PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed November 15, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 13-O-12150
	)	
FERNANDO FABELA CHAVEZ,	)	OPINION
	)	
A Member of the State Bar, No. 86902.	)	
	)	

A hearing judge found Fernando Fabela Chavez culpable of six counts of misconduct involving two clients and resulting primarily from his failure to maintain and manage his client trust account (CTA). The most serious charges involved grossly negligent misappropriations of approximately $65,000 from one client and $10,000 from another. The judge found two factors in aggravation (multiple acts and client harm) and three significant factors in mitigation (no prior record, good character, and community service). The judge recommended a one-year actual suspension continuing until Chavez pays $23,500 in restitution.

Chavez appeals. He concedes culpability for most of the charged misconduct but argues the evidence does not prove he is culpable of misappropriating approximately $65,000, or of failing to maintain that amount in trust. He admits misappropriating $10,000 by gross negligence. He urges that the recommended discipline is excessive and requests a suspension that does not exceed six months. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the judge's findings and discipline recommendation.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's discipline recommendation.

I. PROCEDURAL BACKGROUND

Chavez was admitted to the State Bar of California on June 4, 1979, and has no prior record of discipline. He practiced law for 31 years before committing misconduct.

On December 23, 2014, OCTC filed a seven-count Notice of Disciplinary Charges (NDC) alleging that Chavez: (1) misappropriated client funds (two counts); (2) failed to maintain client funds in a trust account (two counts); (3) commingled funds; (4) failed to promptly pay client funds; and (5) failed to obey a court order.

After a seven-day trial, the judge issued her decision on August 31, 2015. Chavez was found culpable of all counts, except failing to promptly pay funds (Count Four), which the judge dismissed.

On review, Chavez does not challenge that dismissal or his culpability for failing to obey a court order. As noted, he also concedes he failed to maintain and misappropriated by gross negligence $10,000 in client funds. We therefore focus our attention on the contested issues Chavez raised on review, namely, (a) whether he failed to maintain and misappropriated approximately $65,000 by gross negligence; (b) whether he commingled client and personal funds in his CTA; and (c) whether the recommended discipline is proper given his significant mitigation. As detailed below, we answer yes to each question.

II. FACTUAL BACKGROUND[1]

A. Chavez Is Retained

On July 10, 2007, by referral of the Mexican Consulate, Noemi Barajas Arellano hired Chavez to represent her in a civil action related to a recent car accident involving several family members. The accident occurred in Madera County when Noemi's[2] sister-in-law, Micaela

[1] The facts are based on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[2] We identify some individuals by their first names to avoid confusion.

Cornelio Sanchez, was struck by a car after she lost control of her own vehicle when the tread on a tire delaminated. Micaela's children, Hector Enrique Perez Cornelio and Zaira Perez Cornelio, were in the car along with two of Noemi's children, Jonathan Cornelio Barajas and Juan Antonio Cornelio Barajas. Micaela's daughter, Zaira, and Noemi's younger son, Jonathan, were killed. Micaela and her son, Hector, suffered major injuries, and Noemi's older son, Juan Antonio, suffered minor lacerations.

On July 10, 2007, Noemi signed a personal injury contingency fee agreement with Chavez's firm, which provided for a 40 percent attorney fee if the case settled after mediation. Micaela signed the same fee agreement a few months later in September 2007. In February 2008, Micaela's automobile insurance carrier paid Noemi a $10,100 settlement. Around the same time, Noemi was appointed guardian ad litem for her minor son, Juan Antonio. Chavez later determined that he could file a product liability case against the companies that manufactured and sold the defective tire to Micaela.[3]

B. Chavez Files a Product Liability Action

On February 6, 2008, Chavez filed a product liability action on behalf of Noemi, Micaela, and the other family members. Given the complexity of the product liability case and associated legal work, Chavez sought to have Noemi and Micaela sign new fee agreements increasing his fee from 40 percent to 50 percent if the case settled after mediation. Micaela signed the new agreement at Chavez's office the day the lawsuit was filed.

Noemi did not sign the new agreement, as she had returned to Mexico. The hearing judge found that Noemi never signed the new agreement, citing her credible testimony that no one from Chavez's office ever sent her a second agreement to sign, and she never told Chavez's office that she was willing to sign a contract for a 50 percent fee. She signed only one fee

[3] Chavez's firm also represented Micaela in the accident investigation by the Madera County District Attorney's Office, which did not prosecute her.

agreement for 40 percent in July 2007. The judge further found that Noemi's credibility was not diminished by her testimony that she mistakenly indicated to the State Bar the incorrect date she met with Chavez's office manager, Rosario Villareal-Newell. In further support of Noemi's position, the judge noted that Hector Salitrero, Chavez's associate who worked on Noemi's matter, testified that he never saw a 50 percent retainer agreement.

In contrast to this testimony, the hearing judge rejected Rosario's testimony that Noemi signed the new fee agreement during a meeting at Rosario's relatives' house in Mexico on January 5, 2010, and that Rosario obtained Chavez's signature and sent a fully executed copy to Noemi on January 29, 2010. We give great weight to the hearing judge's credibility findings particularly because, as the judge noted, Chavez did not produce a copy of the modified retainer agreement that he contends Noemi signed. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions because she saw and heard witnesses testify]; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13 [attorney's unexplained failure to substantiate testimony with evidence expected to be produced is strong indication testimony not credible].)

C. Chavez Settles the Product Liability Action

Chavez ultimately negotiated an aggregate settlement of $750,000 for his clients, which provided for the following apportionment:

- $220,000 to Micaela for the death of her daughter, Zaira;
- $220,000 to Noemi for the death of her son, Jonathan;
- $205,000 to Micaela for her own serious personal injuries;
- $90,000 to Hector, Micaela's minor son, for his serious personal injuries; and
- $15,000 to Juan Antonio, Noemi's minor son, for his injuries.

In October 2010, Salitrero filed a petition for a minor's compromise on behalf of Noemi, as guardian ad litem for Juan Antonio, to protect his interest in the settlement proceeds (minor's

compromise).[4] The minor's compromise requested that $10,000 of Juan Antonio's settlement proceeds ($15,000 – $5,000 in court-approved attorney fees) be deposited in an insured account at Bank of America, subject to withdrawal only upon court authorization. Salitrero attached a copy of the 40 percent fee agreement Noemi signed in July 2007. The minor's compromise stated that under that agreement, Chavez's firm should receive attorney fees of $88,000 from Noemi (40 percent of her $220,000 settlement), $170,000 from Micaela (40 percent of her $425,000 total settlement), and $30,000 from Hector (one-third of his $90,000 settlement).

In November 2010, the court approved the compromise of Juan Antonio's claim, and ordered that his $10,000 be placed in a blocked account at Bank of America. Chavez acknowledged that he received the order—and, ultimately, Juan Antonio's $10,000—but did not comply with it or establish the blocked account.

D. Chavez Failed to Oversee His CTA and Client Funds Were Misappropriated

Chavez admitted that he mismanaged his CTA. For years, he had delegated all responsibility for it to his non-attorney office manager, Rosario, who had worked for him for over three decades. Rosario kept Chavez's books and accounts, and was a signatory on his CTA. Chavez tasked her with the day-to-day operations of the account with virtually no supervision, and Rosario executed most, if not all, of the CTA deposits, withdrawals, and transfers.[5]

On December 6, 2010, the $750,000 settlement check was deposited into Chavez's CTA, which contained $381.48. As noted, under the July 2007 fee agreement, Chavez was entitled to 40 percent, or $88,000, of Noemi's $220,000 settlement. After costs, Chavez was required to

[4] This document was entitled Amended Petition to Approve Compromise of Pending Action. The record does not include the original petition or clarify how or why it was amended.

[5] Chavez testified that he has made significant changes to the management of his CTA as a result of this case. He asked his accountant to be responsible for completing a monthly reconciliation of his CTA; he withdrew Rosario's authority to sign CTA checks, so that he alone is authorized to sign such checks; and, if he is unavailable to sign one, he must be informed of the need for it and must give advance written authorization to Rosario to sign the check on his behalf.

maintain $123,500 in his CTA on her behalf. He failed to do so and, instead, just one week after the $750,000 deposit, Rosario began issuing six trust account checks totaling $144,875 to her sister, Beatriz Novoa, and her niece, Adriana Novoa, for "loan" repayments.[6] Chavez testified that these loans had funded office expenditures and litigation costs. Within three weeks of the deposit of the settlement check, Chavez's CTA's balance fell below $123,500, dropping to $108,703.09 on December 28, 2010, and to $58,158.09 on February 7, 2011. The latter amount was $65,341.91 less than Chavez was required to maintain for Noemi.

On March 11, 2011, after other deposits were made to Chavez's CTA, $100,000 was wire-transferred to Noemi. Thus, Chavez was still required to maintain $23,500 on her behalf. In addition, he was to hold $10,000 in a separate account on behalf of Juan Antonio for the minor's compromise. Thereafter, however, his CTA's balance fell below $10,000 on at least 15 occasions, and on April 11, 2011, it was negative $1,586.33.

On December 27, 2011, Juan Antonio reached the age of 18 and became entitled to receive his $10,000. Months later, on March 6, 2012, a $20,400 check from an unrelated matter was deposited into Chavez's CTA, which held only $313.48. The next day, $10,100 was wire-transferred to Juan Antonio.

E. Chavez Prepared Two Inconsistent Accountings

Before Juan Antonio turned 18, Noemi inquired about the settlement proceeds and requested an accounting from Chavez. On May 17, 2011, Noemi was sent an accounting that showed she was entitled to the $100,000 she received in March 2011 (first accounting). That accounting, however, contained several errors, stated that $8,500 in costs was allocated to her

[6] The loans included two checks to Beatriz on December 14, 2010, for $30,000 and $25,000; one check to Adriana on December 14, 2010, for $15,000; and three additional checks to Beatriz on December 17, 2010, April 8, 2011, and November 25, 2011, for $15,000, $50,000, and $9,875, respectively.

and Juan Antonio, and did not specify a contingency fee percentage (but the fee amount was calculated as 45.75 percent).

On May 30, 2014, after the State Bar's investigation began, Chavez provided the State Bar with a modified accounting (second accounting). This accounting specified that the attorney fees were $108,100, added over $3,400 to Noemi's share of the costs (totaling $11,904.72), and deducted the insurance-settlement-related $10,100 that Noemi received in February 2008 and a $45.00 wire transfer fee, neither of which appeared on the first accounting. Despite the differences in the two accountings, the second one showed that Noemi was still entitled to $100,000, noting that Chavez had reduced his fee to 47 percent (from the 50 percent to which he claimed to be entitled). Rosario testified that she sent the second accounting to Noemi on May 24, 2011, but Noemi testified that she never received it.

The hearing judge found that Chavez's and Rosario's testimony about the second accounting lacked credibility, and that it appeared to be "a post State Bar investigation attempt to justify the fees taken in this matter," particularly "considering the additional costs added and the inexplicable 3% 'reduction' in attorney[] fees." The judge concluded that the document was "highly suspect and not at all credible," and noted that, "[t]he only figure that remained constant in [Chavez's] various accountings was Noemi's $100,000." We adopt these factual and credibility findings.

III. CHAVEZ IS CULPABLE OF MULTIPLE ETHICAL VIOLATIONS[7]

A. Count Five: Failure to Obey Court Order (Bus. & Prof. Code, § 6103)[8]
Count Six: Failure to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))[9]
Count Seven: Moral Turpitude (Misappropriation) (§ 6106)[10]

OCTC alleged that Chavez failed to obey a court order to establish and maintain $10,000 in trust in an interest-bearing bank account until Juan Antonio turned 18 (Count Five), failed to maintain $10,000 in trust on behalf of Juan Antonio until he became 18 (Count Six), and dishonestly or grossly negligently misappropriated that $10,000 (Count Seven). The hearing judge found Chavez culpable of all three counts, including misappropriating Juan Antonio's $10,000 by gross negligence.[11] On review, Chavez does not challenge these findings, and we affirm them as supported by the record.[12]

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[7] We discuss the charged counts out of order to address the uncontested matters first.

[8] Section 6103 provides that an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension." All further references to sections are to the Business and Professions Code.

[9] 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.

[10] 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."

[11] Chavez and Rosario testified that Rosario placed Juan Antonio's funds in the firm's general account soon after she unsuccessfully tried to open the blocked account for him. The record does not establish that Juan Antonio's funds were deposited and maintained in any account.

[12] We assign the rule violation (Count Six) no weight for discipline because the same misconduct underlies the section 6106 violation (Count Seven), which supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

B. Count Four: Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))[13]

Based on the lack of clear and convincing evidence,[14] the hearing judge dismissed with prejudice Count Four, which alleged that Chavez failed to promptly pay Juan Antonio. We affirm the dismissal for lack of evidence because Juan Antonio did not testify in this proceeding, nor is the record clear as to when he first requested payment of his settlement proceeds.

C. Count One: Moral Turpitude (Misappropriation) (§ 6106)
Count Two: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Count One alleged that Chavez was required to maintain $130,500, and dishonestly or grossly negligently misappropriated $22,000, of Noemi's settlement funds, in violation of section 6106. The hearing judge correctly determined that Chavez should have maintained $123,500, not $130,500, and that he misappropriated $65,341.91, rather than $22,000, through gross negligence. The revised misappropriation calculation was based on the fact that after Rosario issued checks to repay the loans, the CTA dipped to $58,158.09—which was $65,341.91 less than Chavez was required to hold for Noemi under the July 2007 (40 percent) agreement.[15]

The mere fact that Chavez's CTA balance fell below $123,500 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].) To rebut this inference, Chavez must then show that a misappropriation did

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[13] 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.

[14] 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.)

[15] Though the amount Chavez misappropriated ($65,341.91) differs from the amount OCTC alleged in the NDC ($22,000), we agree with the hearing judge that Chavez received adequate notice of the allegation that he misappropriated Noemi's funds. (Rules Proc. of State Bar, rule 5.41(B)(2) [NDC must contain facts describing the violations in sufficient detail to permit preparation of defense].)

not occur and that he was entitled to the fees that Rosario 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].)

Chavez argues that he did not misappropriate Noemi's settlement funds because, by his calculation, he owed her only $100,000 and paid that amount on March 11, 2011. His argument relies on a 50 percent retainer agreement and an assessment of Noemi's litigation costs as $11,904.72 per his second accounting. The hearing judge flatly rejected this evidence because she did not find Chavez or his accounting credible and Chavez never produced the 50 percent agreement Noemi purportedly signed. Giving great weight to the judge's findings, we also reject Chavez's argument. (See *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 103 [attorney asserted written fee agreements had been modified, but failed to produce documents to support contention and offered varying characterizations of alleged changes in fee arrangements, in contrast to credible client testimony that no such changes had been made]; *McKnight v. State Bar*, *supra*, 53 Cal.3d at pp. 1032-1033 [in light of credible witness testimony and attorney's inability to produce any memorialization or other documentation, conflicting evidence resolved against attorney].) Like the hearing judge, we find that the July 2007 (40 percent) fee agreement and the costs listed in the first accounting are the operative documents in Noemi's matter. Thus, Chavez misappropriated $65,341.91 from Noemi.[16]

Moreover, Chavez's argument that he paid $100,000 to Noemi does not address the fact that even if Noemi signed a 50 percent retainer agreement and her litigation costs were $11,904.72 (per the second accounting), Chavez would still have misappropriated $39,937.19

[16] This total was calculated as follows: $220,000 (settlement proceeds) – $88,000 (40% fees) – $8,500 (litigation costs) – $58,158.09 (February 7, 2011 CTA balance) = $65,341.91.

when his CTA dipped to $58,158.09 on February 7, 2011, after Rosario paid back the loans to her relatives.[17]

We agree with the hearing judge that the misappropriation was grossly negligent and not intentional. The misappropriation occurred because Chavez improperly delegated all responsibility for his CTA to Rosario for years with virtually no oversight. Such gross negligence constitutes an act of moral turpitude in willful violation of section 6106. (*Giovanazzi v. State Bar*, *supra*, 28 Cal.3d at pp. 474-475 [gross negligence in handling client funds, shortfall in trust account, and careless supervision of staff constituted moral turpitude despite attorney's lack of intent to misappropriate funds]; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude finding proper for gross carelessness in failing to maintain trust account].)

As to Count Two, we affirm the hearing judge's finding that Chavez violated rule 4-100(A) by failing to maintain Noemi's $123,500 in his CTA between December 28, 2010 and March 11, 2011. We assign no additional weight for discipline to this rule violation, however, because the misconduct underlying the moral turpitude charge in Count One supports the same or greater discipline. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

D. Count Three: Commingling Personal Funds in Trust Account (Rule 4-100(A))[18]

Count Three alleges that Chavez commingled personal and client funds when he did not promptly remove from his CTA monies he had earned as fees, and thereafter issued six checks to Beatriz and Adriana from those funds for payment of personal expenses, in willful violation of rule 4-100(A). The hearing judge found Chavez culpable. We agree. Though Chavez contested

[17] This total was calculated as follows: $220,000 (settlement proceeds) – $110,000 (50% fees) – $11,904.72 (litigation costs) – $58,158.09 (February 7, 2011 CTA balance) = $39,937.19.

[18] Rule 4-100(A) requires that: "[n]o funds belonging to the [attorney] . . . shall be deposited [into a CTA] or otherwise commingled therewith . . . ."

culpability, he acknowledged on review that "the correct practice" would have been for him to have Rosario write checks payable to him for his earned attorney fees, deposit those checks into his operating account, and then issue checks from that account. (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23 [using account denominated as "client trust account" for personal purposes violates rule 4-100(A) even if no client funds are on deposit therein; rule absolutely bars use of trust account for personal purposes].)

IV. MITIGATION OUTWEIGHS AGGRAVATION

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

A. Aggravation

1. Multiple Acts

The hearing judge found that Chavez's multiple acts of misconduct constitute an aggravating factor. (Std. 1.5(b) [multiple acts of wrongdoing constitute circumstance in aggravation].) We agree and assign significant weight given Chavez's culpability on six counts of misconduct.

2. Significant Harm to Client

The hearing judge found that Chavez caused significant financial harm to Noemi; he still owes her $23,500 in settlement proceeds—nearly six years after the settlement check was deposited. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance]; *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061 [misappropriation of

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

settlement funds "especially harmful" to client because funds were intended to reimburse for personal injuries]; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 413 [significant client harm for six-month delay in distributing $5,618.25 in medical malpractice settlement proceeds].) But OCTC did not present evidence establishing that Chavez's failure to pay had a specific economic impact on Noemi or caused her emotional harm. Accordingly, we assign some, but not full, aggravation to Noemi's financial harm.[20]

B. Mitigation

1. No Prior Record

The hearing judge found that Chavez's 31 years of practice without prior discipline warrant significant consideration in mitigation. (Std. 1.6(a) [mitigation for no prior discipline over many years of practice coupled with present misconduct not likely to recur].) We too acknowledge Chavez's long discipline-free practice. Though Chavez made several changes to the way he manages his CTA after this case was filed, his long-term inattention to it and his continuing failure to pay Noemi her remaining settlement funds demonstrate that his misconduct is not aberrational. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long discipline-free practice is most relevant where misconduct is aberrational].) We therefore assign moderate mitigation credit for Chavez's lack of prior discipline.

2. Good Character

The hearing judge properly assigned significant mitigation credit for Chavez's demonstration of "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."

[20] The hearing judge correctly declined to find uncharged misconduct in aggravation for Chavez's failure to prepare conflict of interest waivers for Noemi and the passengers. (Std. 1.5(h); *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 260 [uncharged misconduct not found where attorney "did not have sufficient notice or opportunity to defend against [charges]"].)

(Std. 1.6(f).) Chavez presented character testimony from 19 witnesses, including six attorneys, six clients, a doctor, a private investigator, and current and former staff members. (*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"].) These witnesses knew of and attested to his honesty, generosity, integrity, and legal competence. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant weight given to testimony of two attorneys and fire chief who had long-standing familiarity with attorney and broad knowledge of his good character, work habits, and professional skills].) We find that such character evidence is an important mitigating factor in this case because it highlights the scope and scale of the overall positive impact that Chavez has had on his clients and his community over many years.

3. Pro Bono Work and Community Service

The hearing judge found that Chavez is entitled to significant mitigation credit for his pro bono work and community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) We agree, and acknowledge his extraordinary service to the community, as summarized below. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigating weight assigned for demonstrated legal abilities and zeal in undertaking pro bono work].)

Chavez has been active in and recognized for his community service and pro bono activities. He has received 30 to 40 legal and community awards, and has worked extensively with nonprofit organizations for decades, offering his time with speeches and community events. Further, he has performed considerable volunteer services, including with his family charity—the Cesar Chavez Foundation. He helped with programs in Mexico for the Save the Children organization, and he volunteered at homeless shelters and at a labor fair organized by the Mexican Consulate. In addition, Chavez's firm performs pro bono work with wage and hour

claims, and it educates people about the bill that permits California residents to obtain a driver's license regardless of immigration status. Recently, he established the Chavez Institute for Law and Social Justice to provide low-income people with legal advice through technology.

V. DISCIPLINE[21]

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law to determine the appropriate discipline. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Many standards apply here, but two are most relevant—standards 2.11 and 2.1(b).[22] Standard 2.11 provides in part that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude . . . ." The degree of sanction depends on the magnitude of the misconduct, the extent of harm to the victim, the impact on the administration of justice, and the extent to which the misconduct is related to the practice of law. Standard 2.1(b) specifically addresses grossly negligent misappropriations and directs that an *actual suspension* is the presumed sanction.

Applying these standards to the facts, Chavez's culpability for six counts of misconduct directly relate to his practice of law and his misconduct harmed Noemi. Further, Chavez

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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; to maintain high professional standards; and to 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 commingling or failure to promptly pay entrusted funds); 2.2(b) (suspension or reproval is presumed sanction for any other violation of rule 4-100); and 2.12(a) (disbarment or actual suspension is presumed sanction for disobedience or violation of court order related to member's practice of law). We apply standards 2.11 and 2.1(b) because they call for the most severe discipline. (Std. 1.7(a) [most severe sanction required where multiple sanctions apply].)

misappropriated from two clients—albeit by gross negligence—more than $75,000, which is a significant amount of money. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 deemed significant].)

Turning to case law for guidance to determine the appropriate length of an actual suspension, we note that Chavez presented cases involving grossly negligent misappropriations that resulted in a public reproval to a six-month actual suspension, including *Vaughn v. State Bar* (1972) 6 Cal.3d 847 (public reproval for commingling and negligently supervising staff unrelated to CTA duties); *Palomo v. State Bar* (1984) 36 Cal.3d 785 (one-year stayed suspension for small misappropriation; attorney made restitution, changed office procedures, and expressed remorse); *In the Matter of Blum*, *supra*, 4 Cal. State Bar Ct. Rptr. 403 (30-day suspension where attorney suffered emotional and physical abuse by attorney's former husband to whom she entrusted CTA duties, expressed remorse, and took control of managing law office); and *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 (six-month suspension where attorney negligently supervised staff, implemented improved office management system, and misconduct was atypical).

OCTC suggests that the hearing judge correctly found two guiding cases that imposed a one-year actual suspension: *Gassman v. State Bar* (1976) 18 Cal.3d 125; and *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708. OCTC also offers two cases that imposed a two-year actual suspension: *Snyder v. State Bar*, *supra*, 49 Cal.3d 1302; and *Porter v. State Bar* (1990) 52 Cal.3d 518.[23]

Of the cases cited by both parties, we find *In the Matter of Robins*, *supra*, 1 Cal. State Bar Ct. Rptr. 708, upon which the hearing judge relied, to be most on point because the degree of

[23] OCTC discussed *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 (disbarment), and *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 (disbarment), but conceded both involved more extensive misconduct than here.

misconduct and the mitigating factors are similar to Chavez's case. In *Robins*, the attorney was culpable of six counts of grossly negligent misappropriation of trust funds totaling over $20,000 in medical liens, constituting a seven-year pattern. The attorney also failed to pay the liens for up to two years after learning of them, and significantly harmed one client. Like Chavez, the attorney had no prior discipline record. Further, the attorney had physical disabilities at the time of some of the misconduct, was candid and cooperative, made belated restitution, performed extensive pro bono services, worked to improve his law office management practices, changed his values through a spiritual reawakening, and demonstrated remorse.

Guided by standard 2.1(b) (actual suspension presumed sanction for grossly negligent misappropriation), the *Robins* case, and Chavez's impressive mitigation, we find his misconduct does not merit disbarment, particularly where the misappropriation resulted from gross negligence, and where Chavez has changed his CTA mismanagement practices. Yet given the high-dollar amount misappropriated in two client matters, the vulnerability of his victims, and the aggravating factors, the six-month suspension Chavez requests is insufficient discipline. (Stds. Part B [presumed sanction is starting point for imposition of discipline; may be adjusted up or down depending on mitigating and aggravating circumstances].) For Chavez to be barred from the practice of law for one year is a significant, yet appropriate, discipline for a longtime practitioner whose extraordinary mitigation has directly benefited the community for decades. Our discipline recommendation is supported by standard 2.1(b) and relevant Supreme Court precedent.[24]

[24] *Murray v. State Bar* (1985) 40 Cal.3d 575 (one-year suspension for misappropriation for negligent management of $5,680 where no prior record of discipline in 15 years and several mitigating factors); *Hipolito v. State Bar* (1989) 48 Cal.3d 621 (one-year suspension for $2,000 misappropriation repaid in 13 months where several mitigating factors present, including remorse, cooperation, candor, and engagement of management firm to avoid future difficulties).

We also recommend that Chavez complete Ethics School and Client Trust Accounting School and that his suspension continue until he makes full restitution to Noemi. (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 685-686 [restitution order appropriate to compensate victims of wrongdoing, discourage dishonest and unprofessional conduct, protect public and profession, and encourage high professional standards of conduct].)

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Fernando Fabela Chavez be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first year of his probation, and remain suspended until the following conditions are satisfied:

    a. He makes restitution to Noemi Barajas Arellano in the amount of $23,500 plus 10 percent interest per year from December 6, 2010 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Noemi Barajas Arellano, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,

    b. If he remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 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, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and 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.)

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Chavez be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or during the period of his actual suspension, whichever is longer, 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).)

VIII. RULE 9.20

We further recommend that Chavez 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.

IX. 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.

PURCELL, P. J.

WE CONCUR:

HONN, J.

STOVITZ, J.*

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