

Filed October 11, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	No. 16-O-17807
)	
BOB BABAK KHAKSHOORY,)	OPINION
)	[As Modified on November 22, 2019]
State Bar No. 224044.)	
_____)	

Respondent Bob Babak Khakshooy is charged with multiple counts of professional misconduct in one client matter, in which Khakshooy sued a driver that rear-ended his client's vehicle and injured him while working. The hearing judge found Khakshooy culpable on four of the nine counts that were charged. The judge recommended discipline, including that Khakshooy be actually suspended for 30 days.

Both Khakshooy and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. Khakshooy argues that the hearing judge's culpability findings are not supported by the evidence and should be reversed. OCTC argues that Khakshooy should be found culpable of three additional acts of misconduct not found by the judge. Additionally, OCTC asserts, whether or not those dismissals are overturned, the recommended 30-day actual suspension is inadequate and should be increased to six months.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's findings of culpability, and we also find culpability on two of the dismissed counts. Due to the additional culpability found, we recommend an actual suspension of 90 days as the appropriate discipline in this case.

I. PROCEDURAL BACKGROUND

On May 1, 2018, OCTC filed the original Notice of Disciplinary Charges (NDC) in this matter. The NDC was subsequently amended on May 29, 2018 (FANDC), and charged Khakshooy with nine counts of misconduct relating to one client matter: (1) rule 3-110(A) of the Rules of Professional Conduct¹ (failure to perform with competence); (2) rule 4-100(A) (failure to deposit client funds in trust account); (3) rule 4-100(B)(4) (failure to pay client funds promptly); (4) rule 4-100(B)(3) (failure to render accounts of client funds); (5) Business and Professions Code section 6068, subdivision (m)² (failure to respond to client inquiries); (6) section 6106 (moral turpitude—misrepresentation/concealment); (7) section 6068, subdivision (m) (failure to inform client of significant developments); (8) section 6103 (failure to obey court order); and (9) section 6106 (moral turpitude—conversion).

Trial occurred on August 20, 21, 22, and 23, 2018. Khakshooy did not appear for trial on the first day,³ at which time his attorney filed a motion to continue the trial based on his doctors' recommendations that Khakshooy "stay off work" for two weeks due to stress and a cold. The hearing judge denied the motion and proceeded to trial without Khakshooy as he was represented by counsel. Khakshooy appeared for the other three days of trial.⁴ A Partial Stipulation as to Facts and Admission of Documents (Stipulation) was filed on August 22, 2018. The parties filed

¹ All further references to rules are to the Rules of Professional Conduct that were in effect from September 14, 1992, to October 31, 2018, unless otherwise noted.

² All further references to sections are to the Business and Professions Code unless otherwise noted.

³ On July 9, 2018, OCTC served a notice in lieu of subpoena on Khakshooy's attorney, requesting that Khakshooy appear at trial.

⁴ At the end of the third day of trial while discussing the following day's trial schedule, Khakshooy stated that he had a conflict because he had a deposition already scheduled for that day. The hearing judge inquired if Khakshooy was ignoring his doctors' advice to stay off work, and he admitted that he was because he had planned on attending the deposition.

closing briefs on September 7, 2018. The judge issued her decision on November 21, 2018, which included granting OCTC's oral motion at trial to dismiss count nine of the FANDC.

II. FACTUAL BACKGROUND⁵

On January 16, 2013, Grean Anderson sustained minor injuries after he was rear-ended in an auto accident while driving for his employer, Time Warner Cable. Anderson filed a workers' compensation claim without the assistance of an attorney. His claim was administered by ESIS, the third-party administrator of workers' compensation benefits for Time Warner Cable.

Anderson testified he needed to obtain help outside the workers' compensation system in order "to be protected." After seeing a television commercial, he hired Khakshooy to represent him on January 18, 2013, at which time he signed a contingency fee agreement. Khakshooy hired a contract attorney, Greg Goodheart, to assist him in filing a lawsuit on behalf of Anderson. Goodheart contacted Anderson and explained to him that Khakshooy's law firm would draft a complaint and file a civil lawsuit against the driver who had hit him. On October 3, 2013, Khakshooy filed the lawsuit in Los Angeles County Superior Court. Notwithstanding his discussion with Goodheart, Anderson did not understand that a lawsuit would be filed. He testified that he thought some type of administrative complaint would be filed against Mercury Insurance, which insured the driver.

On October 4, 2013, Recovery Services International (RSI) wrote Khakshooy and informed him that it was the agent for ESIS's lien rights. Specifically, RSI informed Khakshooy that, as a lienholder, ESIS had a statutory subrogation right, pursuant to Labor Code section 3852, to recover all compensation paid to Anderson in any action brought by him against

⁵ The facts included in this opinion are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

the driver who hit him. For Anderson's workers' compensation claim, RSI stated that ESIS had paid out \$5,504.95 in lost wages and medical expenses.

Mercury Insurance retained attorney David Hillier to represent the driver who hit Anderson. On November 13, 2013, Khakshooy was served with Form Interrogatories and a Demand for Inspection and Production of Documents. He did not respond to these discovery demands, nor did he notify Anderson or send him a copy. On December 27, Hillier sent Khakshooy a "meet and confer" letter, notifying Khakshooy that he would file a motion to compel if he did not receive the requested discovery responses within 10 days. Khakshooy still did not respond. On February 6, 2014, Hillier filed a motion to compel discovery and for monetary sanctions. Khakshooy received the motion but did not notify Anderson or send him a copy. Hillier also properly noticed a deposition of Anderson for February 13, 2014. Khakshooy and Anderson did not appear. Khakshooy had not told Anderson that his deposition had been scheduled.

On April 1, 2014, the superior court granted the motion to compel discovery and ordered Khakshooy and/or Anderson to pay \$645 in sanctions and to serve written discovery responses on opposing counsel within 15 days. On April 7, Hillier served Khakshooy with a notice of ruling that detailed the court's order. Khakshooy failed to serve the discovery responses by the April 27 deadline and pay the sanctions.

On May 14, 2014, Hillier filed a motion for an order imposing terminating sanctions, requesting that Anderson's lawsuit be dismissed. Khakshooy received the motion but did not notify Anderson of this development. In June 2014, Khakshooy informed Anderson that a settlement offer of \$8,000 had been made by Mercury Insurance. Khakshooy advised Anderson that proceeding with litigation would be expensive and that he should accept the settlement offer. Anderson agreed to accept the offer on June 10. However, Khakshooy did not notify RSI about

the settlement, even though ESIS was entitled to satisfy its lien from the settlement funds, less his reasonable attorney fees and costs. Khakshooy's office did not contact RSI until July 2015, more than one year later.

On June 11, 2014, Mercury Insurance issued the \$8,000 settlement check, made payable to Khakshooy, Anderson, and RSI. Khakshooy could not deposit the check into his client trust account (CTA) because RSI was a named payee. Khakshooy did not promptly contact RSI to negotiate the amount of money RSI required to satisfy its lien. On June 26, Anderson executed a release of all claims and Khakshooy filed a request for dismissal on June 30. As part of the settlement, Hillier agreed that Mercury Insurance would not require Khakshooy or Anderson to pay the \$645 in sanctions. Mercury Insurance re-issued the settlement check three additional times after the June 11 check had gone stale. The additional checks were issued on May 28, 2015; April 7, 2016; and November 30, 2016.

From 2014 through 2016, Anderson communicated with Khakshooy's office, inquiring about his settlement money and how it would be disbursed. In November 2016, Anderson went to Khakshooy's office where he was provided a disbursement sheet with the following information:

Total Settlement	\$8,000.00
Medical Payment	\$2,863.95
Attorney Fees	\$3,600.00
Costs	\$ 495.00
Client's Share	\$1,041.05

Anderson was not satisfied with his portion, and Khakshooy agreed to increase it to \$1,500. He did this by waiving the costs he incurred. In December 2016, Khakshooy paid Anderson the \$1,500 from his general account.

Anderson filed a State Bar complaint because he had several unanswered questions about his case. On January 3, 2017, OCTC sent Khakshooy a letter, which he received, advising him

of Anderson's complaint. In May 2017, ESIS agreed to reduce its lien to \$1,200 and RSI authorized Khakshooy to deposit the check from Mercury Insurance. On May 23, 2017, Khakshooy deposited the November 30, 2016 check into his CTA.

III. CULPABILITY

A. Count One: Failure to Perform with Competence (Rule 3-110(A))

In count one, OCTC alleged that Khakshooy failed to perform with competence when he (1) filed a civil case without Anderson's knowledge or consent; (2) failed to provide Anderson with the form interrogatories and the demand for production of documents that were served on November 13, 2013; (3) failed to serve written discovery responses by the December 18, 2013 deadline; (4) failed to comply with the superior court's April 1, 2014 order requiring him to provide written discovery responses within 15 days, which resulted in the opposing party filing a motion for terminating sanctions; and (5) failed to promptly negotiate and pay the workers' compensation lien to ESIS and medical liens between June 2014 and April 2017. Rule 3-110(A) provides that a lawyer "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The hearing judge found that Khakshooy violated rule 3-110(A) as charged in count one, except for the first allegation that he filed the case without Anderson's consent since Goodheart had explained the lawsuit to Anderson.

On review, Khakshooy disputes the finding of culpability under count one. He argues that Anderson was unwilling to participate in the discovery process, and therefore he was prevented from responding to the discovery requests. He also argues that he did not fail to perform with competence regarding the third-party liens. He asserts that he was able to significantly reduce the amount of the liens and that he advised Anderson about the lien negotiation process.

We reject Khakshooy's arguments as they fail to address the hearing judge's findings that are the basis for the culpability determination that Khakshooy failed to perform with competence. To begin, Khakshooy did not provide Anderson with the discovery requests⁶ and did not serve written discovery responses. His inaction led Hillier to file a motion to compel and a request for monetary sanctions, which the superior court granted. When ordered to provide the responses, Khakshooy failed to comply with or challenge the order, which resulted in Hillier seeking a terminating sanction. Regarding the third-party liens, Khakshooy did not promptly negotiate and pay the ESIS lien; he did not notify RSI about the settlement until over a year after he had received the initial settlement check from Mercury Insurance; and he did not pay ESIS until three years after the matter settled. His inaction and delay clearly establish culpability under rule 3-110(A) as the hearing judge found. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 556 [delay in taking action and settling personal injury case and failure to handle case diligently violated rule 3-110(A)].)

**B. Count Two: Failure to Deposit Client Funds in Trust Account (Rule 4-100(A))
Count Three: Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))**

Count two charges Khakshooy with a violation of rule 4-100(A) for failing to deposit in a trust account the \$8,000 settlement check from Mercury Insurance he received in June 2014.

Count three alleges that Khakshooy did not promptly pay Anderson his portion of the settlement,

⁶ At trial, Khakshooy's employee, Maria Romero, testified that Anderson was not cooperative in assisting with discovery. The hearing judge found that Romero was not credible because she spoke in generalities and was evasive and non-responsive. Additionally, no phone records or any other documentation were produced to corroborate Romero's testimony. We rely on the hearing judge's credibility determination. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge's credibility findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions, having observed and assessed witnesses' demeanor and veracity firsthand].)

thus violating rule 4-100(B)(4).⁷ The hearing judge dismissed both counts with prejudice because RSI was a named payee on the check and Khakshooy was unable to obtain its authorization until May 2017, at which time he paid RSI, and he had already paid Anderson from his own funds in December 2016. We disagree with the judge and find Khakshooy culpable on both counts.

Rule 4-100(A) requires lawyers to deposit funds received for the benefit of a client into a bank account labeled as a CTA. Rule 4-100(B)(4) requires lawyers to “[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the [lawyer] which the client is entitled to receive.”

OCTC asserts that Khakshooy’s failure to promptly contact RSI to negotiate and settle its lien when he received the first settlement check establishes a violation of rule 4-100(A). To support its argument, OCTC cites *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 479, where we held that an attorney violated rule 4-100(A) when he did not properly handle a client’s settlement. The attorney in that case did not ensure that the settlement check was made out to himself so that he could deposit it into his CTA; in fact, he never knew the settlement check had been issued. Instead, the check was issued to the client and a different attorney because of his staff’s actions and thus was not deposited into the proper account.

Citing *Rubens*, OCTC asserts that Khakshooy “had a duty to ensure the proper handling of the funds, to include obtaining, or at least seeking to obtain, proper authorization to ensure the funds were deposited in the [CTA], as required.” Khakshooy argues that the *Rubens* case is inapplicable because culpability was based on Rubens’s failure to supervise his staff, which led to the settlement check being improperly issued.

⁷ Khakshooy notes correctly that the FANDC incorrectly alleges in both counts two and three that he received the first settlement check on June 11, 2014. Counsel for Mercury Insurance did not forward the first settlement check to him until July 29.

While Khakshooy's point is factually correct, he misses the broader point in *Rubens* that an attorney is required in all circumstances to properly handle a client's settlement. We agree with OCTC's reliance on *Rubens*. The violation of rule 4-100(A) is even more clear here because the delay in contacting RSI can only be attributed to Khakshooy's misconduct. He did not attempt to negotiate with RSI before he settled the matter in June 2014, and, once he received the first settlement check the following month, he did not have direct contact with RSI about the settlement until July 2015. As a result of his failure to undertake those duties, the check was not deposited until May 2017, almost three years after it was first issued. Accordingly, we find Khakshooy culpable of violating rule 4-100(A).

OCTC also asserts that Khakshooy violated rule 4-100(B)(4) because he possessed the funds and failed to promptly pay Anderson. We agree. Anderson began to request his share of the settlement funds from Khakshooy in July 2014, shortly after he signed the release of claims. Khakshooy did not communicate with RSI until a year later in July 2015. Further, when Anderson came to Khakshooy's office, 16 additional months later in November 2016, Khakshooy had not deposited any of the checks from Mercury Insurance because he had yet to obtain RSI's prerequisite authority. Instead, in December 2016, he paid Anderson from his general account. Khakshooy's unreasonable delay in contacting and negotiating with RSI prevented him from paying Anderson sooner than he did. (See *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 521–522 [attorney's unreasonable delay in endorsing settlement check prevented client from promptly receiving funds and violated rule 4-100(B)(4)].) We reject Khakshooy's argument that *Kaplan* does not apply because the attorney in *Kaplan* did not have physical possession of the check (a successor attorney did) and refused to sign it when it was presented to him. Accordingly, Khakshooy is also culpable of violating rule 4-100(B)(4).

C. Count Four: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

In count four, OCTC alleged that Anderson requested an accounting on November 15, 2016, and Khakshooy thereafter failed to provide Anderson with an appropriate accounting. Rule 4-100(B)(3) requires lawyers to maintain complete records of client funds in his or her possession and to “render appropriate accounts to the client regarding them.” The required records include “the date, amount, payee and purpose of each disbursement” made on behalf of a client. (See rule 4-100(C) and adopted standards.) The hearing judge found that, while Khakshooy gave Anderson a disbursement sheet that indicated a “broad overview of how much came in and how much went out,” he did not provide “the specific details that one would expect to see in an accounting.” The judge further noted that the disbursement sheet set forth a \$2,863.95 medical payment without identifying which lienholder was paid and also included \$495 for costs, but it failed to indicate how they were incurred. Finally, the disbursement sheet increased Anderson’s settlement share by \$458.95 without disclosing the source of those additional proceeds. As such, the hearing judge found Khakshooy culpable under count four.

Khakshooy asserts on review that he did not fail to render an appropriate accounting in November 2016, as alleged in the FANDC. He argues that an accounting could not have been provided at that time because the settlement funds had not been received—an up-to-date check was not issued until November 30—and he did not receive authorization to deposit the funds until May 2017. He states that he paid Anderson out of his own funds, before the settlement funds were received, and that an accounting at that time would consist only of a “copy of the same check that [Anderson] was about to receive.” Khakshooy maintains that the disbursement sheet was only a proposed settlement breakdown and was accurate when it was made. He also asserts that Anderson never sought more information after he received the disbursement sheet. Thus, he contends that he should not be culpable for failing to provide a more detailed

accounting in November 2016 because the information on the disbursement sheet was all he had at the time.

Khakshooy's arguments are without merit. Rule 4-100(B)(3) requires attorneys to "render appropriate accounts to the client." Khakshooy admitted that he never gave Anderson any accounting beyond the disbursement sheet. The disbursement sheet was not an adequate accounting under rule 4-100(B)(3) because it failed to provide complete information, including the specific amount paid to each medical provider, as the hearing judge noted. Also, Anderson need not request further information, as Khakshooy argues. Under the rule, Khakshooy is obligated to provide an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [obligation under rule 4-100(B)(3) does not require as predicate that client demand accounting].) Anderson was entitled to receive an accounting clearly identifying how the settlement money was disbursed and he did not receive it. Therefore, we uphold the judge's conclusion that Khakshooy violated rule 4-100(B)(3).

D. Count Five: Failure to Respond to Client Inquiries (§ 6068, subd. (m))

Count five charges that Khakshooy failed to respond to over 15 telephonic inquiries made by Anderson between April 2015 and November 2016. Section 6068, subdivision (m), provides that an attorney is required to "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." The hearing judge found that OCTC did not establish by clear and convincing evidence⁸ that Khakshooy violated section 6068, subdivision (m). The judge found that Anderson did have some communication with Khakshooy's office, but not as much as he hoped or expected. The judge described the evidence offered by OCTC as "murky."

⁸ 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.)

For example, Anderson could not recall specific dates on which he called Khakshooy's office, no documentary evidence supported the claim that Anderson left numerous voicemails, and Anderson did not write letters or emails to Khakshooy. The judge dismissed count five with prejudice. OCTC does not challenge the dismissal on review. We agree with the judge's reasoning and conclusion, and therefore affirm the dismissal with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

E. Count Seven: Failure to Inform Client of Significant Developments (§ 6068, subd. (m))
Count Six: Moral Turpitude—Misrepresentation/Concealment (§ 6106)

We discuss counts seven and six together as they allege the same facts under alternative theories of culpability. Count seven alleges that Khakshooy failed to keep Anderson reasonably informed of significant developments, in violation of section 6068, subdivision (m),⁹ by failing to inform Anderson that (1) he filed a civil case on Anderson's behalf; (2) a notice of Anderson's deposition had been served on Khakshooy; (3) discovery requests were served on Khakshooy for Anderson's response; (4) the superior court sanctioned Khakshooy and/or Anderson \$645 for failing to comply with those discovery requests; and (5) a motion for terminating sanctions was filed against Anderson. The hearing judge found that Khakshooy failed to keep Anderson informed as charged, with the exception of the filing of a civil case on Anderson's behalf.

Khakshooy asserts that he discussed the discovery requests with Anderson, who was unresponsive. We reject his argument based on the record and find that clear and convincing evidence establishes that Khakshooy did not inform Anderson about the February 2014 deposition, the discovery requests, the sanctions order, or the motion for terminating sanctions.

⁹ Section 6068, subdivision (m), provides that “[i]t is the duty of an attorney to . . . keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.”

Anderson testified that Khakshooy did not update him on these developments. The hearing judge found that Anderson's testimony was credible that he did not receive the letters Khakshooy presented at trial purportedly showing that he informed Anderson of specific developments.¹⁰ We agree with the judge's culpability determination under count seven. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 643 [failure to contact client and inform of imminent critical development violates § 6068, subd. (m)].)

Regarding count six, OCTC alleges that Khakshooy, under the same facts as pleaded in count seven, also violated section 6106.¹¹ The hearing judge dismissed this charge with prejudice by concluding that OCTC did not establish Khakshooy's culpability with clear and convincing evidence.

OCTC has the burden of proving culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103.) On review, OCTC asserts the evidence establishes that Khakshooy knowingly, or with gross negligence, withheld facts that were material, relevant, and required to be disclosed. Specifically, OCTC argues that Khakshooy acted with moral turpitude because he failed in his fiduciary duty to Anderson by telling him that the expense of pursuing further litigation was too great, and he did this to hide from Anderson his failures to perform. He then led Anderson to settle on unfavorable terms, and thus committed an act of moral turpitude.

We decline to adopt OCTC's reasoning for at least two reasons. First, based on the record we have, we see insufficient evidence to conclude that the settlement terms were unfavorable to Anderson. Additionally, we are unable to see from our review of the evidence how OCTC's assertions can be supported to conclude that Khakshooy's failures to inform

¹⁰ We note the hearing judge found that letters to Anderson by Khakshooy, regarding the discovery requests, the sanctions order, and the motion for terminating sanctions, were "suspect and unreliable." We see no reason to alter her conclusions.

¹¹ Section 6106 provides, "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 . . . constitutes a cause for disbarment or suspension."

Anderson were done to cover up his mistakes, either intentionally or through gross negligence, and OCTC has failed to cite in its briefs where in the record such evidence exists. Thus, we agree with the hearing judge that OCTC has not established by clear and convincing evidence that Khakshooy committed an act of moral turpitude as charged in count six, and affirm the dismissal with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 84.)

F. Count Eight: Failure to Obey Court Order (§ 6103)

In count eight, OCTC alleges that Khakshooy failed to comply with the superior court's April 1, 2014 order compelling him to pay \$645 in sanctions within 15 days, in violation of section 6103.¹² To discipline an attorney under section 6103, OCTC must prove two elements by clear and convincing evidence: (1) the attorney willfully disobeyed a court's order, and (2) the court order required the attorney to do or forbear an act in connection with or in the course of the attorney's profession which he ought in good faith to have done or not done. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.)

The hearing judge found Khakshooy culpable under count eight as charged. Khakshooy argues on review that the evidence does not support his culpability under count eight because he was never served with a copy of the sanctions order or the corresponding minute order.¹³ He

¹² Section 6103 provides that, "A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

¹³ We note that Khakshooy produced a letter at trial that he purportedly sent to Anderson. The letter is dated April 15, 2014, and provides, in pertinent part, "Please enclosed find the Court's Order pertaining the outstanding discovery responses that we must furnish Defendant in this matter, along with the Court's Sanction Order in the amount of \$645.00."

states that the notice of ruling that Hillier served on him did not include a copy of the sanctions order or the minute order. We find these points to be unpersuasive in light of the evidence in the record. Khakshooy testified that he had known that Hillier intended to file a motion to compel, subsequently received that motion, and did not oppose it. Khakshooy had no basis for an opposition and did not appear in court, but rather testified that he “submitted on the tentative.” He also testified that he knew the court would issue the order compelling discovery and he knew that a sanctions order would be entered. Further, he received the notice of ruling from Hillier, which clearly stated that the superior court had issued an order for \$645 in sanctions that he and his client were required to pay within 15 days. If he had any doubts about the order or its particulars, he could have obtained a copy of it so that he would know exactly what it said. (See *Call v. State Bar* (1955) 45 Cal.2d 104, 110 [willful inattention to duty is grounds for discipline].)

Khakshooy also argues that OCTC did not establish that he knew that the sanctions order was a final and binding order. Citing the *Maloney and Virsik* case, he asserts that an attorney must know that the court order is final and binding in order to violate section 6103. Specifically, Khakshooy argues that, because his sanctions order was not appealable prior to final judgment pursuant to Code of Civil Procedure section 904.1, subdivision (b),¹⁴ and, because he obtained from the opposing party a waiver of the sanction costs before any final judgment occurred, he is not culpable of violating section 6103.

We reject this argument as Khakshooy’s reliance on the opposing party’s waiver of the sanctions costs is misplaced. Superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in the courts of record. (*In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 559.) Khakshooy never sought to stay,

¹⁴ Code of Civil Procedure section 904.1, subdivision (b), states, “Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.”

vacate, modify, or challenge the April 1, 2014 discovery and sanctions order, and thus it remained in effect notwithstanding any agreement between the parties. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 [obedience to court's order intrinsic to respect attorney must accord judicial system; attorney must follow court order or proffer formal explanation by motion or appeal as to why order cannot be obeyed].)

Khakshooy's failure to take any action regarding the order rendered the order final and binding for attorney discipline purposes. Accordingly, we find him culpable under count eight.

IV. AGGRAVATION AND MITIGATION

Standard 1.5¹⁵ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Khakshooy to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found Khakshooy's multiple violations to be an aggravating factor. We agree and assign moderate weight. (*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. Intentional Misconduct, Bad Faith, Dishonesty (Std. 1.5(d))

Standard 1.5(d) provides that aggravating circumstances may include intentional misconduct, bad faith, or dishonesty. The hearing judge agreed with OCTC's argument in its closing trial brief that Khakshooy engaged in additional acts of dishonesty and bad faith when he attempted to deceive the court and avoid trial by filing a motion to continue with doctors' notes recommending that he be off work for two weeks. At trial, Khakshooy admitted that he was

¹⁵ 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. The standards were revised effective January 25 and May 17, 2019. Because this request for review was submitted for ruling after these effective dates, we apply the revised version of the standards.

planning on doing other legal work during those two weeks, even though he had argued that he was not well enough to participate in the disciplinary trial. The judge found that Khakshooy's conduct demonstrated bad faith, especially because he argued that he could not participate in trial only after his motion to abate was denied.

Khakshooy asserts that the evidence does not support a finding of bad faith under standard 1.5(d). He argues that aggravating circumstances cannot be used as a sanction for trial conduct where the attorney does not have the opportunity to prepare a defense or otherwise respond to the allegation. We agree. The circumstances surrounding Khakshooy's conduct were not delved into at trial, and OCTC did not make a bad faith allegation until its closing trial brief, depriving Khakshooy of the chance to respond.

We find that Khakshooy's actions do not amount to bad faith because clear and convincing evidence has not established that he deliberately attempted to mislead the court. None of his actions interrupted the proceedings—the first day of trial proceeded without him and he attended on the other days. He presented doctors' notes along with the motion to continue and was candid in stating that he had taken some time off work due to illness, but still planned on attending a previously scheduled deposition. From these facts, the record is not clear that Khakshooy was attempting to evade culpability. Therefore, we do not assign aggravation for bad faith. (See *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [no aggravation where insufficient evidence of bad faith].)

3. Significant Harm to Client and Administration of Justice (Std. 1.5 (j))

OCTC asserts that we should also find that Khakshooy's recommendation to Anderson to settle the matter—without disclosing material facts about his own misconduct—significantly harmed Anderson and the administration of justice. OCTC argues that Khakshooy did not tell Anderson prior to settlement about the motion for terminating sanctions and the impending

hearing on the matter in order to hide his errors and misconduct for his own benefit. The hearing judge did not find aggravation for significant harm, and we agree. OCTC has not presented clear and convincing evidence that Anderson or the administration of justice was significantly harmed by Khakshooy's failure to inform Anderson of certain facts. Therefore, we do not assign aggravation under standard 1.5(j).

B. Mitigation

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

Mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) The hearing judge gave significant mitigation credit for Khakshooy's 10 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [more than 10 years of discipline-free practice is significant mitigation].) Khakshooy was admitted to practice law in January 2003 and his misconduct began in late 2013.

Khakshooy failed to give adequate attention to the Anderson matter from his failure to respond to discovery in November 2013 through July 2015 when he contacted RSI. Further, he did not pay Anderson his portion of the settlement funds until December 2016, two years after the case had settled, and did not pay RSI until May 2017 because of his delay in contacting RSI. While Khakshooy's misconduct dealt with a single client matter, this misconduct occurred over a significant period of time. Thus, we assign only moderate mitigation credit under standard 1.6(a) because his overall period of misconduct gives us concern that Khakshooy's misconduct may recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free record is most relevant where misconduct is aberrational and unlikely to recur].)

2. Candor and Cooperation with State Bar (Std. 1.6(e))

Khakshooy's Stipulation is a mitigating circumstance. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) The hearing judge assigned nominal weight because she determined that his motion to continue the trial was "misleading." As discussed above, we do not find enough evidence to conclude that his motion was misleading so we believe more than nominal weight should be assigned. However, Khakshooy did not admit culpability, and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) Further, the Stipulation was not extensive and contained easy-to-prove facts. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318 [limited weight for non-extensive stipulation to easily proved facts].) Therefore, we assign limited weight in mitigation for this circumstance.

V. 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.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.2(a) is the most severe and applicable, providing for actual suspension of three months for failure to deposit client funds in a

CTA and failure to pay client funds promptly. The hearing judge did not apply this standard because she did not find culpability, as we do, for failure to deposit client funds in a CTA (count two) or for failure to pay client funds promptly (count three).¹⁶

Applying standard 2.2(a), the presumed sanction for Khakshooy's culpability under counts two and three is three months of actual suspension. We must also consider the net effect of the aggravating and mitigating circumstances to determine if a greater or lesser sanction than the one recommended in standard 2.2(a) is necessary to fulfill the primary purposes of discipline.

(Std. 1.7.) The two mitigating circumstances here do not sufficiently outweigh the one aggravating circumstance in order to deviate from the three-month actual suspension recommended under standard 2.2(a). (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons required for departure from standards].) Therefore, we conclude that a 90-day actual suspension is the appropriate discipline to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

We recommend that Bob Babak Khakshooy, State Bar No. 224044, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. Khakshooy must be suspended from the practice of law for the first 90 days of his probation.
2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Khakshooy must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to

¹⁶ The hearing judge applied standard 2.12(a), which is also applicable, providing that disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to an attorney's practice of law. While we agree with the judge's analysis under standard 2.12(a) and the relevant case law calling for an actual suspension of 30 days, we must analyze this matter under standard 2.2(a) as this standard provides for a minimum period greater than 30 days. We also note that standard 2.7(c) is applicable for performance violations based on the facts of Khakshooy's misconduct and provides for suspension or reproof.

his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.

3. Khakshooy must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.
4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Khakshooy must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Khakshooy must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
5. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Khakshooy must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Khakshooy must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
6. During Khakshooy's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
7. Quarterly and Final Reports
 - a. **Deadlines for Reports.** Khakshooy must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Khakshooy must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
 - b. **Contents of Reports.** Khakshooy must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion

of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Khakshooy is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Khakshooy must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Khakshooy will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Khakshooy will nonetheless receive credit for such evidence toward his duty to comply with this condition.
9. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Khakshooy has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Bob Babak Khakshooy be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If Khakshooy provides satisfactory evidence of the taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme

Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Khakshooy be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.¹⁷ Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

¹⁷ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)