PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **RICARDO L. MENDOZA,** Member No. 129356 A Member of the State Bar.	)	No**. 06-O-10493** **OPINION AND ORDER**

In his second disciplinary case, respondent Ricardo L. Mendoza seeks review of a hearing judge's disbarment recommendation. The hearing judge found Mendoza culpable of 19 counts of misconduct in six different cases involving 13 clients from 2004 to 2007. The most serious acts of misconduct involve Mendoza's misappropriation of over $16,000 from five clients. In recommending disbarment, the hearing judge applied standard 2.2(a),[1] which calls for disbarment for misappropriation of entrusted funds unless the amount of funds is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Mendoza contends that the hearing judge's decision: (1) fails to properly credit him for mitigating circumstances; (2) ignores case authority that would support a lower level of discipline; and (3) proposes excessive discipline based on the totality of the facts. Mendoza argues that a suspension of not more than one year is appropriate. The Office of the Chief Trial Counsel of the State Bar (State Bar) urges that we affirm the hearing judge's disbarment recommendation.

Based on our independent review (Cal. Rules of Court, rule 9.12), we find: (1) the only factor in mitigation is Mendoza's cooperation in these proceedings by entering into a

[1]Unless otherwise noted, all references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

comprehensive stipulation with the State Bar; (2) case law does not support a lower level of discipline based on the nature and extent of misconduct in this case; and (3) disbarment is not excessive. Ultimately, we agree with the hearing judge's culpability determinations and find no compelling mitigation to justify departure from standard 2.2(a) that calls for Mendoza's disbarment.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mendoza was admitted to the bar in July 1987. Based upon the stipulation and our own independent review of the record, we accept the hearing judge's factual and culpability findings for the six cases as summarized below.[2]

A. THE NARANJO MATTER (CASE NO. 06-O-10493)

On or after January 25, 2003, Maria, Irma, Claudia, and Jennifer Naranjo (Naranjo Plaintiffs) hired Mendoza to represent them in bodily injury claims arising out of an automobile accident with defendant Joshua Martin (Martin). On June 28, 2004, Mendoza filed a civil complaint on behalf of the Naranjo Plaintiffs against Martin in the San Bernardino County Superior Court.

Between February 2005 and September 2, 2005, Mendoza failed to respond to Martin's written discovery requests served on the Naranjo Plaintiffs, failed to respond to Martin's discovery motions, failed to comply with the San Bernardino County Superior Court's orders requiring the Naranjo Plaintiffs to respond to discovery, and failed to attend five court

[2]In the six pending cases, Mendoza was charged with a total of 23 counts of misconduct. At the start of trial, the judge granted the State Bar's motion to dismiss three counts. Mendoza entered into an extensive stipulation with the State Bar, stipulating to the facts and culpability findings in 17 of the remaining 20 counts. Thus, at trial, Mendoza contested only three counts, relating to a dispute over a lien for attorney's fees in the Galan, Vergara and Gonzales case (case number 06-O-14407), which case is discussed at page 6 under subdivision D. The hearing judge found Mendoza culpable of two of the three charges in that case, which we affirm on review.

appearances. On September 2, 2005, the court dismissed the matter without prejudice, and Mendoza failed to file a motion for relief or take other steps to set aside the dismissal.

Between May 2004 and December 2005, Mendoza failed to respond to Maria Naranjo's numerous telephone messages requesting status updates on the case. Mendoza also failed to keep the Naranjo Plaintiffs informed of significant developments in the case, including its dismissal.

We agree with the hearing judge that there is clear and convincing evidence that Mendoza willfully: (1) failed to perform with competence in violation of Rules of Professional Conduct, rule 3-110(A)[3] in his handling of this case; (2) failed to inform his clients of a significant development in violation of Business and Professions Code, section 6068, subdivision (m);[4] and (3) failed to respond promptly to his client's reasonable status inquiries in willful violation of section 6068, subdivision (m).

B. THE CALIX, RODRIGUEZ, MENDOZA, AND WENVES MATTER (CASE NO. 06-O-12659)

On or after January 31, 2004, Fredy Calix (Calix), Johnny Rodriguez (Rodriguez), Felix Mendoza, and Linda Wenves (Wenves) hired Mendoza to represent them in bodily injury claims arising out of an automobile accident with defendant Bong Ki Hong (Hong). On July 14, 2004, Mendoza filed a civil complaint on behalf of the plaintiffs against Hong in the Riverside County Superior Court.

In October 2004, Mendoza settled Calix's claim for $2,365 and Rodriguez's claim for $2,050. Mendoza deposited the two settlement checks from Hong's automobile insurer into his attorney-client trust account (CTA). Between October of 2004 and January of 2007, Mendoza

[3]Unless otherwise noted, all further references to "rule(s)" are to the Rules of Professional Conduct of the State Bar.

[4]Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

was required to hold $1,366 in trust for Calix and Rodriguez to pay outstanding medical liens. Although Mendoza eventually paid the liens in January 2007, the balance in his CTA fell below $1,366 several times between October of 2004 and April 12, 2006, at one point even dropping to a negative $199.67. Mendoza misappropriated for personal use the $1,366 he was required to hold in trust on Calix's and Rodriguez's behalf.

In October 2005, Mendoza settled Felix Mendoza's claim for $3,725 and Wenves' claim for $4,605. Mendoza deposited these two additional settlement checks from Hong's automobile insurer into his CTA. Between October of 2005 and January of 2007, Mendoza was required to hold $4,810 in trust to pay outstanding medical liens for Felix Mendoza and Wenves. Although Mendoza eventually paid the liens in January of 2007, the balance in his CTA repeatedly fell below $4,810 between June 6, 2006 and August 14, 2006, when it hit a low of $1.33. Mendoza misappropriated for his personal use $4,808.67 he was required to hold in trust for Felix Mendoza and Wenves.

On February 8, 2007, after Wenves filed a complaint with the State Bar, a State Bar investigator sent Mendoza a letter requesting information. Mendoza failed to respond.

We agree with the hearing judge that there is clear and convincing evidence that Mendoza willfully: (1) failed to pay client funds promptly in violation of rule 4-100(B)(4) by failing to pay approximately $1,366 for medical liens on behalf of Calix and Rodriguez between October 2004 and January 2007; (2) failed to maintain client funds in a CTA in violation of rule 4-100(A) by failing to maintain at least $1,366 in his CTA on behalf of Calix and Rodriguez, and at least $4,810 on behalf of Felix Mendoza and Wenves; (3) committed acts of moral turpitude, dishonesty, or corruption in violation of section 6106 by misappropriating for personal use the $1,366 in client funds held on behalf of Calix and Rodriguez, and $4,808.67 in client funds held on behalf of Felix Mendoza and Wenves; and (4) failed to cooperate in a State

Bar investigation in violation of section 6068, subdivision (i) by failing to respond to a letter from a State Bar investigator seeking a written response to Wenves' complaint.

C. THE RIVAS MATTER (CASE NO. 06-O-14395)

On August 14, 2004, René F. Rivas (Rivas) hired Mendoza to represent her in a bodily injury claim arising out of an automobile accident with defendant Aurelia Lopez (Lopez). Mendoza and Rivas agreed upon a contingency fee of 33% of any personal injury settlement.

In August of 2006, Mendoza settled Rivas's personal injury claim with Lopez's automobile insurer for $15,000. Mendoza received a settlement check and deposited it into his CTA. From August 25, 2006 to at least November 28, 2006, Mendoza was required to hold in trust $10,000 ($15,000 minus the 33% contingency fee) on behalf of Rivas. However, in that time period, Mendoza issued approximately 86 checks to himself from his CTA, totaling approximately $14,996. The balance in the CTA, as of November 27, 2006, was $5.33. Mendoza misappropriated approximately $9,994.67 that he was required to hold in trust for Rivas.

On September 11, 2006, the State Bar opened an investigation in response to Rivas's complaint. On March 20, 2007, Mendoza mailed Rivas a check for $5,000 and three checks to medical providers totaling $9,370, in full payment of reduced medical liens. However, a State Bar investigator sent Mendoza two letters seeking information in March of 2007, and Mendoza failed to respond to either one.

We agree with the hearing judge that there is clear and convincing evidence that Mendoza willfully: (1) failed to maintain client funds in his CTA in violation of rule 4-100(A) by failing to maintain $10,000 on behalf of Rivas; (2) committed an act of moral turpitude, dishonesty, or corruption in violation of section 6106 by misappropriating for personal use approximately $9,994.67 being held on behalf of Rivas; and (3) failed to cooperate in a State Bar

investigation in violation of section 6068, subdivision (i) by failing to respond to two letters from a State Bar investigator requesting information about Rivas' complaint.

D. THE GALAN, VERGARA, AND GONZALEZ MATTERS (CASE NO. 06-O-14407)[5]

On November 4, 2002, Gilberto Vergara Galan, Wendy Vergara and Yesica Gonzalez (collectively Plaintiffs) hired attorney Michael M. Mojtahedi to represent them in bodily injury claims arising out of an automobile accident with J. Pizano (Pizano). Plaintiffs terminated Mojtahedi's services and hired Mendoza in his place. On August 20, 2003, Mojtahedi sent a letter to both Pizano's automobile insurer and Mendoza, asserting a lien on the settlement for attorney's fees and costs.

Mendoza settled Plaintiffs' claims, and on October 11, 2004, he received three settlement checks for a combined total of $13,590. Each check listed both Mendoza and Mojtahedi as payees. On October 25, 2004, Mojtahedi's administrative manager informed Mendoza that Mojtahedi was asserting $1,310 in attorney's fees. Without Mojtahedi's permission or signature, Mendoza then deposited the checks into his CTA on November 8, 2004.

On January 4, 2005, Mendoza offered Mojtahedi $650 to settle the attorney's lien. Although Mendoza and Mojtahedi did not agree upon a lien amount, Mendoza failed to maintain at least $650 in his CTA between November 8, 2004 and April 12, 2006. On review, Mendoza attached to his opening brief a copy of a letter and $650 check to Mojtahedi dated April 8, 2010 – eight months after trial in this matter concluded.[6]

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[5]Although Mendoza stipulated to the factual findings in this case, he did not stipulate to misconduct relating to the attorney's lien.

[6]Although Mendoza failed to properly move to augment the record, based on the State Bar's non-opposition to this evidence, we will consider it on review. However, Mendoza's payment of the undisputed amount three years later and after a trial on the case does not negate a finding of culpability or support a finding in mitigation. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [restitution paid under threat of disciplinary proceedings does not have any mitigating effect].)

The State Bar sent Mendoza letters about this matter on March 7, 2007 and May 8, 2007. Mendoza failed to respond to either one.

We find that Mendoza willfully: (1) failed to maintain client funds in his CTA in violation of rule 4-100(A) by failing to maintain $650 in disputed fees in his CTA; (2) committed an act or acts of moral turpitude, dishonesty, or corruption in violation of section 6106 by misappropriating $650 in disputed fees; and (3) failed to cooperate in a State Bar investigation in violation of section 6068, subdivision (i) by failing to respond to two letters from a State Bar investigator.

We agree with the hearing judge that the evidence is not clear and convincing that Mendoza willfully committed an act or acts of moral turpitude, dishonesty, or corruption in violation of section 6106 when he deposited the three checks into his CTA without Mojtahedi's signature or permission. Mendoza testified that the checks were deposited by mistake, and the hearing judge found Mendoza's uncontroverted testimony to be credible. Based on the limited evidence, we agree with the hearing judge's finding and dismiss this count (sixteen) with prejudice.

E. THE DE PASCACIO MATTER (CASE NO. 07-O-10488)

In October 2002, Ana De Pascacio hired Mendoza to represent her in a bodily injury claim against defendant Andrew Cheung (Cheung). On December 15, 2003, Mendoza filed a complaint on De Pascacio's behalf against Cheung in the Los Angeles Superior Court. On June 4, 2004, the Superior Court ordered both parties to participate in mediation. The first step in mediation required both parties to sign and submit an Alternative Dispute Resolution Case Referral Intake Form (ADR Form).

Mendoza failed to complete and return the ADR Form to Cheung's counsel, failed to respond to Cheung's written discovery requests, and failed to inform De Pascacio of these

requests. On February 8, 2005, the court scheduled a hearing on an Order to Show Cause (OSC) re Dismissal for March 25, 2005. Mendoza finally responded to some of Cheung's written discovery requests a month after the due date, but failed to appear for the OSC re Dismissal. The court rescheduled the hearing for April 27, 2005.

On April 1, 2005, Cheung filed two more discovery motions to which Mendoza failed to respond. The court scheduled the hearing for these two motions to coincide with the OSC re Dismissal on April 27, 2005. Mendoza again failed to appear, and the Superior Court dismissed the complaint and ordered Mendoza to pay sanctions of $250 to the court. Mendoza failed to take any steps to set aside the dismissal, and did not pay the sanctions until three years later on March 8, 2008.

After De Pascacio filed a complaint with the State Bar, an investigator sent Mendoza letters requesting information on May 23 and June 14 of 2007. Mendoza failed to respond to either letter.

We agree with the hearing judge that there is clear and convincing evidence that Mendoza willfully: (1) failed to perform with competence in violation of rule 3-110(A) in his handling of the case by, among other things, not cooperating in meditation, not appearing for the two OSCs, and failing to seek to set aside the judgment in favor of Cheung; (2) failed to obey a court order in violation of section 6106 by failing to pay $250 in sanctions to the court by May 27, 2005; and (3) failed to cooperate in a State Bar investigation in violation of section 6068, subdivision (i) by failing to respond to two letters from a State Bar investigator.

F. MENDOZA'S FAILURE TO UPDATE STATE BAR OFFICIAL MEMBERSHIP RECORDS ADDRESS (06-O-10493, 06-O-11784, 06-O-12659 and 06-O-14407)

Between April 14, 2006 and January 29, 2007, Mendoza failed to maintain a correct address with the State Bar. As a result, the State Bar could not contact him during investigations of attorney misconduct in four different matters. Mendoza stipulated that he willfully failed to

update his membership records address in violation of 6068, subdivision (j) by failing to maintain his current contact information between April 14, 2006 and January 29, 2007.

II. AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravating and mitigating circumstances. Mendoza must establish mitigation by clear and convincing evidence (std. 1.2(e)) while the State Bar has the same burden to prove aggravating circumstances. (Std. 1.2(b).)

A. AGGRAVATION

The hearing judge found three factors in aggravation and we agree. Mendoza has a prior record of discipline (std. 1.2(b)(i)), his misconduct evidences multiple acts of wrongdoing (std. 1.2(b)(ii)), and he caused harm to the plaintiffs in the Naranjo and De Pascacio matters (std. 1.2(b)(iv)).

In 2001, the Supreme Court ordered Mendoza to be suspended for one year, stayed, and placed him on probation for two years with conditions including a 30-day suspension. Mendoza stipulated that he practiced law while not an active member of the State Bar in violation of sections 6125, 6125, and 6068, subdivision (a). Mendoza's misconduct in the current matter began approximately five months after his disciplinary probation terminated in the 2001 case.

Mendoza is culpable of 19 counts of misconduct in six different cases involving 13 clients from 2004 to 2007. This is clear evidence of multiple acts of wrongdoing.

Finally, Mendoza's misconduct significantly harmed the plaintiffs in the Naranjo and De Pascacio matters. His failure to perform with competence resulted in the courts dismissing both civil complaints. Mendoza urges us on review to consider later events in the Naranjo Plaintiffs matter, including his claim that a subsequent attorney was able to vacate the dismissal and obtain a monetary recovery. However, no evidence in the record supports Mendoza's claims and

therefore we reject them. Likewise, we reject Mendoza's argument that no client harm occurred because all remaining clients and doctors were paid. The fact that Mendoza ultimately satisfied his ethical obligations and paid the clients and doctors in the other three matters does not undo the harm he caused his clients in the two matters that were dismissed as a result of his misconduct.

B. MITIGATION

We agree with the hearing judge that the only factor in mitigation is Mendoza's cooperation with the State Bar by entering into a comprehensive stipulation as to facts and conclusions of law. (Std. 1.2(e)(v).) Mendoza stipulated to 17 counts of misconduct, leaving only three counts to be tried. His cooperation greatly assisted the State Bar's prosecution, entitling Mendoza to strong mitigation credit. (*In the Matter of Spaith, supra,* 3 Cal. State Bar Ct. Rptr. at p. 521 [stipulation to facts and culpability is mitigating]. Mendoza requests that we rely on these same facts to support a finding in mitigation that he also acted in good faith throughout these proceedings. However, we decline to do so as it would be duplicative.

We also decline to find that Mendoza's rehabilitation from substance abuse qualifies as a factor in mitigation. He testified that he had a substance abuse problem with cocaine during the time of his misconduct. Mendoza testified that he has been sober for two and a half years and has regularly attended NA meetings. Although we commend him for his efforts at sobriety, he failed to offer clear and convincing evidence to support a finding in mitigation. (Std. 1.2(e)(iv) [expert testimony establishes mitigating factor that substance problem was directly responsible for misconduct and member no longer suffers from such difficulties].)[7]

[7]We also decline to find in mitigation his good character, remorse, passage of considerable time or unreasonable delay by the State Bar. Mendoza failed to provide clear and convincing evidence of any of these factors.

III. LEVEL OF DISCIPLINE

We start with the standards in determining the appropriate discipline to recommend. Guided by standard 1.6(a), we consider the most severe discipline provided by the various standards applicable to the misconduct. Standard 2.3 provides for actual suspension or disbarment for an act of moral turpitude, while standard 2.2(a) states: "Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances." While we are " 'permitted to temper the letter of the law with considerations peculiar to the offense and the offender' [Citations.]" (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994), the evidence before us presents no compelling reason to depart from the application of disbarment as provided in the standard.

Neither of the exceptions to disbarment – insignificant misappropriation or compelling mitigation – in standard 2.2(a) applies in this case. Mendoza knowingly misappropriated a significant amount of money from five clients. The extent of his misconduct, which occurred over four years, is of paramount concern. During those years, Mendoza committed 19 ethical violations in six different cases involving 13 clients. When we consider the totality of his misconduct starting with his prior record, we find that his offenses have become increasingly more serious with the passage of time. Finally, his mitigation evidence is neither compelling nor does it clearly predominate. Indeed, his multiple circumstances in aggravation greatly outweigh his single factor in mitigation. There is no reason to depart from standard 2.2(a).

Comparable case law supports our disbarment recommendation. (E.g., *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of $10,000 from multiple

clients and failure to return files with no prior misconduct in eight years]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of $20,000 and failure to account with no prior discipline in seven years].)

IV. RECOMMENDATION

For the foregoing reasons, we recommend that Ricardo L. Mendoza be disbarred and his name stricken from the roll of attorneys.

We further recommend that Ricardo L. Mendoza be required to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order herein.

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 Business and Professions Code section 6140.7 and as a money judgment.

V. ORDER

The order of the hearing judge below that Ricardo L. Mendoza be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), will continue in effect pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.