PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed May 15, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 14-O-06274
	)	
BERNARD RICHARD DEETMAN,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 120511.	)	
	)	

A hearing judge found Bernard Richard Deetman culpable of multiple counts of misconduct in a single client matter, including failure to respond to client inquiries, misrepresentation, and numerous trust account violations. Most serious among them was the intentional misappropriation of $14,855.77. Given the egregious and extensive nature of the misconduct, the hearing judge recommended disbarment.

Deetman appeals. He disputes the misappropriation finding and contends that the client "loaned" or "advanced" him the money. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we, like the hearing judge, reject Deetman's argument. We find no evidence of a client-authorized loan transaction. Rather, the record reflects that, over the course of two years, Deetman deflected his client's repeated requests for an accounting and for disbursement of the settlement funds, stating that Medicare-related issues prevented remittance. Yet, at the same time, he invaded the client trust account (CTA) on numerous occasions, withdrawing the entire amount of entrusted funds for his own purposes. He failed to perform and provide basic recordkeeping, and, when pressed by his client about the status of the funds, he falsely represented that he had not yet received them.

Under these circumstances, our disciplinary standards[1] call for disbarment. Finding no sufficiently compelling mitigating reasons to depart from them, we affirm the disbarment recommendation.

I. SIGNIFICANT PROCEDURAL HISTORY

On August 26, 2015, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a 10-count Notice of Disciplinary Charges (NDC) in this matter. Specifically, OCTC charged Deetman with failure to notify client of receipt of funds (Count One); commingling (Count Two); failure to perform and render an accounting of client funds (Counts Three and Eight); failure to maintain funds in trust (Counts Four and Six); moral turpitude/misappropriation (Counts Five and Seven); failure to respond to client inquiries (Count Nine); and moral turpitude/misrepresentation (Count Ten).

On November 30, 2015, the parties entered into a pretrial Stipulation as to Facts and Admission of Documents (Stipulation I). Following a one-day trial on December 21, 2015, the hearing judge issued her decision on April 14, 2016. She found Deetman culpable as charged, recommended disbarment, and ordered restitution. On May 20, 2016, the parties filed a Motion to Reopen the Record and a Stipulation as to Facts, No. Two (Stipulation II), which indicated that Deetman had satisfied his restitution obligations. The motion was granted on June 3, 2016. That same day, the hearing judge issued an amended decision, withdrawing the restitution requirement.

II. FACTS

On December 16, 2012, Lisa Cameron slipped and fell while traveling as a passenger aboard a Hornblower cruise ship. Cameron, who was approximately 80 years old at the time, injured her hip and fractured her pelvis.

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[1] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

On March 20, 2013, she hired Deetman to represent her in a lawsuit against Hornblower regarding her injuries. Deetman's retainer agreement stated, in pertinent part, that he was entitled to a contingency fee of 33-1/3 percent of any amount Cameron received for her bodily injury claim. It also contained a provision under the costs section, stating the following:

> Since in some instances funds may be advanced by any party to this agreement, this agreement will also constitute a loan agreement, operative until closing of this matter. Any such loans will not involve interest or any other loan charges.

Finally, the agreement gave Deetman a power of attorney to sign releases on Cameron's behalf and to deposit any settlement checks into his CTA. Both Deetman and Cameron testified that they did not discuss the agreement or any of its provisions at the time the agreement was executed.

On May 29, 2013, Deetman sent a settlement demand letter to Hornblower's claims adjuster. The letter included a list of Cameron's health care services billed to Medicare and the Medicare Summary Notice (MSN), which showed Medicare's payment of $403.06.[2]

On an unspecified date, Deetman negotiated a $22,500 settlement with Hornblower. On August 5, 2013, Deetman signed Cameron's name to a Release of All Claims (Hornblower Release) without indicating that he was signing for Cameron. He also signed his own name as a "witness." The Hornblower Release required that Cameron satisfy any and all Medicare liens. The next day, Deetman called Cameron and informed her of the settlement amount. He did not mention the terms of the Hornblower Release, nor did he provide her with a copy. Cameron

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[2] In Stipulation I, the parties stipulated that the MSN stated, in part, that Medicare provided Cameron with medical care totaling $5,414.11. The parties also stipulated that Deetman was aware, as of August 12, 2013, that Medicare had a statutory claim for at least this amount. The MSN actually indicates that Cameron received medical treatment totaling $5,314.11 from the University of California, San Diego, and that Medicare paid $403.06 of this amount. In any event, we hold Deetman to his stipulation to the extent that, as of August 12, 2013, he was aware of the pending amount of Medicare's statutory claim. (Rules Proc. of State Bar, rule 5.58(E).)

testified that she first saw the document during the investigation of her State Bar complaint against Deetman.

Deetman received the $22,500 settlement check from Hornblower and deposited it into his CTA on August 15, 2013. Based on the retainer agreement, he was entitled to $7,644.23 ($7,500 in attorney fees and $144.23 in costs), and was required to maintain $14,855.77 in his CTA for Cameron. Between August 16 and August 28, 2013, Deetman made multiple withdrawals and transfers, which caused the CTA balance to fall below the required amount. Thereafter, he continued to withdraw from the CTA, which fell to a negative balance of -$82.27 on September 16, 2013.[3]

Deetman acknowledges that he took all of Cameron's settlement funds, but contends that Cameron loaned him the money pursuant to the "mutual loan and advance provision" in his retainer agreement. Deetman's and Cameron's positions diverge as to the loan provision. Deetman testified that the loan provision allowed him to have control over Cameron's funds while the Medicare set-aside issue[4] was pending to ensure that enough money would be available to pay all of her related medical bills. He further testified that it also gave him the ability to make the most of Cameron's recovery because he intended to pay her an above-market interest rate (somewhere between 2 and 5 percent, to be determined at the close of the case), which was more interest than she would receive from the bank. He described the loan arrangement as a way

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[3] In Stipulation I, the parties stipulated that these transactions occurred between August 28, 2013, and September 16, 2015. Upon review, we find that the September 16, 2015, date was a typographical error, and the correct date is September 16, 2013. The modification does not affect the discipline recommendation. (See *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19, 23, fn. 6 [modifications made by Review Department in referee's decisions did not affect recommended discipline and were deemed insubstantial].)

[4] Cameron's case involved a documented Medicare statutory claim (i.e., a lien). However, Deetman has repeatedly referred to an outstanding Medicare set-aside, which we understand to mean circumstances where a portion of the settlement funds must remain in trust to pay for future medical expenses that would otherwise be covered by Medicare. Hereinafter, we use the term "Medicare issues" collectively to refer to the lien and the alleged set-aside.

to “maximize the money in, minimize the money out,” and claimed that he and Cameron discussed it several times and she agreed to this plan.

Cameron testified, however, that she had never heard of this arrangement, and did not give Deetman permission to borrow her money as she was unaware that he was even in receipt of her settlement funds.[5] The hearing judge found Cameron’s testimony credible and Deetman’s testimony “disingenuous.”[6] The judge found no evidence of a loan transaction, and noted that Cameron’s actions over the next year and a half revealed that she was confused and uncertain about the status of the case and her settlement money.

Cameron, seeking information about the settlement and clarification about the Medicare issues, called Deetman 20 to 25 times between August 2013 and October 2014. During this 14-month time period, on May 29, 2014, Medicare issued a demand letter requiring that Cameron reimburse $698.87 for the medical care costs it had paid relating to her accident. This amount included Medicare’s previous payment of $403.06 as well as additional covered medical services. When Cameron’s telephone calls to Deetman went largely unanswered, she contacted Deetman’s brother and left messages for him to have Deetman call her back.[7] Deetman did return two or three of Cameron’s calls; however, Cameron testified that the conversations

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[5] Deetman himself could not recall whether he ever told Cameron about receipt of the funds: “I don’t know if I told her I actually received it. I told her it was coming. I asked her what she wanted me to do with it. We discussed the options. I don’t know if I told her, ‘Okay. It’s been done.’” Deetman further admitted that his file notes were “spotty” on this issue.

[6] We give great weight to these findings. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [great weight given to hearing judge’s credibility findings].)

[7] Deetman’s brother, Gregory, is also an attorney, with whom Deetman used to share office space. While they maintained separate phone numbers, Deetman’s line would be forwarded into his brother’s voicemail system. Deetman testified that he did not recall his brother relaying a message from Cameron, but he could not say for sure: “I don’t recall anything like that. I’m not saying it didn’t happen, but I don’t remember anything like that.” He further testified, “Every once in a while, [I] might get a message from Greg saying, ‘Somebody got into my voice-mail. Somebody is trying to get hold of you.’”

centered on the Medicare issues and Deetman never told her that he had already received and withdrawn all of her settlement funds. Such was the case in a June or July 2014 phone call, during which Deetman suggested that Cameron get a second medical opinion regarding her injuries and told her he was still reviewing the case and "getting closer to closing." [8]

In October 2014, Cameron asked if she could meet with Deetman in person, and he agreed. On October 19, 2014, Cameron and her friend, Catherine Worix, met Deetman at a coffee shop near Cameron's home. Cameron testified that she asked Worix to accompany her because she was "getting the runaround" from Deetman and wanted her friend to assess him. At the meeting, Cameron asked Deetman when he thought the settlement funds would be received. According to Cameron and Worix, Deetman said, "that's not going to happen," but in the meantime he would advance her $1,000 a month if she needed money to pay her mortgage and other bills. Cameron and Worix testified that they left the meeting with the impression that the Hornblower settlement was still pending.

A few days later, Cameron sent Deetman a handwritten letter stating she was not comfortable accepting monthly payments until she knew all the facts. She asked several questions: where the $22,500 was coming from; whether her medical bills had been paid; whether she had to reach an agreement with Medicare about future treatment before it would pay her outstanding bills; what the status of her claim against Hornblower was; and whether Deetman would provide her with a written contract confirming that, if she accepted monthly installments from him, she would not be responsible for repayment if her case did not settle. Deetman did not

[8] Relatedly, the record includes a letter from Deetman to Medicare requesting a final lien amount and inquiring if Cameron's matter was subject to a set-aside. The letter is dated May 26, 2015, but a handwritten note at the bottom states: "This is a reprint of letter dated 8-18-2014." Assuming the letter was sent on August 18, 2014, it was Deetman's first contact with Medicare, just over a year after he received Cameron's settlement funds. We also note that the record contains no response from Medicare.

respond to this letter, and the proposed $1,000 a month arrangement was never memorialized in writing. Deetman testified he could not recall whether he received Cameron's letter.

On November 6, 2014, Deetman gave Cameron a personal money order for $1,000. The notation line stated, "Monthly Installment/Advance." Later that month, Cameron filed a State Bar complaint against Deetman.

On December 31, 2014, Deetman wanted to personally deliver a second $1,000 payment to Cameron's home on New Year's Eve. Instead, Cameron told him to mail it. The money order arrived by mail on January 12, 2015; this time, the notation line stated, "Periodic Payment." On January 16, 2015, a State Bar investigator sent Deetman a letter informing him of Cameron's complaint. After Deetman received the letter, he stopped making the $1,000 payments to Cameron and retained counsel.

At some point, Cameron also retained counsel, Richard Leuthold, to assist her in obtaining her settlement funds from Deetman. On February 27, 2015, Leuthold sent Deetman a letter requesting an accounting. Deetman received the letter, but did not respond. On April 8, 2015, Leuthold filed a civil lawsuit against Deetman alleging, inter alia, malpractice, breach of contract, conversion, and elder abuse.

The civil case settled on December 20, 2015, more than two years after Deetman received the $22,500 settlement check from Hornblower and the day before trial commenced in these disciplinary proceedings. In the civil settlement, the parties agreed that $16,600 constituted full compensation for the restitution owed to Cameron, and Deetman has since paid her this amount.

III. CULPABILITY

A. Count One: Failure to Notify Client of Receipt of Funds (Rules Prof. Conduct, Rule 4-100(B)(1))[9]

We adopt and affirm the hearing judge's finding that Deetman failed to notify Cameron of receipt of the Hornblower settlement funds. Deetman contends he told Cameron that he negotiated a $22,500 settlement on her behalf. However, the notes in Deetman's file, and indeed his own testimony, do not provide any evidence that he ever actually notified her of receipt of the settlement funds, and the hearing judge found that Cameron credibly testified that he did not inform her. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032 [hearing judge's credibility findings afforded great weight].)

B. Count Two: Commingling (Rule 4-100(A))[10]

The hearing judge found Deetman culpable of failing to promptly remove his costs and fees from the CTA. Deetman does not dispute the culpability finding, but, upon our independent review, we dismiss Count Two. Rule 4-100(A)(2) provides that "the portion [of the CTA funds] belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed." Deetman deposited the Hornblower settlement check into his CTA on August 15, 2013. Pursuant to his retainer agreement, he was entitled to $7,644.23. The CTA records show that he withdrew this amount by August 27, 2013. We are presented with no authority, nor were we able to find any, that deems 12 days an unreasonable amount of time to withdraw costs and earned fees.

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[9] All further references to rules are to the Rules of Professional Conduct unless otherwise noted. Rule 4-100(B)(1) requires a member to "[p]romptly notify a client of the receipt of the client's funds, securities, or other properties."

[10] Rule 4-100(A), in relevant part, provides that, "[n]o funds belonging to the member . . . shall be deposited [in the CTA] or otherwise commingled therewith . . . ."

C. Counts Three and Eight: Failure to Render Account of Client Funds (Rule 4-100(B)(3))[11]
Count Nine: Failure to Respond to Client Inquiries (Bus. & Prof. Code, § 6068, subd. (m))[12]

In the NDC, Deetman was charged with two violations of rule 4-100(B)(3): failure to maintain CTA records (Count Three) and failure to render an accounting to Cameron (Count Eight). He was also charged with a failure to respond to client status inquiries (Count Nine). The hearing judge found Deetman culpable as charged in Counts Three, Eight, and Nine, but dismissed Count Eight as duplicative of Count Nine. We affirm. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little purpose served by duplicative charges of misconduct].) Deetman stipulated that he did not prepare, maintain, and perform the required CTA accounting, and the record demonstrates that he failed to respond to numerous telephone calls from Cameron regarding her case.

D. Counts Four and Six: Failure to Maintain Funds in Trust (Rule 4-100(A))[13]
Counts Five and Seven: Moral Turpitude/Misappropriation (§ 6106)[14]

We begin our discussion with the misappropriation counts, and agree with the hearing judge that Deetman is culpable of intentionally misappropriating $14,855.77, a portion of which

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[11] Rule 4-100(B)(3) requires a member to "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member . . . and render appropriate accounts to the client regarding them. . . ."

[12] All further references to sections are to the Business and Professions Code. Section 6068, subdivision (m), requires an attorney "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

[13] Rule 4-100(A), in relevant part, requires an attorney to deposit and maintain in a trust account "[a]ll funds received or held for the benefit of clients."

[14] Section 6106, in relevant part, states: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

belonged to Medicare (Count Seven) and the remainder to Cameron (Count Five).[15] The mere fact that Deetman's CTA balance fell below $14,855.77 raises an inference of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [inference of misappropriation if CTA balance drops below amount attorney should maintain for client].) To rebut this inference, the burden shifts to Deetman to show that a misappropriation did not occur and that he was entitled to the funds 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].)

Deetman maintains he did not misappropriate the funds because Cameron "loaned" them to him. We reject this argument for three reasons. First, the hearing judge found that Cameron credibly and unequivocally testified that she did not agree to loan money to Deetman. Rather, she was unaware that Deetman signed and witnessed her name to the Hornblower Release or that he was even in possession of her settlement funds. As late as October 2014, Cameron was still inquiring about when she would receive her portion of the Hornblower settlement, and Deetman offered to personally advance her $1,000 per month while the settlement was pending. His offer of what was purported to be an advance of his own money is at odds with his claim that Cameron lent him the underlying funds.

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[15] In its Responsive Brief on Review, OCTC points out that Medicare's lien was actually $698.87, even though the NDC listed the amount as $5,314.11. OCTC then states that "Deetman misappropriated $14,855.77 [and] it is not important whether the missing funds belong to Cameron or to Medicare." OCTC submits that if we agree with this position, Counts Six and Seven may be dismissed. We do not agree. First, Medicare is a separate party, to which Deetman owed a fiduciary duty. (See *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632 [attorney holding funds for third party must adhere to same fiduciary duties in dealing with funds as if attorney-client relationship existed]; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [CTA fiduciary duties extend to nonclients].) Second, Medicare's lien was *less* than the amount charged in the NDC, and Deetman therefore had sufficient notice of the allegations to prepare his defense. (See Rules Proc. of State Bar, rule 5.41(B)(2) [NDC must contain facts describing violations in sufficient detail to permit preparation of defense].)

Second, no evidence exists of a client-authorized loan transaction. We interpret the clause under the costs section in Deetman's retainer agreement to authorize advance costs or fees as an interest-free loan; it does not authorize Deetman to borrow money from Cameron, with or without her knowledge. Further, it does not contain reasonable terms and conditions expected in a legitimate loan transaction between an attorney and a client, such as the duration of the loan, security or collateral requirements, repayment options, and interest rates.[16] Finally, it does not permit Deetman to borrow funds that were owed to Medicare.

Third, Cameron's and Deetman's actions belie Deetman's position that Cameron loaned him her settlement funds. Between August 2013 and October 2014, Cameron called Deetman on numerous occasions requesting disbursement of her funds or an accounting and status update. As previously noted, Deetman ignored most of these requests. When he did respond, instead of discussing the alleged loan arrangement, he deflected her requests under the pretext that he was unsure of the outstanding Medicare issues, even though the record reveals no evidence that any such unresolved issues actually existed. Medicare documented the amount of its lien, of which Deetman stipulated he was aware as early as August 12, 2013, and the record does not contain any notice to Deetman or Cameron of a required Medicare set-aside.

The evidence is undisputed that Deetman knowingly and purposefully took settlement funds, and we see no evidence of a mutual or consensual loan transaction. Instead, we view Deetman's use of the generic reference to a "loan" in his retainer agreement as an after-the-fact attempt to justify misappropriating funds. Accordingly, we find clear and convincing evidence[17]

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[16] Deetman argues that the loan provision in the retainer agreement satisfies rule 3-300. While we see nothing in the record that meets the requirements of a true business transaction under rule 3-300, we note, as did the hearing judge, that OCTC did not charge Deetman with this rule violation.

[17] 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.)

that his misappropriations were intentional and thus affirm the hearing judge's findings of culpability for Count Five and Count Seven.

As to the rule 4-100(A) counts, we affirm the hearing judge's finding that Deetman failed to maintain funds in his CTA on behalf of Cameron (Count Four) and Medicare (Count Six). However, we accord no additional weight to these rule violations in assessing the degree of discipline because the same misconduct underlies the section 6106 misappropriation counts. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

E. Count Ten: Moral Turpitude/Misrepresentation (§ 6106)

In the NDC, Deetman was charged with falsely informing Cameron at their October 19, 2014, meeting, in the presence of her friend Worix, that he had not yet received any settlement proceeds. The hearing judge found that Deetman failed to answer Cameron's inquiries candidly and that his false statements and omissions were acts involving moral turpitude, deceit, and dishonesty, in willful violation of section 6106. We agree.

Both Cameron and Worix testified that Cameron specifically asked Deetman during the meeting when she would receive her check. Deetman told her "that's not going to happen." According to Cameron and Worix, he led them to believe Cameron's settlement was still pending, and he offered Cameron $1,000 a month of his own money so she could pay her bills in the interim.

Deetman maintains that Cameron misunderstood what he meant when he said, "that's not going to happen." He testified that he made the statement to explain to Cameron that he was withholding funds until he resolved the Medicare issues. He further testified that Cameron was "an elderly client," and someone who "obviously did not have the capacity to recall nor understand what occurred in the conversations she had with [him] about why the settlement was not being disbursed." We find Deetman's attempt to discredit Cameron unpersuasive. We find

no evidence of a lack of Cameron's competency in our review of the record; additionally, Deetman's testimony does not vitiate Worix's testimony, which corroborates Cameron's. Further, Deetman does not explain why he failed to inform Cameron of his receipt, deposit, and withdrawal of the entire $22,500 settlement amount, which are material events that occurred over a year before their in-person meeting. The concealment of these facts is just as misleading as making explicitly false statements. (See *Lewis v. State Bar* (1973) 9 Cal.3d 704, 713 [attorney's concealment of material facts designed to mislead others is no less serious than affirmative deceptive statements].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Deetman to meet the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found that Deetman's multiple acts of misconduct constituted substantial aggravation. Because we find culpability on nine counts, we agree and affirm. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

2. Concealment (Std. 1.5(f))/Overreaching (Std. 1.5(g))

Like the hearing judge, we find that Deetman engaged in acts of concealment and overreaching. At the outset, he personally signed and witnessed Cameron's signature to the Hornblower Release without informing her of the details. He then engaged in obfuscation and acts of dishonesty regarding the status of the settlement funds. Finally, without his client's knowledge or consent, or any other indicia of a legitimate business transaction, he transformed

Cameron's entrusted funds into a unilateral loan to himself. Such actions warrant significant weight in aggravation. (See *Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [essence of fiduciary or confidential relationship is that parties do not deal on equal terms because person in whom trust and confidence is reposed is in superior position to exert unique influence over dependent party].)

3. Significant Harm to Client (Std. 1.5(j))

We agree with the hearing judge that Deetman caused significant financial harm to Cameron, as she was deprived of her money for more than two years (from August 2013 until December 2015 when Cameron settled her lawsuit with Deetman). Cameron, who is retired and on a fixed income, testified that she would have invested the settlement funds in a high-yielding investment account in order to earn interest. However, Deetman withheld her funds, and, by October 2014, she asked to meet with him because she needed money to pay her mortgage and other bills. Deetman paid her only $2,000 in "advances" before she filed a disciplinary complaint (after which he stopped), and Cameron then had to incur the added expense of hiring an attorney to pursue legal recourse. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm where client hired new attorney, incurred fees, and suffered for three years due to attorney's misconduct].)

4. Lack of Candor and Cooperation to Victim of Misconduct (Std. 1.5(l))

The hearing judge found Deetman lacked candor and directly contradicted his stipulation when he testified he was unaware of the amount of the Medicare lien. However, we find that Deetman's lack of candor is more pointedly directed at the Medicare set-aside, rather than the lien. During trial, he repeatedly testified that the Medicare set-aside required him to withhold disbursement of funds to Cameron. However, no evidence exists in the record of any notice from Medicare regarding a set-aside requirement or that Deetman promptly contacted Medicare

to resolve this issue after he received Cameron's settlement check. The alleged Medicare set-aside is even more suspect in light of the fact that Deetman misappropriated all of Cameron's entrusted funds and never paid the Medicare lien. (See *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-283 [lack of candor to State Bar deserves strong aggravation and may be more egregious than underlying offense].)

5. Indifference Toward Rectification or Atonement for Consequences of Misconduct (Std. 1.5(k))

The record reveals several instances of significant indifference by Deetman. First, he failed to accept responsibility for his actions. He testified at trial that he did nothing wrong, and argued that he acted "in [Cameron's] best interest," despite depriving Cameron of her funds for two years while he used them for his personal purposes. Second, he attempted to shift blame and discredit Cameron by stating that she was elderly and unable to recall or comprehend conversations. The hearing judge found Cameron credible and reliable and Deetman "disingenuous," and we affirm these findings. The record demonstrates that the reason Cameron did not fully comprehend the situation was that Deetman failed to inform her and otherwise lied to and misled her. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [attorney who fails to accept responsibility for actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse].) Finally, Deetman stopped making $1,000 payments to Cameron immediately after he became aware of her State Bar complaint, which shows a lack of remorse and appreciation for the consequences of his actions. While the law does not require false penitence, it does require that Deetman accept responsibility for his misconduct and come to grips with his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) He has not done this.

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

The hearing judge gave Deetman significant mitigation for his 28 years of discipline-free practice. (Std. 1.6(a) ["absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur" is mitigating circumstance].) While we assign some mitigation to Deetman's nearly three decades of discipline-free law practice, we cannot say that his bad acts are aberrational or unlikely to recur in light of his serious and multiple transgressions in this case involving moral turpitude. His current misconduct, along with his lack of candor and indifference, demonstrate an inability or unwillingness to conform his conduct to the high ethical standards required of an attorney. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029-1030 [when misconduct is serious, long record without discipline most relevant when misconduct occurs during single period of aberrant behavior; "although in other circumstances petitioner's past discipline-free record would be relevant to the degree of discipline to be imposed, the present circumstances are such that a sanction less than disbarment does not offer assurance that the public will be protected"].)

2. Spontaneous Candor and Cooperation Displayed to State Bar (Std. 1.6(e))

The hearing judge gave Deetman some consideration in mitigation for cooperating with the State Bar and entering into an extensive factual stipulation, which the judge found evidenced Deetman's culpability for Count Three (failure to account) as well as Counts Six and Seven (failure to maintain and misappropriation of Medicare funds). We agree that Deetman in entitled to some mitigation, but find the stipulation only evidenced the predicate facts giving rise to culpability for Count Three. The case still proceeded to trial on all 10 counts, and Deetman maintained at trial that he did not mishandle or misappropriate funds, including the Medicare funds, because Cameron loaned him the money. (See *In the Matter of Gadda* (Review Dept.

2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [factual stipulation merits some mitigation]; but see *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation reserved for those who stipulate to culpability].)

3. Extraordinary Good Character (Std. 1.6(f))

We agree with the hearing judge that Deetman is not entitled to mitigation credit for good character. His single piece of character evidence was a declaration from the attorney who represented him in the civil action with Cameron and had known Deetman for over 25 years. The declaration, dated December 20, 2015, does not mention the disciplinary charges against Deetman or contain any indication that the declarant was aware of the full extent of the misconduct. (Std. 1.6(f) [character evidence must be attested to by wide range of references in legal and general communities, who are aware of full extent of misconduct]; see also *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167 [no mitigation for good character evidence based on testimony of one witness]; *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 [single character witness insufficient to be mitigating circumstance].)

4. Extreme Emotional Difficulties Suffered at Time of Misconduct (Std. 1.6(d))

The hearing judge declined to give any weight in mitigation for extreme emotional difficulties. Deetman testified that he suffered emotional hardship stemming from his wife's suicide in November 2014. This tragedy occurred after most of the misconduct took place, including the section 6106 violations (misappropriation and misrepresentation). We acknowledge Deetman's loss, but we agree with the hearing judge that Deetman has not met the requirements of standard 1.6(d), which allows mitigation for "extreme emotional difficulties . . . suffered by the member *at the time of the misconduct* and established by expert testimony as directly responsible for the misconduct . . . ." (Std. 1.6(d), italics added.)

5. Community Service and Pro Bono Activities

Deetman testified to his involvement in several community and pro bono activities, including volunteering as a youth pastor, serving as chairman of the board for a nonprofit called Steppin' Out Urban Ministries and as a liaison from San Diego County to an organization called Family Ministries, and working as a high school football coach. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community and pro bono work can be mitigating circumstances].) However, the hearing judge declined to extend any mitigating credit because Deetman offered no supporting evidence of his involvement, and the timing of his stated activities predated his misconduct by many years. Based on Deetman's own testimony, we assign him little weight in mitigation. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where respondent testified but evidence failed to demonstrate level of involvement].)

6. Restitution (Std. 1.6(j))

The hearing judge properly declined to assign any mitigation credit for restitution. Deetman repaid the misappropriated funds only when faced with a malpractice lawsuit and on the eve of this disciplinary proceeding.[18] (Std. 1.6(j) [mitigation credit appropriate only when "restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings"]; *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution under threat or force of disciplinary or civil proceedings not mitigating].)

[18] The hearing judge assigned some aggravation based on Deetman's late restitution. Standard 1.5(m) provides that failure to make restitution can be an aggravating circumstance. Since Deetman ultimately made restitution, we do not assign aggravation in this regard.

V. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE[19]

Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92), and should be followed whenever possible (std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11).

Standard 2.1(a) is directly on point, and addresses Deetman's most egregious misconduct: intentional misappropriation. It provides that "[d]isbarment is the presumed sanction . . . unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[20]

Deetman intentionally misappropriated $14,855.77, which is a significant amount of money. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 considered significant].) He also failed to render an accounting, disregarded the rights of a known lienholder, and deprived his client of the use of her money for two years—repaying it only after she initiated a State Bar complaint and hired an attorney to file a civil action.

Deetman's misconduct is also shrouded in acts of concealment, overreaching, and dishonest behavior. After he signed as Cameron and "witnessed" Cameron's signature to the Hornblower Release, he failed to notify her that he received the settlement funds, and affirmatively misled her into believing he had not. Further, he ignored or avoided numerous calls and inquiries from Cameron for updates and an accounting, claiming he was prevented

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

[20] Standard 2.11 is also on point and provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude. . . ." However, we apply the presumed disbarment analysis under standard 2.1(a) because standard 1.7(a) directs that if a member commits two or more acts of misconduct and the standards specify different sanctions, "the most severe sanction must be imposed."

from responding due to Medicare issues. At the same time, and without Cameron's knowledge or permission, he unilaterally withdrew the entire amount of her entrusted funds pursuant to what he attempts to characterize as a loan to himself.

In light of this record, Deetman's modest mitigation is neither compelling nor does it predominate over his serious and multiple acts of misconduct involving moral turpitude. His misappropriation of entrusted 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 single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

Under these circumstances, we find no basis to recommend a more lenient sanction than disbarment under standard 2.1(a). (See 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, legal system, or profession, and attorney able to conform to ethical responsibilities in future]; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) Accordingly, disbarment is warranted under the facts of this case, the standards, and relevant decisional law, and it is necessary to protect the public, the courts, and the legal profession.[21]

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[21] E.g., *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 (disbarment for misappropriating approximately $20,000, 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 misappropriating approximately $27,000, despite mitigation, including 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, and remorse); *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 (disbarment for misappropriating approximately $40,000, intentionally misleading client about funds, despite mitigation, including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar).

VI. RECOMMENDATION

We recommend that Bernard Richard Deetman be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Deetman 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.

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

VII. ORDER OF INACTIVE ENROLLMENT

The order that Bernard Richard Deetman be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective April 17, 2016, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.