone who has committed misconduct is likely to do so again. Accepting that Afari's depression contributed to his grossly negligent conduct, his mental health is pertinent to considering whether he is likely to commit future wrongdoing. And while the evidence establishes that Afari is addressing his problems and his mental health is currently stable, the issue of his rehabilitation will be best addressed in a standard 1.4(c)(ii) hearing where he must prove his mental health, fitness to practice and present legal abilities before his suspension is terminated.

4. No Credit for Afari's Good Faith (Std. 1.2(e)(ii))

Afari asserts he reasonably believed his former law partner, Morovati, "was going to complete the Velasquez case and disburse the settlement funds to pay the outstanding medical bills." He contends his reasonable belief mitigates his misconduct. We consider his arguments under standard 1.2(e)(ii), which affords mitigation for an attorney's good faith. "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Even if we accept that Afari's belief was honest, it was not reasonable on this record.

Afari testified he gave Morovati a box of personal injury cases to complete shortly after he closed the law office in December 2008. But Afari could not confirm the box even included the Gonzalez-Velasquez file. Three months after closing the office and due to further disputes among the former partners, Afari agreed that "any active cases" were his sole responsibility and that Morovati was "in no way responsible for the handling of such cases or the outcome of said cases from July 2008 to the present." It was unreasonable for Afari to assume without verifying that Morovati had finalized the Gonzalez-Velasquez case, and accordingly, we decline to find good faith in mitigation.

III. DISBARMENT IS UNWARRANTED

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors, including mitigation and aggravation, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) We begin our analysis with the standards, which the

Supreme Court instructs us to follow "whenever possible." (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11.) While they are not binding on us, we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91.) The standards call for discipline ranging from reproval to disbarment.[12]

Standard 2.2(a) is the most apt. It calls for disbarment when an attorney willfully misappropriates entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case a minimum one-year actual suspension may be imposed. However, the Supreme Court has held that strict application of this standard "is not faithful to the teachings" of its decisions. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) In fact, after adopting the standards, the Court stated that "[a] year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation." (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1368.) Based on the Supreme Court's analysis of standard 2.2(a) and its guidance in similar cases, we decline to recommend disbarment. Instead, considering the facts unique to this case, we recommend a one-year suspension. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].)

Primarily, Afari is culpable of a single instance of misappropriation. He misappropriated the funds through gross negligence, not out of self-interest or intent to defraud his client. Upon learning of the CTA problems, Afari took affirmative actions to remedy the situation and ultimately reimbursed his client. As the Supreme Court has stated, "[a]n attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has

[12] Applicable standards include: 1.6 (where multiple sanctions apply, most severe shall be imposed); 2.2(b) (rule 4-100 violation shall result in at least three-month actual suspension irrespective of mitigation); and 2.6 (disbarment or suspension imposed for violations of § 6068).

acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar, supra,* 52 Cal.3d at p. 38.) Afari clearly falls within the latter category calling for less severe discipline than disbarment.

In addition, Afari's misappropriation was an aberrational event. We base this finding on multiple factors: (1) he was relatively inexperienced; (2) realizing his inability to practice, he placed himself on voluntary inactive status; (3) he made full, albeit belated, restitution; (4) he ultimately cooperated with the State Bar by entering into a trial stipulation; (5) he acknowledged his misconduct; and (6) he is seeking psychiatric help for the emotional difficulties that contributed to his misconduct and led him to close his law firm. It is significantly mitigating when, as here, an attorney "[displays] candor, cooperation and remorse throughout the disciplinary proceedings, and a willingness to accept punishment and to rehabilitate himself." (*Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 748.) While these extenuating circumstances do not exonerate Afari from his misconduct, they indicate that disbarment would be punitive rather than remedial. (*In re Kelley* (1990) 52 Cal.3d 487, 496 ["task in disciplinary cases is preventative, protective and remedial, not punitive"].)

Finally, as stated, a one-year actual suspension is consistent with relevant case law. (*Sugarman v. State Bar* (1990) 51 Cal.3d 609 [one-year actual suspension for over $15,000 grossly negligent misappropriation in one matter and improper business transaction with client in another matter; aggravated by harm to the clients due to delayed restitution, and mitigated by family problems and good faith efforts to improve office procedures]; *Hipolito v. State Bar* (1989) 48 Cal.3d 621 [one-year actual suspension for commingling and negligent misappropriation of $2,000 in one matter and failure to competently perform and communicate in another; significant mitigation that predominated including no prior record, good character, candor and cooperation, and remorse by paying restitution and hiring of management firm to

prevent recurrence of misconduct].) To reduce the risk of any future misconduct due to Afari's mental health problems, we also recommend that his actual suspension continue until he satisfactorily proves to the State Bar Court his rehabilitation, present fitness to practice and present learning and ability in the general law under standard 1.4(c)(ii). We believe that this lengthy suspension properly promotes the goals of attorney discipline and will adequately protect the public, the courts, and the legal profession.

IV. RECOMMENDATION

For the foregoing reasons, we recommend that Daniel Hooman Afari be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Afari be placed on probation for two years on the following conditions:

1. Afari must be suspended from the practice of law for a minimum of the first year of his probation, and Afari must remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. Afari 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 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.

4. Within 30 days after the effective date of discipline, Afari 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.

5. 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, as to whether he is complying or has complied with the conditions contained herein.

6. Afari 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.

7. Afari 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.

8. Within one year after the effective date of the discipline herein, Afari must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the 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 School 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 Afari has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Afari be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension 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).)

VI. RULE 9.20

We further recommend that Afari 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.

VII. COSTS

We further recommend that 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.

VIII. ORDER

Because he recommended disbarment, the hearing judge ordered Afari involuntarily enrolled inactive under section 6007, subdivision (c)(4), effective December 1, 2012. We order Afari's inactive enrollment under section 6007, subdivision (c)(4), terminated, effective upon filing of this opinion.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.