PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED September 2, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of MARY DERPARSEGHIAN aka MARY DER-PARSEGHIAN, A Member of the State Bar, No. 224541.	)	Case Nos. 13-O-17168; 14-O-01719 (Cons.) OPINION AND ORDER

Mary Derparseghian stipulated to five counts of misconduct in two client matters: failing to perform competently and committing four trust account violations. Based on the stipulations, the hearing judge found her culpable of these charges. The judge also found that the trial evidence proved she failed to maintain approximately $64,000 in her client trust account (CTA) and misappropriated those funds by gross negligence. The judge recommended discipline that included a two-year actual suspension.

Both the Office of the Chief Trial Counsel of the State Bar (OCTC) and Derparseghian appeal. OCTC argues that the misappropriation was intentional or so grossly negligent that, combined with Derparseghian's other misconduct and aggravation, disbarment is warranted. Derparseghian argues that the misappropriation resulted from a simple negligent accounting error, and urges a maximum three-month suspension.

After independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings except we conclude that Derparseghian's misappropriation was intentional, and not grossly negligent. We also find more aggravation and less mitigation.

In these circumstances, our disciplinary standards call for disbarment, and we find no reason to depart from them. We recommend that Derparseghian be disbarred.

I. SIGNIFICANT PROCEDURAL BACKGROUND

Derparseghian was admitted to practice law in California in March 2003. On July 14, 2014, OCTC filed a two-count Notice of Disciplinary Charges (NDC) in case No. 13-O-17168 (the Merrigan matter). On September 30, 2014, OCTC filed a seven-count NDC in case No. 14-O-01719 (the Donis/Rodionov matter). A two-day trial was held, and the judge issued his decision on October 6, 2015.

Given Derparseghian's stipulations, the primary issues before us are the level of discipline and whether the misappropriation alleged in the Donis/Rodionov matter was intentional (as OCTC contends), by gross negligence (as the hearing judge found), or by simple negligence (as Derparseghian alleges). This distinction is an important judicial determination because the applicable standard suggests different presumptive disciplines depending on the presence or absence of intentionality. (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[1] std. 2.1(a) [disbarment for intentional or dishonest misappropriation]; std. 2.1(b) [actual suspension for grossly negligent misappropriation]; and std. 2.1(c) [suspension or reproval for misappropriation not involving intentional misconduct or gross negligence].) As noted and as discussed below, we find that Derparseghian's misappropriation was intentional and that disbarment is warranted.

II. THE DONIS/RODIONOV MATTER

A. FACTS

In February 2010, Galina Donis and Igor Rodionov hired Derparseghian to represent them in a dispute with their homeowners association (HOA) over a leaky roof that caused mold

[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.

in their condominium. The clients advanced $5,000 in costs and agreed to pay a contingency fee of 40% of the gross recovery. Derparseghian acknowledged that she did not deposit the $5,000 into her CTA.

Derparseghian stipulated to the following facts. She settled the HOA case for $111,500, to be paid in three different checks over nearly two years: $2,500 on June 28, 2011; $65,000 on March 1, 2013; and $44,000 on April 26, 2013. She deposited each check into her CTA and was entitled to $45,700.24 (40% contingency fee = $44,600 plus costs of $1,100.24). She was required to hold the balance of $65,799.76 in trust. Beginning about two weeks after the March 1, 2013 deposit, and continuing as the proceeds were deposited, she withdrew a total of $87,600 by writing 16 checks to herself.[2] These withdrawals caused the balance in her CTA to drop below the required $65,799.76 on several occasions, reaching a low of $2,486.44 on June 25, 2013, where it remained until July 19, 2013. She thus failed to maintain $63,313.32 in trust for her clients during this time.

The trial evidence established the following facts. Donis emailed Derparseghian in January 2014 to inquire about the settlement proceeds. The roof repairs and mold clearance test had been completed in October 2013, and the property sold in November 2013. Derparseghian replied in early February 2014, claiming that a former employee had not timely transmitted earlier messages from Donis to her, and that she still needed signatures on the settlement documents before she could disburse any funds. She instructed Donis: “I really need to see you as soon as possible to figure out the breakdown of the settlement proceeds.” Derparseghian

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[2] Although the record demonstrates that Derparseghian wrote more than 16 checks to herself during this time period, she stipulated that she issued the following checks: $9,500 on March 12; $9,800 on March 14; $4,000 and $7,000 on March 18; $8,500 on April 11; $9,500 on May 17; $4,000 on May 21; $3,000 and $2,000 on May 24; $6,000 on May 30; $9,800 on June 3; $6,000 on June 6; $1,500 on June 12; $3,000 on June 14; $2,000 on June 21; and $2,000 on June 25. The record does not establish how she spent the money.

misaddressed the letter, and Donis never received it. Shortly thereafter, Donis filed a State Bar complaint.

On February 20, 2014, a State Bar investigator wrote to Derparseghian informing her that Donis had complained about her failures to communicate and to provide a status report about the settlement. The investigator requested a written response, and directed Derparseghian to produce a copy of the "settlement agreement, settlement and disbursement checks, and an itemized accounting of the settlement funds."

For the next few months, Derparseghian communicated with the investigator primarily to request extensions of time. She did not mention her CTA or the Donis/Rodionov settlement, nor did she provide the requested settlement records. In the meantime, Donis continued her efforts to collect the settlement funds. As of March 2014, Derparseghian had not paid her clients their settlement share, had misappropriated nearly $64,000 a year earlier, did not have enough money in her CTA to pay the clients, and had not checked her CTA balance since she deposited the settlement funds in 2013. Nevertheless, Derparseghian asserted to the State Bar investigator that Donis's complaint was an attempt to obtain a discount on attorney fees.

On April 15, 2014, the State Bar investigator sent another letter, this time requesting copies of Derparseghian's CTA monthly bank statements and all CTA ledgers. Derparseghian did not send the bank statements and testified at trial that she still had not checked her CTA balance. She further testified that she discovered for the first time that her CTA balance was lower than required on May 27, 2014, when she prepared to write the settlement checks to Donis and Rodionov. On that day, she drafted two checks to her clients totaling $70,575, and placed them in the overnight mail two days later, on May 29, 2014. To cover those checks, she borrowed $75,000, which she deposited into her CTA on May 30, 2014. The loans included $40,000 from a friend, an additional $25,000 that was wire transferred directly into her account

from other friends, and a $10,000 "counter credit" transfer from her personal account. Donis and Rodionov cashed their checks on May 31, 2014, and the funds cleared the CTA on June 2, 2014.

Derparseghian stipulated that she failed to properly manage her CTA. She did not maintain the records required by rule 4-100(C) of the California Rules of Professional Conduct,[3] including a client ledger, written journal, bank statements, and monthly reconciliations. Instead, she tracked her CTA balance by: (1) reviewing copies of checks she had written; (2) placing them in the appropriate client's file; and (3) calculating the amount that should be remaining in her CTA. Using this calculation, she withdrew her fees and costs when she needed money. She did not separately check, track, or otherwise reconcile her CTA balance.

Derparseghian testified that she miscalculated her CTA balance in the Donis/Rodionov matter when she inadvertently neglected to place copies of the numerous checks she had written to herself in their client file. She deemed this "an accounting error" as a result of being overworked, explaining: "I did not realize I had withdrawn that much money." Derparseghian also testified that she now keeps a general ledger, in addition to her individual client ledgers, but has not read books or taken classes about proper client trust accounting procedures.

B. CULPABILITY FINDINGS

Count 1: Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]
Count 3: Rule 4-100(A) [Commingling]
Count 4: Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]
Count 6: Rule 4-100(C) [Failure to Keep Trust Accounting Records]

The NDC alleged in counts one, three, four, and six that Derparseghian failed to: (1) deposit $5,000 in advanced costs into her CTA; (2) promptly remove funds she earned (commingling); (3) maintain over $60,000 in trust; and (4) prepare and maintain a written ledger for her clients, a written journal for the CTA, and a monthly reconciliation for the written ledger,

[3] All further references to rules are to this source unless otherwise noted.

written journal, and bank statement. She stipulated to culpability on all four counts, which the hearing judge accepted, and we affirm.[4]

Count 5: Business and Professions Code, Section 6106 [Misappropriation (Moral Turpitude)][5]

The NDC alleged in count five that Derparseghian committed an act of moral turpitude by intentionally, or with gross negligence, misappropriating approximately $64,000 from Donis and Rodionov between June 25, 2013 and July 19, 2013. Derparseghian stipulated she failed to maintain $63,313.32 in trust as of June 25, 2013, and on review, concedes that this constituted a misappropriation. She argues, however, that it was neither intentional nor by gross negligence. Instead, she contends that due to her "accounting error," she committed simple negligence and inadvertently withdrew more funds than she was entitled to receive under the settlement agreement.

The hearing judge rejected this explanation and found that Derparseghian's repeated use of client monies for more than a year, coupled with her failure to monitor, reconcile, or balance her CTA, constituted clear acts of moral turpitude. Nor did the judge accept her attempt to justify her "ignorance of the true status of her CTA" by admitting that she exercised virtually no oversight for a year. Instead, the judge found "ample evidence" that her misappropriation and personal use of her clients' money for more than a year was "knowing and intentional." Yet, in determining the degree of discipline and without further comment on this finding, the judge concluded that the misappropriation was grossly negligent. We find that the hearing judge erred.

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[4] We assign no weight to count four [violation of rule 4-100(A) [failure to maintain client funds in trust account] because the same misconduct underlies the section 6106 violation, which supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

[5] Section 6106 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." All further references to sections are to this source.

As analyzed below, the record clearly and convincingly establishes an intentional misappropriation.[6]

First, Derparseghian's deliberate failure to establish and oversee her CTA is so wholly improper, it is suspect. (*Clark v. State Bar* (1952) 39 Cal.2d 161, 174 [failure to keep proper books is suspicious circumstance in itself].) Rule 4-100 provides the mandatory minimum framework for managing a CTA. Among other things, attorneys must deposit all client funds, including advanced costs, into the CTA. (Rule 4-100(A).) They must also keep a written client ledger listing every monetary transaction, an account journal tracking all the deposits into and withdrawals from the CTA, bank statements and cancelled checks, a monthly reconciliation of client finances, and a journal of any other securities or properties held. (Rule 4-100(B)(3), (C); The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2013) ("Handbook"), § II, p. 3.) Derparseghian admittedly did not deposit the $5,000 in advanced costs into her CTA, failed to maintain the required financial documentation, and made it her general practice *not* to comply with the established trust accounting requirements. She thus violated the panoply of protective rules designed to prevent the loss of trust funds that occurred here. (E.g., *Silver v. State Bar* (1974) 13 Cal.3d 134, 144-145.)

Second, Derparseghian stipulated that she withdrew $87,600 from the CTA in two series of withdrawals that corresponded to the timing of each deposit of a large settlement check. Starting on March 12, 2013, approximately two weeks after depositing the settlement check for $65,000, she wrote five checks to herself totaling $38,800 of the $45,700.24 to which she was entitled. Then, within weeks of depositing the settlement check for $44,000 on April 26, 2013, she wrote an additional 11 checks to herself between May 7 and June 25, 2013, totaling $48,800.

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[6] 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.)

As a result, her CTA balance on several occasions dropped below the $65,799.76 she was required to hold, reaching a low of $2,486.44 on June 25, 2013, where it remained through July 19, 2013.

Third, she issued all 16 checks to herself with no explanation of their purpose.

Fourth, Derparseghian's claim that she did not check her CTA balance for more than a year after depositing $111,500 and withdrawing $87,600 is implausible considering that the State Bar contacted her about this very issue. Beginning in February 2014, the State Bar investigator informed her that Donis had complained about not receiving her share of the settlement. Then in April 2014, the State Bar requested copies of her CTA records. By this time, Derparseghian was on notice that something was seriously amiss with her CTA. Yet she insisted that she did not check her CTA balance until May 27, 2014, just a few days before she secured $75,000 in loans to finally disburse the settlement funds.

We find that the only reasonable inference from all the evidence, including the frequency, amounts, timing, and nature of her many withdrawals, is that Derparseghian intentionally took client funds from her CTA freely, for her own purposes, and without regard to the balance. (See *Zitny v. State Bar* (1966) 64 Cal.2d 787, 792 [intent may be proved by direct or circumstantial evidence].) The hearing judge's initial finding that "ample evidence" proved Derparseghian committed an intentional misappropriation was correct.[7]

III. THE MERRIGAN MATTER

A. FACTS

Image Lab, Inc. sued Paul Merrigan and his corporation, Desert Classic Concours D'Elegance (Desert Concours) for breach of contract. In July 2011, Merrigan hired

[7] At OCTC's request, the hearing judge dismissed count two alleging a violation of rule 4-100(B)(1) [failure to notify of receipt of client funds]. For lack of evidence, the judge also dismissed count seven alleging a violation of section 6068, subdivision (m) [failure to respond to client inquiries]. We affirm both dismissals.

Derparseghian to represent him and the corporation. Derparseghian filed an answer and cross-complaint, and the matter was set for a jury trial on January 14, 2013. A few days before trial, Derparseghian informed Merrigan that he did not need to attend the trial.

Derparseghian did not prepare for trial. On January 11, 2013, she filed an ex parte application to continue the trial, and sent a contract attorney to the hearing on her application, which was scheduled for the first day of trial. The court denied the application. Since the contract attorney was authorized to appear only for the continuance hearing, no one represented Merrigan or Desert Concours at the trial. After a brief default hearing, the court dismissed the cross-complaint and found in favor of Image Lab. The court awarded $83,700, plus $15,189.78 in interest, and $18,000 in attorney fees against Derparseghian's clients.

On January 17, 2013, Derparseghian received a copy of the proposed judgment. A few days later, she sent a letter to Merrigan informing him that his action had been dismissed; she did not disclose that the trial was held or that judgment had been entered. A hearing on the proposed judgment was set for February 20, 2013. Derparseghian failed to file an opposition and did not appear for the hearing. Two days later, Image Lab served Derparseghian with the notice of an entry of judgment for $116,889.78. Derparseghian filed and served a motion for a new trial, which was denied after a hearing on April 12, 2013.

On June 6, 2013, Merrigan contacted Derparseghian to inform her that he was shocked to read in a local newspaper that a money judgment had been entered against him in the Image Lab case. Derparseghian testified that she had told Merrigan about important case developments during several telephone conversations. Merrigan denied these discussions, but the hearing judge found Derparseghian more credible than Merrigan.

On July 24, 2013, Derparseghian filed a motion to set aside the default judgment. Two days later, she sent Merrigan her first written status update since January, notifying him that his

cross-complaint had been dismissed and apprising him of her efforts to set aside the judgment. On August 20, 2013, she sent a second written status update, further informing Merrigan that: (1) the motion to set aside the judgment had been denied, but she could pursue an appeal, at an additional cost, as an option; (2) she had incurred another $25,157 in legal fees that she expected Merrigan to pay; and (3) she had made attempts to settle the Image Lab matter for $15,000, which was less than the appeal would cost.

Merrigan declined to continue settlement efforts, and subsequently filed for bankruptcy relief. A few months later, he filed a malpractice lawsuit against Derparseghian. The case settled when Derparseghian, through her counsel, agreed to pay for Merrigan's bankruptcy action in exchange for his dismissal of the malpractice action.

B. CULPABILITY

Count 1: Rule 3-110(A) [Failure to Perform Competently]

OCTC charged that Derparseghian failed to perform competently, in violation of rule 3-110(A),[8] by advising Merrigan he need not appear at trial and by failing to timely request a trial continuance and to prepare for or appear at trial or at the hearing on the proposed judgment. Derparseghian stipulated to culpability, which the hearing judge accepted, and we affirm.

Count 2: Section 6068, Subdivision (m) [Failure to Inform Client of Significant Developments][9]

OCTC charged Derparseghian with failing to inform Merrigan of significant developments in the Image Lab case. The hearing judge dismissed this charge, citing

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[8] Rule 3-110(A) provides that "[a] member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

[9] 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."

Derparseghian's credible testimony that she timely reported these events to Merrigan during several telephone conferences after the trial and in written communications. The judge found Merrigan's testimony was not credible due to his "faulty memory." We give great weight to the judge's credibility determination "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand." (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.) Accordingly, we affirm the dismissal, which OCTC does not challenge.

IV. MITIGATION IS NOT COMPELLING

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

A. AGGRAVATION

1. Multiple Acts of Wrongdoing

The hearing judge found that Derparseghian's multiple acts of misconduct were an aggravating factor. (Std. 1.5(b).) We agree, and assign significant weight because the misconduct was varied and involved two client matters. Contrary to OCTC's contentions, however, this does not constitute a pattern of misconduct. (See *Young v. State Bar* (1990) 50 Cal.3d 1204, 1217 [pattern demonstrated by most serious instances of repeated misconduct over prolonged time period].)

2. Significant Harm to Clients

The hearing judge found that Derparseghian's misappropriation caused significant financial harm to Donis and Rodionov. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We agree, and also find she caused emotional harm to Donis, who testified that she cried frequently, had difficulty sleeping, and her weight fluctuated during the year she tried to obtain her settlement money. Donis further

testified that she became frustrated and depressed as a result of the stress, and even believed she might "end up in a mad house."

As to Merrigan, the hearing judge found no harm. We disagree as this finding is contrary to the evidence. When Derparseghian failed to prepare for or attend trial, the court awarded $116,889.78 against him and Desert Concours. Merrigan testified that the judgment forced him into bankruptcy and the small sum of money in his bank account was garnished. He stated that the circumstances left him "at the moment, at a fairly advanced age, utterly dependent on no income other than my Social Security." As for emotional harm, Merrigan testified that the experience was "embarrassing," "frustrating," " infuriating," and "moderately devastating."

We assign significant weight in aggravation to the harm Derparseghian caused her clients.

B. MITIGATION

1. Absence of Prior Discipline

Derparseghian was admitted to practice law in California in 2003. She first committed misconduct in February 2010, when she failed to deposit into her CTA the $5,000 in advanced costs she received in the Donis/Rodionov matter. The hearing judge assigned some mitigation credit for her seven years of discipline-free practice. We agree and assign it slight weight. (Std. 1.6(a); *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [seven years entitled to "slight weight in mitigation"].)

2. Cooperation with State Bar

The hearing judge assigned mitigation for cooperation. Derparseghian entered into an extensive partial factual stipulation, and she admitted culpability on five out of nine counts, although not the misappropriation charge. (Std. 1.6(e) [mitigation for spontaneous candor and

cooperation to victims or State Bar].) We agree with the hearing judge that Derparseghian is entitled to some mitigation for her cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation is appropriate when culpability as well as facts admitted].)

3. No Credit for Restitution Payment

The hearing judge properly declined to assign mitigation for restitution because Derparseghian did not repay the misappropriated sums until many months after Donis filed a complaint with the State Bar. (Std. 1.6 (j); *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution under threat or force of disciplinary or civil proceedings not mitigating].)

4. No Credit for Recognition of Wrongdoing/Remorse

The hearing judge assigned Derparseghian credit in mitigation for acknowledging and voicing regret for her wrongdoing. (Std. 1.6(g).) We disagree. First, her expression of remorse alone does not merit significant mitigating weight. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2.) Further, she did not agree to handle Merrigan's bankruptcy matter pro bono as an expression of remorse; she offered to do so to obtain his agreement to dismiss his malpractice action against her. Finally, but importantly, according to her own testimony, Derparseghian has neither educated herself about properly managing her CTA nor implemented an appropriate accounting system.

5. Good Character

The hearing judge correctly assigned nominal mitigating credit for Derparseghian's good character evidence. (Std. 1.6(f) [mitigation credit for extraordinary good character attested to by wide range of references in legal and general communities who are aware of full extent of misconduct].) Derparseghian presented unsworn letters from three character references—one attorney and two prominent members of the Armenian community. While each spoke highly of

her as a moral person, hard worker, and outstanding community member (*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"]), three references are insufficient to warrant significant credit. The references did not represent a broad spectrum of the community, demonstrate knowledge of the charges in the Donis/Rodionov matter, or establish extraordinary good character, as the standard requires. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [assigning diminished mitigation for character evidence from four witnesses who did not constitute wide range of references in legal and general communities]; *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct are not given significant weight in mitigation].)

6. Pro Bono Work and Community Service

The hearing judge assigned significant mitigation credit to Derparseghian's pro bono work and community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) We agree. Derparseghian testified, and documentary evidence proved, that she has donated hundreds of hours of volunteer work relating to child advocacy and family law, including providing educational programs to parents, teachers, and children and free legal assistance to low-income people in Los Angeles County. She has been honored for her commendable charitable efforts by the Harriett Buhai Center for Family Law. (*Id*. [substantial record of pro bono activities entitled to considerable weight]; *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigating weight assigned for demonstrated legal abilities and zeal in undertaking pro bono work].)

V. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE[10]

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 for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.1 is most relevant as it addresses misappropriation. It distinguishes three levels of recommended discipline, depending on whether the misappropriation was intentional, grossly negligent, or neither (e.g., simple negligence).[11] This new standard, revised July 1, 2015, requires our court to clearly identify the presence or absence of intentionality in a misappropriation case. Here, we have found that Derparseghian committed an intentional misappropriation. Thus, subdivision (a) of the standard applies and provides that disbarment is appropriate unless: (1) the misappropriation is insignificantly small; or (2) the most compelling mitigating circumstances clearly predominate.

Neither exception applies. Derparseghian intentionally misappropriated nearly $64,000, a significant amount. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 deemed significant].) And while her overall mitigation for no prior discipline, cooperation, good character, and pro bono service is considerable, it is not

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[10] 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. 1.1.)

[11] Standard 2.1 provides: "(a) Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate. [¶] (b) Actual suspension is the presumed sanction for misappropriation involving gross negligence. [¶] (c) Suspension or reproval is the presumed sanction for misappropriation that does not involve intentional misconduct or gross negligence."

Standard 2.11 also applies and provides that disbarment or actual suspension is appropriate for an act of moral turpitude.

compelling nor does it predominate over her serious misconduct and significant aggravation for multiple acts of wrongdoing and significant harm to all three of her clients.

In sum, Derparseghian ignored the CTA rules and safeguards designed to protect her clients' funds and then misappropriated the money. (*Silver v. State Bar, supra*, 13 Cal.3d 134, 144-145 [failure to adhere to basic accounting duties jeopardizes safety of client funds].) The CTA rules are "binding on all members" (rule 4-100(C)), and cannot be exempted by the press of business, ignorance, inattention, or incompetence. (Handbook, § 1, p. 1; see *Zitny v. State Bar, supra,* 64 Cal. 2d 787, 793 [ignorance no defense to rule violation].) An attorney who intentionally ignores these prophylactic safety measures does so at his or her own peril. Here, Derparseghian failed to maintain and account for funds in her CTA. She may not use this failure to create an aura of deniability as a means of defending against a charge of intentional misappropriation. To conclude otherwise would permit an attorney to mismanage his or her CTA, withdraw funds claiming ignorance of the CTA balance and its requirements, and thereby avoid responsibility for entrusted client funds. (See *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388 [criticizing attorney for "ostrich-like behavior" in not knowing official actions taken against her].)

We reject Derparseghian's argument that disbarment is excessive. Misappropriation of client trust funds is "a particularly serious ethical violation" as it "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.) Accordingly, "misappropriation generally warrants disbarment," and "[e]ven a single 'first-time' act of misappropriation has warranted such stern treatment." (*Id.* at pp. 656–657; see also *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38 [misappropriation is grave misconduct for which disbarment is

usual discipline].)[12] Of particular concern in this case is the harm Derparseghian caused her clients and her continuing failure to properly manage her CTA, even as of the time of trial. For these reasons, we do not recommend a lesser sanction than called for in standard 2.1(a).[13] The public, the courts, and the profession are best protected if Derparseghian is disbarred.

VI. RECOMMENDATION

We recommend that Mary Derparseghian be disbarred from the practice of law and that her name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that she must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

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

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

[13] Stds. 1.2(i), 1.7(c) (lesser sanction than recommended in standard may be warranted where misconduct is minor, little or no injury to client, public, or profession, and attorney able to conform to ethical responsibilities in future); see *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 (clear reasons for departure from standards should be shown).

VII. ORDER OF INACTIVE ENROLLMENT

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Mary Derparseghian is ordered enrolled inactive, effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

STOVITZ, J.*

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