PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed May 12, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of HENRY EDWARD GUZMAN, A Member of the State Bar, No. 202421.	)))))))	Case Nos. 11-O-17734 (11-O-18399; 12-O-12012; 12-O-13348) **OPINION AND ORDER**

This case involves a personal injury attorney who disregarded his professional and ethical obligations for three years. Prompted by several client complaints, the Office of the Chief Trial Counsel of the State Bar (OCTC) investigated and charged respondent Henry Edward Guzman with numerous acts of serious misconduct in four client matters. The hearing judge found Guzman culpable of 18 counts of misconduct, including two counts of misappropriation of client funds totaling $8,646.34, and two counts of moral turpitude.[1] After finding two factors in aggravation (multiple acts and significant harm) and two in mitigation (no prior discipline and cooperation), the judge recommended a one-year suspension.

OCTC appeals and asks that we find Guzman culpable of all 24 counts of misconduct, and seeks disbarment. Guzman did not file a response.

Based on our independent review (Cal. Rules of Court, rule 9.12), we find Guzman culpable of 24 counts of misconduct. We adopt the hearing judge's findings in aggravation, plus an additional factor due to Guzman's indifference towards the consequences of his misconduct.

[1] Guzman was charged with 25 counts of misconduct. The hearing judge granted OCTC's motion to dismiss Count One in case no. 11-O-17734 in the interests of justice, and he dismissed six other counts on the merits.

We also give less weight to Guzman's mitigation evidence than was afforded by the hearing judge. Having considered the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[2] and the relevant decisional law, we recommend that Guzman be disbarred.

I. BACKGROUND

A. Guzman's Personal Injury Practice

Guzman was admitted to practice law in California on August 25, 1999, and committed misconduct from early 2008 through 2012. During this time, Guzman maintained a solo practice, handling personal injury cases on a contingency fee basis. "[O]n all personal injury matters," Guzman testified he used a form retainer agreement, which included the following language:

> The Client hereby specifically authorizes The Attorney to settle his/her claims without instituting litigation, to receive the settlement proceeds; and to take a percentage of the recover in payment of his/hers fees. Client further authorizes The Attorney to endorse The Client's name on checks paid in settlement claims, to have the proceeds placed in The Attorney's Client Trust Account, and for The Attorney to with draw attorney's fees from the account. (Errors in original.)

The retainer agreement also authorized Guzman to unilaterally dismiss his clients' lawsuits without the clients' consent.

B. Guzman's Relationship with Claudia Wheeles

Guzman subleased an office from his former law school classmate, Steven Siebig.[3] The two attorneys were not partners and maintained separate bank accounts and records. However,

[2] All further references to standards are to this source, and reflect the modifications to the standards that are effective as of January 1, 2014.

[3] Sometime around early 2010, Siebig moved his offices to a different suite. Guzman moved with Siebig, but retained his phone number. In June 2011, Guzman began working from his home and around that time also obtained a new phone number.

they relied on the same staff for administrative support, including office manager Claudia Wheeles and a few of her family members.

Due to the nature of Guzman's practice, he spent the majority of his time in court. Since his staff handled the day-to-day activities, Guzman provided them with access to his client and banking records, including his client trust account (CTA) records. Guzman also permitted Wheeles to make deposits into his CTA and to use his signature stamp, although she was not an approved signatory to his CTA or authorized to make withdrawals. Guzman said he "tried to" reconcile his CTA every month until the end of 2010.

Guzman testified that two investigators from the Auto Insurance Fraud Division of the Los Angeles County District Attorney's Office visited him in early September 2010. They advised that the DA's office "believed [Wheeles] was taking advantage of individuals, including other attorneys, doctors, and clients regarding personal injury matters" and that Guzman was also a possible victim. Nevertheless, he continued to rely on Wheeles to manage his legal practice for almost nine months. During this time, Guzman did not question her about the DA's investigation nor did he take any action to protect his clients or his CTA. His inaction persisted even after he became aware in the Fall of 2010 that Wheeles was stealing some of his mail, including his CTA statements. He testified that by the end of 2010, he could not reconcile his CTA accounts.

Yet Guzman waited until May 26, 2011, to fire Wheeles and then did so by fax. Shortly thereafter, Guzman returned to his office to find that Wheeles had absconded with most of his client files, his CTA ledger, and other office items. Guzman ultimately came to believe that Wheeles had been using his signature stamp without authorization to make withdrawals from his

CTA. At the time of his trial, Guzman had not recovered any of his stolen client files from Wheeles.[4]

II. CASE NUMBER 11-O-17734 – ZAMORA MATTER

A. Factual Background

On June 27, 2007, Araceli Zamora was involved in a car accident. On July 23, 2007, Guzman agreed to represent her and notified the insurance company for the driver who was at fault that he was representing Zamora. As a result of her accident, Zamora incurred $4,767 in medical expenses from four different providers. From September to October 2007, Zamora received bills from three of the providers and notified Guzman via fax about these bills. Guzman did not respond. Over the next year and a half, Zamora paid a total of $1,868 to the three providers. She was not reimbursed for these expenses.

On December 1, 2008, Guzman's office faxed a letter to the driver's insurance company and asked it to evaluate Zamora's claim in light of the $4,767 in medical expenses. Guzman then agreed to a settlement without Zamora's knowledge or consent, resulting in a $7,800 payment on December 22, 2008. The settlement check was deposited into Guzman's CTA on March 10, 2009. He testified he did not know why the funds were not deposited for more than two months. Guzman did not inform Zamora about the settlement offer or the receipt of the settlement funds.

Pursuant to Guzman's contingency fee agreement, Guzman was entitled to one-third of the settlement or $2,600 as his fees, and Zamora was to receive $5,200. On July 22, 2009, before distributing any funds to Zamora, Guzman allowed his CTA to dip to $635, resulting in a misappropriation of $4,564.92. At trial, he was not able to explain why he did not notice the

[4] Guzman located the Licerio/Jaramillo and Haro client matter files in Siebig's filing cabinet. He did not recover the files for the Zamora or Darpinian client matters.

drop in funds, although he believed Wheeles caused it by using his signature stamp to steal funds from his CTA.

Between December 2008 and August 2011, Zamora called Guzman's office at least ten times concerning her case, but he did not return her calls. Zamora was experiencing difficult financial circumstances, requiring her to borrow money from relatives and rely on her unemployment checks to pay her medical expenses from the car accident. Finally, unable to reach Guzman, Zamora contacted the driver's insurance company in August 2011 and learned for the first time that her case had been settled two and a half years earlier.

On August 13 and September 6, 2011, Zamora sent Guzman letters demanding payment of the settlement money. On October 3, 2011, Guzman's attorney, Michael Magasin, whom Guzman hired to assist him with the fallout from the Wheeles' investigation, wrote and offered to pay Zamora $3,900 as her portion of the settlement funds and purported to provide an accounting for the case. Zamora did not respond. At trial, Guzman claimed that a January 25, 2010 check for $3,809 drawn against his CTA represented payment to Zamora for the car accident case. However, his claim is inconsistent with other more credible evidence.[5]

B. Culpability

OCTC established by clear and convincing evidence[6] that Guzman committed two violations of Business and Professions Code section 6068, subdivision (m),[7] by failing to inform

[5] OCTC maintains that the $3,809 check paid to Zamora represented a portion of the funds owed to her for settlement of an earlier trip-and-fall lawsuit that Guzman filed on behalf of Zamora against McDonald's Corporation. The record indicates that Siebig took over the McDonald's lawsuit from Guzman at some point, and obtained a settlement of $50,000.

[6] Clear and convincing evidence must leave no substantial doubt and be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[7] Section 6068, subdivision (m) requires attorneys "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in

Zamora of the December 2008 settlement offer and by failing to respond to her multiple requests for information for over two years. In addition, the evidence is clear and convincing that Guzman failed to notify Zamora when he received the settlement funds on her behalf, in violation of rule 4-100(B)(1) of the Rules of Professional Conduct,[8] failed to provide any accounting of his services until almost three years after he received the settlement in violation of rule 4-100(B)(3),[9] and failed to promptly pay Zamora her share of the settlement funds in spite of her repeated requests in violation of rule 4-100(B)(4).[10]

Guzman misappropriated $4,564.92 when he allowed Zamora's $5,200 settlement in his CTA to dip to $635 in July 2009. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 ["The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation"].) OCTC concedes that this misappropriation was the result of gross carelessness. Guzman allowed his staff to access his CTA records without supervision, gave Wheeles his signature stamp without regularly monitoring his CTA, and took no corrective action to protect his clients or his CTA for almost nine months after he learned that Wheeles was under investigation for fraud upon attorneys and clients. Such gross negligence constitutes an act of moral turpitude in willful

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matters with regard to which the attorney has agreed to provide legal services." All further references to sections are to this source.

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

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

[10] Rule 4-100(B)(4) provides a member shall "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."

violation of section 6106.[11] (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude finding proper for gross carelessness in failing to maintain trust account]; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795 [attorney has "personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. [Citations]".)

Guzman's failure to maintain $5,200 in funds in his CTA is also a violation of rule 4-100(A) as charged.[12] However, we assign no additional weight to it because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

III. CASE NUMBER 11-O-18399 – LICERIO AND JARAMILLO MATTER

A. Factual Background

On December 19, 2008, Chris Licerio was involved in a car accident while driving with his girlfriend, Maryann Jaramillo, and their child. Licerio testified that a photographer appeared at the accident scene, took pictures of the car accident, gave him Guzman's business card, and told him he would send the photos to Guzman. The next day, Licerio called Guzman at his office. Guzman confirmed he had received the accident photos and would represent Licerio. Shortly thereafter, a man whom Licerio believed was a co-worker or employee of Guzman's, came to the couple's house with a model to recreate the accident. At the meeting, Licerio and Jaramillo signed Guzman's retainer agreement. They were not provided with and did not sign conflict waivers.

[11] Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

[12] Rule 4-100(A) provides: "All funds received or held for the benefit of clients . . . shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith . . . ."

In August 2010, the insurer for the at-fault driver communicated a settlement offer to Guzman's office and provided general claim release forms. Guzman did not discuss the settlement offer with Licerio or Jaramillo. Instead, he, or one of his staff, executed the release forms using Licerio or Jaramillo's names without any indication that someone else had actually signed the releases. When asked why he did not obtain the clients' authorization to settle the case and why he signed their names on the releases without their knowledge, Guzman testified "I ha[d] the authority pursuant to the retainer agreement and my power of attorney that they signed off on."

On August 27, 2010, the insurer sent Guzman's office three settlement checks, totaling $12,000. On September 1, 2010, Guzman deposited the checks into his CTA. He did not inform Licerio or Jaramillo that he received the checks. Based on the retainer agreement, Guzman was entitled to $4,000 as his fee, which left $8,000 to be held on behalf of his three clients. On October 29, 2010, before disbursing any settlement funds to his clients, Guzman's CTA dipped to a low of $3,918, making the misappropriation $4,081.

From December 2010 through August 2011, Licerio repeatedly called Guzman's office and requested return calls. Licerio was concerned because he was unable to pay several invoices he received from medical providers since he was unemployed due to his injuries. Guzman did not return the calls. Jaramillo contacted the couple's own insurer and learned that the case had been settled for $12,000. The couple again contacted Guzman. In October 2011, more than a year after receiving the settlement, Guzman finally acknowledged he had received the money. The couple demanded payment and received their $8,000 share of the settlement in July 2012, almost two years after the funds had been deposited in Guzman's CTA. However, Guzman never provided an accounting.

B. Culpability

Guzman accepted the representation of Licerio, Jaramillo, and their child, in a matter in which a potential conflict existed, without obtaining their informed written consent, in violation of rule 3-310(C)(1).[13] Guzman also committed two separate violations of section 6068, subdivision (m), by failing to inform his clients of the August 2010 settlement offer and by failing to respond to multiple requests for information between December 2010 and August 2011. He violated rule 4-100(B)(1) by failing to notify his clients that he had received $12,000 in settlement funds on their behalf. He also failed to provide an accounting of his services for the relevant time period, in violation of rule 4-100(B)(3), and failed to promptly pay his clients their share of the settlement funds, in violation of rule 4-100(B)(4).

OCTC concedes that Guzman's misappropriation of $4,081.42 in settlement funds held in trust for Licerio and Jaramillo ($8,000 - $3,918.58) resulted from gross negligence, in willful violation of section 6106. We find that Guzman's carelessness here is highlighted by the fact the misappropriation occurred *after* Guzman was contacted by the DA's office about Wheeles. (See *Lipson v. State Bar*, *supra*, 53 Cal.3d at p. 1020; *Palomo v. State Bar*, *supra*, 36 Cal.3d at p. 795.) Although Guzman's failure to maintain the necessary $8,000 in his CTA is also a violation of rule 4-100(A), we assign no additional weight to this violation because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

[13] Rule 3-310(C)(1) provides that a member shall not, without the informed written consent of each client, accept representation of more than one client in a matter in which the interests of the clients potentially conflict.

1. Improper Solicitation

The hearing judge found that OCTC failed to provide clear and convincing evidence that a solicitation was made on Guzman's behalf in violation of rule 1-400(C).[14] We disagree. Licerio provided *unchallenged* testimony that the photographer who appeared at the accident scene gave him Guzman's card and told Licerio that he would forward the photos to Guzman who was "going to be representing" him. The next day, Guzman confirmed that he had received the photos when Licerio called and he told Licerio that he would be his attorney. Shortly thereafter, someone who worked for Guzman appeared at Licerio and Jaramillo's home and obtained their signatures to Guzman's retainer agreement. We find Licerio's testimony to be credible and constitutes clear and convincing evidence that Guzman made an improper solicitation through the photographer. We therefore reverse and find a violation of rule 1-400(C).

2. Settling Without Authorization

We also do not agree with the hearing judge's dismissal of the charge that Guzman committed acts involving moral turpitude in violation of section 6106 by placing his clients' signatures on client release forms, releasing all of their claims and causes of action without their knowledge or consent, and negotiating a settlement without their knowledge or consent. Such conduct involves overreaching and constitutes moral turpitude. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1144-1148 [attorney who settled claim without client's knowledge or consent culpable of moral turpitude even though retainer agreement gave attorney power to settle cause of action and endorse checks or releases].)

[14] Rule 1-400(C) provides: "A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship . . . ."

Guzman's testimony that his retainer agreement provided him with complete and unqualified authority to settle his clients' cases only serves to reinforce our conclusion that he breached his fiduciary relationship by overreaching. Clients have the unilateral right to control the outcome of their cases, including the right to settle or to refuse to settle a claim. Attempts by an attorney to restrict a client's right to control his or her case are invalid and evidence of overreaching. (*Hall v. Orloff* (1920) 49 Cal. App. 745, 749-750 [clause in retainer agreement between attorney and client prohibiting client from settling lawsuit without consent of attorney is void against public policy]; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 989 [language in retainer agreement intended to prohibit client from settling or dismissing case without attorney's consent was void and evidence of overreaching].) " 'The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.' [Citation.]" (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) The provisions of Guzman's retainer agreement giving him unfettered authority to settle or dismiss a case on any terms were in utter disregard of Licerio's and Jaramillo's right to retain control of the outcome of their case. Guzman's actions in signing the releases for Licerio and Jaramillo without their knowledge or consent, together with his retainer agreement permitting him to do so, are clear and convincing evidence of Guzman's overreaching. We therefore reverse the hearing judge and find that Guzman violated section 6106.

IV. CASE NUMBER 12-O-12012 – DARPINIAN MATTER

A. Factual Background

In February 2010, Aaron Darpinian, his wife, and their son were involved in a car accident. Guzman stipulated that he accepted representation of the Darpinians on or about

February 26, 2010. Mr. Darpinian testified neither he, his wife, or child was presented with conflict waiver forms. He also testified he was not happy with the representation by Guzman's office and was coerced into staying when advised by Guzman's staff that they would impose a lien for their fees if he left the firm.

Sometime during the spring of 2011, the Darpinian matter was transferred to another attorney, William Crader, without the Darpinians' knowledge or consent.[15] After receiving a letter from Crader, Mr. Darpinian contacted his insurance company and was informed by phone that Guzman withdrew as attorney in the matter. In December 2011, Crader notified the at-fault driver's insurance company that his associate, Ilu J. Ozekhome, would be handling the case. Mr. Darpinian testified the case was then settled "without us," and he has not received any settlement money.

B. Culpability

Guzman was charged with: (1) accepting representation of parties in potential conflict without obtaining their informed written consent, in violation of rule 3-310(C)(1); (2) failing to receive the Darpinians' consent before transferring their case to another lawyer and, thereby, failing to take reasonable steps to avoid reasonably foreseeable prejudice to the Darpinians in violation of rule 3-700(A)(2);[16] and (3) failing to inform the Darpinians that their case had been transferred to another attorney in violation of section 6068, subdivision (m). The hearing judge dismissed the entire Darpinian matter, finding that Guzman's office had never informed the Darpinians that they had been accepted as clients and therefore Guzman was unaware of their case. We disagree.

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[15] The record is not clear as to whether Wheeles or someone else transferred the case to Crader's office.

[16] Rule 3-700(A)(2) provides: "A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice" to his client.

Guzman stipulated that he accepted the representation of the Darpinians. Having admitted to this predicate fact, we find he breached his non-delegable professional duties owed to the Darpinians in willful violation of rule 3-310(C)(1), rule 3-700(A)(2), and section 6068, subdivision (m). Accordingly, we reinstate Counts Nineteen through Twenty-One in the Darpinian matter and find Guzman culpable of the charges alleged in all three counts.

V. CASE NUMBER 12-O-13348 – HARO MATTER

A. Factual Background

On October 7, 2008, Maria Haro was injured while riding on a bus. She hired Guzman to represent her and signed his fee agreement. Haro testified she did not believe that signing the fee agreement gave Guzman the power to dismiss her case.

Early in the representation, one of Guzman's office staff told Haro to be patient as her case would take two to three years to resolve. Over the next three years, Haro tried without success to obtain information about her personal injury claim. In fact, at one point, she lost track of Guzman, but finally located him. She spoke with him on the phone for the first time in September 2011 — three years after she had retained him. He put her off, saying he did not have her file in front of him, told her "not to worry," and promised to call back. After another two weeks passed, she sent him a letter. Only then did he agree to meet her in person.

Haro and her husband testified they met with Guzman in October 2011, and he told them that Haro's case was active, and a mediation would take place, followed by a March 2012 trial. After that meeting, Haro heard nothing from Guzman. When she checked the court's website, she discovered that her case had been dismissed more than seven months earlier. Haro then sought assistance from another attorney who told her the "case was already too old."

For his part, Guzman testified that he filed a summons and complaint in the Los Angeles County Superior Court in October 2010 "to protect the statute on these cases, just in case the

claimant, in this case Ms. Haro, wants to proceed with the claim and try to, I guess, settle the claim with the insurance company." Guzman did not serve the summons and the complaint as he was "deciding whether or not to proceed with [Haro's] case." Then, having unilaterally decided not to proceed, Guzman let the 60-day service period run without serving the summons and complaint. He did not appear at two hearings on orders to show cause (OSC) regarding the failure to submit proof of service of the summons and complaint. On March 1, 2011, the superior court dismissed Haro's case pursuant to Code of Civil Procedure, section 575.2.[17]

Guzman also testified that he informed Haro in writing in January 2011, prior to the dismissal, that her case "would be dismissed if there were no appearances made on her behalf, or if she wanted to continue with the case . . . to either sub into the case herself personally or to hire new counsel." Guzman did not have evidence of the letter to corroborate his testimony even though he had Haro's file. He testified he had no other communication with Haro until she contacted him nine months later in September.

B. Culpability

We affirm the hearing judge's culpability findings that Guzman failed to perform legal services with competence, in willful violation of rule 3-110(A).[18] He failed to timely serve the summons and complaint and did not appear at two OSC hearings, resulting in the dismissal of Haro's case. He also failed to respond promptly to reasonable status inquiries and to communicate significant developments to her. Guzman did not respond to numerous calls and

[17] Code of Civil Procedure, section 575.2 permits courts to impose sanctions up to and including dismissal for failure to comply with local rules, which in this case was the failure to comply with the "fast-track" case management rule requiring service of summons and complaint within 60 days.

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

messages from Haro for three years, failed to advise her that he had moved his office, and did not promptly advise Haro that her case had been dismissed.

The judge found insufficient evidence to support a charge of moral turpitude on the grounds that Guzman made misrepresentations to Haro. We disagree. First, Guzman did not tell Haro it was his fault that her case had been dismissed. Moreover, from October 2010 through September 2011, Guzman hid from Haro that: (1) he had filed a complaint on her behalf; (2) he did not serve the summons and complaint within the 60-day period because of *his* neglect; (3) the court issued two OSCs threatening dismissal; (4) he made the decision not to appear at the OSC hearings; (5) Haro could have appeared at those hearings; and (6) Haro had grounds to challenge the dismissal. In addition, during their *single* phone conversation in early September 2011, Guzman brushed Haro off, told her not to worry, and hid her case status from her for at least another two weeks. Accordingly, we reverse the hearing judge and find Guzman committed acts of moral turpitude in violation of section 6106. (*Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73, 87-88 [making statements to one's clients about their lawsuits that attorney knows to be false, is dishonest conduct falling within section 6106]; *Stevens v. State Bar* (1990) 51 Cal.3d 283, 289 [purposely misleading client about case status is dishonest and involves moral turpitude].)

VI. AGGRAVATION AND MITIGATION

We determine the appropriate discipline in light of the relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) OCTC must establish aggravation by clear and convincing evidence (std. 1.5), while Guzman has the same burden to prove mitigating circumstances (std. 1.6). The hearing judge found two aggravating factors: multiple acts of misconduct and client harm. We find additional aggravation due to Guzman's failure to understand the nature of his misconduct. We agree with the hearing judge's

two findings in mitigation (no prior discipline record and cooperation), although we assign minimal weight to these two factors.

A. Aggravation

1. Multiple Acts of Misconduct (Std. 1.5(b)); Pattern of Misconduct (Std. 1.5(c))

The hearing judge correctly found that Guzman committed multiple acts of misconduct in four client matters. We do not agree with OCTC that Guzman's conduct constitutes a pattern of misconduct warranting disbarment under standard 1.5(c). (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217 [pattern of misconduct limited to " 'most serious instances of repeated misconduct over a prolonged period of time' "].) Nevertheless, Guzman is culpable of 24 counts of misconduct during a four-year period, and we assign significant weight in aggravation to his recurring inattention to his CTA and client matters.

2. Significant Client Harm (Std. 1.5(f))

The hearing judge found that Guzman significantly harmed Zamora and Licerio. We agree. The settlements in both cases were designed to compensate the clients for their personal injuries. Zamora incurred medical expenses when she was already facing financial difficulties. She was forced to borrow money to pay those expenses to avoid credit problems. To date, it is unclear whether Zamora has ever received her share of the car accident settlement proceeds.

Similarly, Licerio was unable to obtain the necessary medical attention for his back injuries incurred in the accident. At the time of trial, he had been unable to work for five years due to his injuries. Since the settlement was intended to compensate Guzman's clients for personal injuries, we find his failure to promptly distribute their funds to them is particularly harmful. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060-1061 [misappropriation of $1,229.75 of personal injury settlement "was especially harmful" to client because amount significant and meant 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].)

In addition, we find significant harm to Haro, whose lawsuit was dismissed due to Guzman's inaction, thereby depriving Haro of her day in court. Overall, we assign substantial aggravation for the client harm caused in these three matters.

3. Indifference (Std. 1.5(g))

At trial, Guzman refused to take responsibility for mismanagement of his CTA, claiming he was "not the one who caused the dip[s]." Guzman misses the point. He had a non-delegable duty to properly manage his CTA, to monitor and safeguard the account, and to take prompt corrective and protective measures. Also, to this day, he does not recognize the overreaching inherent in his fee agreements, which gave him complete control over his clients' causes. Finally, we observe that Guzman failed to respond to OCTC's appeal, thereby depriving this court of any consideration of factual or legal issues he might deem relevant to our consideration of his culpability and/or discipline.

B. Mitigation

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

Standard 1.6(a) provides mitigation in the absence of a prior record of discipline. This discipline is Guzman's first, entitling him to mitigation credit for his eight years of discipline-free practice. However, we assign negligible weight to this factor because Guzman's misconduct is serious, it is not aberrational, and he does not appreciate the consequences of his actions. (But see *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218 [no mitigation credit given to lack of prior discipline record where attorney engaged in extensive dishonesty with no acceptance of responsibility for misconduct and no evidence of rehabilitation].)

2. Cooperation (Std. 1.6(e))

Guzman entered into a stipulation as to facts and documents. The stipulation, however, was not extensive, involved easily provable facts, and he did not admit to culpability. We therefore assign this factor limited weight. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more mitigating weight accorded when admission to culpability as well as facts].)

VII. LEVEL OF DISCIPLINE

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.) The Supreme Court instructs us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We give them great weight to promote consistency (*In re Silverton* (2005) 36 Cal.4th 81, 91), but are not required to follow them in a "talismanic fashion." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) While many standards apply here, we focus on standards 2.1(b), 2.5(a) and (b), and 2.7 because these call for the most severe discipline, including disbarment.[19]

To begin, we observe that Guzman is culpable of 24 counts of misconduct, involving nine different rule and code violations, spanning a period of at least four years, and involving four client matters. We find that the $8,646.34 Guzman misappropriated in two client matters is a

[19] Multiple standards govern here, providing for discipline from reproval to disbarment. Standard 1.7(a) states that when multiple sanctions apply, the most severe discipline shall be imposed. Standard 2.1(b) states that disbarment or actual suspension is appropriate for misappropriation involving gross negligence. Standard 2.7 states that disbarment or actual suspension is appropriate for moral turpitude depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim. Standard 2.5(a) states that disbarment is appropriate for the failure to perform legal services where the conduct demonstrates a pattern or multiple client matters. And standard 2.5(b) states that actual suspension is appropriate for the failure to perform or communicate in multiple client matters where the conduct does not demonstrate a pattern of misconduct.

significant amount.[20] (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [misappropriation of $1,355.75 not insignificant].) Moreover, the misappropriation was the result of gross negligence amounting to recklessness, considering Guzman's failure to monitor his CTA or his office staff. Yet, at trial, Guzman sought to blame Wheeles rather than accept responsibility for the misappropriation. In addition, we weigh heavily his overreaching in having his clients sign a fee agreement that ceded to him the unfettered right to control their cases, and after abandoning or settling their cases without their knowledge or consent, disappearing from view. Not surprisingly, this repeated course of conduct resulted in significant harm to multiple clients.

Guzman also allowed Haro's lawsuit to be dismissed, while lying to her that the matter was being properly handled. Again, having unilaterally decided to abandon her case as meritless, Guzman failed to protect Haro's right to preserve her own cause. Similarly, in the Darpinian matter, Guzman's inadequate office practice allowed his client's case to be transferred to another attorney without authorization. As with the misappropriation, Guzman was unwilling to accept responsibility at trial for this misconduct and did not demonstrate any recognition of its seriousness. His failure to participate on review, knowing that OCTC was seeking his disbarment, further illustrates his indifference to these serious matters.

Given Guzman's habitual disregard of his duties as an attorney and his attendant lack of recognition and remorse, we find a high risk that he may engage in additional professional misconduct if permitted to continue practicing law. Under such circumstances, disbarment has been the usual discipline and is supported by comparable case law. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129 [disbarment in first discipline where attorney misappropriated just over $7,000 in isolated instance of misappropriation and posed risk of future misconduct due to

[20] The total misappropriation reflects $4,564.92 in the Zamora matter and $4,081.42 in the Licerio and Jaramillo matter.

indifference and lack of candor]; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 346-348 [disbarment recommended in first discipline where attorney showed "great likelihood" of engaging in future misconduct after he "demonstrated clear disrespect for his clients and a nearly complete lack of appreciation for his professional obligations " over four years in seven matters by, among other things, attempting to settle cases without client authority, filing lawsuit against client wishes, demonstrating habitual non-responsiveness to clients, and belatedly or never refunding unearned fees]; *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 724 [disbarment recommended in first discipline where attorney's reckless law office management and lack of CTA oversight for more than two years resulted in misappropriation of over $25,000 and demonstrated attorney's favoring of his "own financial interest over the interests of his clients and the requirements of the law"].) Guided by the facts of this case, the standards, and the case law, we are persuaded disbarment is warranted.

VIII. RECOMMENDATION

We recommend that Henry Edward Guzman be disbarred and that his name be stricken from the roll of attorneys.

We further recommend that he make restitution to Araceli Zamora in the amount of $5,200 plus 10 percent interest per year from December 22, 2008[21] (or reimburse the Client Security Fund to the extent of any payment from the Fund to Zamora, in accordance with section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles.

We further recommend that he 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

[21] This amount represents her portion of the $7,800 settlement for her claims arising from the car accident on June 27, 2007.

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

IX. ORDER

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

EPSTEIN, J.

WE CONCUR:

REMKE, P. J

PURCELL, J.