

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the culpability findings of the hearing judge. We find no support in the record for OCTC's theories of misappropriation, and thus affirm the dismissal of those counts. However, we agree that Nia deserves less overall mitigation and significantly more aggravation than afforded by the hearing judge. In particular, we are extremely troubled by Nia's attempt to pass someone else off as the complaining witness to secure withdrawal of the disciplinary complaint. We also find that her lack of candor at trial on this issue further aggravates her misconduct, increasing our concern. Such deception is inappropriate and unbecoming of a member of the legal profession who is expected to adhere to the highest ethical standards. Accordingly, we find a one-year actual suspension is appropriate and necessary to protect the public and the legal profession.

I. SIGNIFICANT PROCEDURAL BACKGROUND

On May 29, 2015, OCTC filed a consolidated 13-count Notice of Disciplinary Charges (NDC). In Case No. 14-O-04592 (the Lukens Matter), Nia was charged with three counts: failure to promptly pay client funds (Count One); failure to promptly pay client funds for medical liens (Count Two); and moral turpitude/misappropriation (Count Three). In Case No. 14-O-05291 (the Lopez Matter), Nia was charged as follows: failure to communicate settlement (Count Four); failure to promptly pay client funds (Count Five); failure to perform competently (Count Six); failure to notify clients of receipt of funds (Count Seven); engaging in potential conflict in representing multiple clients (Count Eight); failure to inform clients of significant developments (Count Nine); seeking agreement to withdraw discipline complaint (Count Ten); moral turpitude/misrepresentation (Count Twelve); and two counts of moral turpitude/ misappropriation (Counts Eleven and Thirteen).

On September 16, 2015, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). On October 1, 2015, trial commenced, and OCTC dismissed Counts

Four, Six, Nine, and Eleven. Trial continued on October 7, December 9, and December 10, 2015, and, after posttrial briefing, the matter was submitted for decision. On April 1, 2016, the hearing judge issued her decision, dismissing Counts Two, Three, Ten, and Thirteen. The judge found Nia culpable of Counts One, Five, Seven, Eight, and Twelve, and recommended a 120-day actual suspension.

Because Nia neither appealed nor filed a brief on review, we focus on OCTC's arguments that Nia misappropriated client funds and that her misconduct warrants more aggravation and more severe discipline.

II. THE LUKENS MATTER

A. FACTS

On June 13, 2010, Monique Lukens was in a car accident, sustaining bodily injuries and damage to her car.¹ Two days later, she hired Nia to represent her.

1. Property Damage Claim

On June 15, 2010, Lukens entered into a retainer agreement (First Retainer Agreement) with Nia, which included the following property damage provision:

Where there is a cash award to CLIENT beyond what is owed to 3rd party lien-holders and/or where CLIENT'S bodily injury recovery is limited . . . ATTORNEY shall receive as its fee, **1/3 or 33.33%** of monies received as **property damage** payments made to CLIENT, if such a recovery or settlement is made **before** filing in any court or a demand for arbitration is made and **forty percent (40%)** if a lawsuit or demand for arbitration is filed. (Emphasis in original.)

Nia testified that her usual practice was not to take attorney fees from a client's property damage recovery, even though she believed the retainer agreement permitted her to do so.²

¹ The other driver was insured by Allstate Insurance Company (Allstate), which accepted coverage liability for Lukens's property damage, rental car expenses, and bodily injuries.

² Nia conceded at trial that the property damage provision in her retainer agreement was unclear and should have read: "[3rd] party *property damage* lien-holders." (Italics added.)

In August 2010, Allstate indicated it would settle Lukens's property damage claim for \$3,604.98, a sum that Nia then advanced to Lukens. When Nia received Allstate's check on August 18, 2010, she deposited it into her client trust account (CTA) without taking any of it as fees.

Shortly thereafter, Nia and Lukens had a disagreement after which Lukens terminated her and hired a new attorney. However, Lukens rehired Nia a few days later. On September 1, 2010, Lukens signed a new retainer agreement (Second Retainer Agreement) containing the same property damage provision as the First Retainer Agreement. The hearing judge found Nia credibly testified she told Lukens that this time she would be invoking the provision entitling her to one-third of the property damage settlement as attorney fees. Nia explained that she deviated from her office practice because Lukens required more attention than most clients.³ According to Nia, she also informed Lukens she intended to take fees from the settlement check received on August 18, 2010, as well as from future proceeds.

2. Loss of Use Claim

On September 23, 2010, Allstate sent Nia a \$1,099.96 check for Lukens's loss of use claim.⁴ Nia received the check on September 27, 2010, deposited it into her CTA, and disbursed \$666.65 to herself as attorney fees. She advised Lukens of the receipt of the funds, but did not give her any money.

On October 1, 2010, Lukens emailed Nia's staff seeking a status update, but the record does not show whether she received a response. On October 6, 2010, Nia disbursed an additional \$433.31 to herself, for a total of \$1,099.96 in attorney fees as of that date. Later that month, Nia sent Lukens a disbursement letter informing her that Nia was entitled to \$1,568.31 in

³ Nia's testimony was corroborated by her paralegal, who testified that "usually" property damage payments go directly to the client, but "it varies" and Lukens was an "exception."

⁴ This amount included \$740 for car rental expenses and \$359.96 for towing charges.

attorney fees (one-third of \$3,604.98 [property damage settlement] plus one-third of \$1,099.96 [loss of use settlement]) and \$300 in costs. Using Nia's calculations, Lukens's recovery totaled \$2,836.63. Because Nia had already advanced \$3,604.98, Nia determined that Lukens had been overpaid by \$768.35. After receiving this letter, Lukens contacted Nia's office to challenge the claim that Nia was entitled to a portion of the property damage/loss of use recovery. The matter was not resolved at that time.

On June 12, 2012, over a year and a half later, Lukens sent Nia an email inquiry about the loss of use settlement. In July 2014, Lukens again inquired about the status of the \$1,099.96 check. On July 28, 2014, Nia emailed Lukens: "[I]t was paid to you already. I will pull your file tomorrow and check on the \$1,099.96." Eventually, Lukens initiated a fee arbitration proceeding. On January 22, 2015, pursuant to the arbitrator's decision, Nia paid Lukens \$1,248 for loss of use and interest.

3. Bodily Injury Claim

Due to the car accident, Lukens sought medical treatment from various providers, including Dr. Jon Scott and Dr. Ali Dini. Nia acknowledged these two liens in August and October 2010, respectively.

On June 18, 2012, Nia received a \$14,000 personal injury settlement check from Allstate on behalf of Lukens. She deposited the check into her CTA and disbursed \$4,666.66 to herself as attorney fees. A few days prior to this, Lukens had called Nia's office about an outstanding emergency medical treatment bill that had been sent to collection. She told the staff she wanted the situation resolved or she would report Nia to the State Bar. Nia called Lukens back that same day and warned that it was "illegal to threaten [her] with the Bar." She then told Lukens she was no longer her attorney and ended the call. Nia and Lukens did not speak again for over a year.

In September 2013, Lukens contacted Nia again about her outstanding medical bill, and forwarded additional medical bills to Nia. Lukens did not specifically ask Nia to pay the liens of Dr. Dini or Dr. Scott. Nia said she would have to renegotiate with the other lienholders to ensure sufficient funds to pay all of Lukens's bills. On March 11, 2014, Nia paid Dr. Dini \$450, and on July 23, 2014, she paid Dr. Scott \$900.

After paying the liens in full, Nia disbursed \$4,732.32 to Lukens as her portion of the settlement proceeds. Later, during the January 2015 fee arbitration proceeding, the arbitrator determined that 30 percent of Nia's fee was unearned because she delayed over one year in disbursing the bodily injury settlement funds. Thus, Nia paid Lukens an additional \$1,613.49—separate from the monies paid for loss of use and for interest.

B. CULPABILITY

1. Count One: Rules of Professional Conduct, Rule 4-100(B)(4) (Failing to Promptly Pay Client Funds)⁵

The hearing judge found Nia culpable of failing to take prompt, substantive steps to resolve a fee dispute with Lukens over the loss of use settlement funds (\$1,099.96), thereby violating rule 4-100(B)(4). We agree with the hearing judge's culpability finding, but for a different reason and a different amount. Nia was entitled to a one-third fee from these funds, leaving \$733.00, which should have promptly been paid to Lukens. Nia received the \$1,099.96 check from Allstate on September 27, 2010. Despite repeated demands from Lukens between October 2010 and July 2014, Nia did not distribute Lukens's share of the proceeds until Lukens initiated a fee arbitration proceeding in January 2015. For this reason, we find Nia culpable of violating rule 4-100(B)(4).

⁵ All further references to rules are to the Rules of Professional Conduct unless otherwise specified. Rule 4-100(B)(4) requires a member to “[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.”

2. Count Two: Rule 4-100(B)(4) (Failing to Promptly Pay Client Funds)

In Count Two, Nia was charged with failing to promptly pay the medical liens of Dr. Dini and Dr. Scott. The hearing judge dismissed this count, finding a lack of clear and convincing evidence⁶ that Lukens asked Nia to pay these liens, as required by rule 4-100(B)(4). (*In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, 188 [“a request by a client for payment of funds or property held by the attorney is an essential element of the offense”].) OCTC does not challenge the dismissal, and we affirm.

3. Count Three: Business and Professions Code Section 6106 (Moral Turpitude/Misappropriation)⁷

Nia was charged with misappropriating \$1,099.96 from Lukens through dishonesty or gross negligence between September 27 and October 6, 2010. The hearing judge dismissed this count, finding that Nia honestly believed she was entitled to the funds as attorney fees when she withdrew them. On appeal, OCTC raises several theories of culpability. Although difficult to parse, OCTC’s primary argument appears to be that Nia knowingly withdrew disputed fees.⁸

We agree with the hearing judge that Nia was entitled to at least \$1,099.96 when she withdrew this amount.⁹ At that time, Lukens had not made a claim against Nia’s one-third fee, and Nia acted pursuant to an honest claim of entitlement to \$1,568.31 (one-third of Lukens’s

⁶ *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 (clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind).

⁷ All further references to sections are to the Business and Professions Code. Section 6106 states: “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.”

⁸ In its opening brief on review, OCTC proffers alternative arguments that Nia may have misappropriated less than \$1,099.96 (“at least \$84.95” or as much as “\$853.30”).

⁹ Nia took a total of \$1,099.96 in fees in two installments: \$666.65 in September 2010 and \$433.31 in October 2010. Coincidentally, this total happens to be the same amount as Lukens’s loss of use settlement amount, which may have led to some confusion in this case.

property damage/loss of use recovery), plus costs. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10-11 [honest but mistaken belief in right to funds may absolve respondent of moral turpitude misappropriation]; cf. *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 332 [even honest *and unreasonable* claim of entitlement vitiates § 6106 moral turpitude charge].)

We find that Nia’s claim of entitlement to the funds was based on several reasons. To begin, both the First and Second Retainer Agreements stated that Nia earned fees on awards beyond anything owed to “3rd party lien-holders.” Since no third party lienholders were owed for Lukens’s property damage claim, Nia believed she was entitled to fees, which Lukens did not question until after Nia withdrew them. Next, Nia testified that she explained to Lukens when she signed the Second Retainer Agreement that Nia would be taking attorney fees from the property damage recovery. The hearing judge found Nia’s testimony credible, and we give this finding great weight. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240 [hearing judge’s credibility findings given great weight]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].) Lastly, Lukens sent Nia’s office an email on October 1, 2010, stating that she was “checking in . . . regarding the loss of use and tow money.” However, she said nothing to indicate that she disputed Nia’s entitlement to fees.

OCTC “must demonstrate that the findings are not sustained by convincing proof and to a reasonable certainty. [Citation.] Merely repeating conflicts in the evidence does not satisfy this burden. [Citation.]” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 655-656.) And we must resolve all reasonable inferences in Nia’s favor. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 689.) Applying these legal principles, we find OCTC has not met its burden of demonstrating

misappropriation by clear and convincing evidence. Nia's honestly held belief in her entitlement to \$1,568.31 precludes a finding of misappropriation. We affirm the dismissal of Count Three.

III. THE LOPEZ MATTER

A. FACTS

On May 11, 2012, Patricia Lopez and her minor son, Anthony Carmona, were involved in a car accident that injured them and caused moderate damage to their vehicle.¹⁰ Lopez was the driver, Carmona the passenger. Carmona's father¹¹ knew Nia and referred Lopez to her. A few days later, Lopez hired Nia and signed a retainer agreement. The two communicated exclusively by email and telephone, but never actually met until the disciplinary trial.

The retainer agreement stated that Nia's fee for resolving the bodily injury claims would be 33.33 percent if resolution was achieved before court action or a demand for arbitration, and 40 percent thereafter.¹² The retainer agreement also gave Nia a special power of attorney to sign Lopez's and Carmona's names "as an endorsement to any releases, necessary to obtain a recovery and/or settlement check, draft or other negotiable instrument tendered as a recovery and/or settlement."

In her Stipulation, Nia acknowledged that "the interests of [Lopez and Carmona] potentially conflicted" at the time Nia accepted representation since Lopez, as the driver, may have been liable, in part, for Carmona's injuries. Nia also testified that she did not obtain informed written consent from the clients to address this potential conflict, nor did she ask the

¹⁰ Lopez and Carmona lived in Van Nuys, California. Lopez was insured by Farmers Insurance Group and the other driver by Automobile Club Insurance (ACI). Ultimately, ACI accepted coverage liability for Lopez's and Carmona's property damage and bodily injury claims.

¹¹ The hearing judge referred to this individual as "Lopez's ex-husband." At trial, Lopez testified that they were never married, but he was Carmona's father.

¹² The retainer agreement was very similar to the First and Second Retainer Agreements in the Lukens Matter. Nia testified that, unlike the Lukens Matter, the Lopez Matter was a "normal case" that did not necessitate taking attorney fees from the property damage recovery.

court to appoint a guardian ad litem for Carmona. Instead, she incorrectly assumed that Lopez could act on her minor son's behalf.

1. Property Damage Claim

After the car accident, Lopez rented a car. To cover that cost, Nia advanced Lopez \$409.35 on June 1, 2012 and \$712 on June 25, 2012. The accompanying letters described the funds as advances against any "bodily injury" settlements. Despite this characterization, both Lopez and Nia testified that they understood the funds were for car rental charges (totaling \$1,121.35) for which Nia would be reimbursed from future settlements.¹³

In July 2012, Nia received a \$1,012.15 check from ACI for Lopez's property damage claim and deposited it into her CTA. She did not notify Lopez. These funds remained in Nia's CTA until OCTC discovered them during the disciplinary investigation. On September 23, 2015 (a week before trial), Nia disbursed the funds to Lopez.

2. Bodily Injury Claim

On December 18, 2013, Nia's office called Lopez to inform her that ACI had offered \$17,500 to settle Lopez's bodily injury claim and \$5,000 to settle Carmona's claim. That same day, Lopez approved the offers. Nia directed her paralegal to sign Lopez's and Carmona's names to the settlement agreement and releases. The documents did not reflect that they were executed pursuant to a power of attorney, and the accompanying letter to ACI stated that they were "properly signed . . . by our clients, Patricia Lopez and Anthony Carmona." Lopez and Carmona were not copied on that correspondence.¹⁴

¹³ Nia's legal assistant drafted the letters memorializing the advances. Nia testified that the letters should have read "property damage" rather than "bodily injury" settlements. However, the memo lines on the checks clearly indicated that they were intended to cover car rental charges.

¹⁴ Nia testified that it was not her office procedure to send a copy of the release to the client: "Unless the client asks for it and they like to see it, that is not something that . . . is communicated to them."

Later that month, Nia received the insurance settlement checks, which she deposited into her CTA. She testified that she did not inform Lopez of receipt of the funds, but she did inform Carmona's father, with whom Nia claimed she was authorized to communicate about the claims.

Lopez testified that she first became aware in March 2014 that the case had settled when she called Nia's office to inquire about the insurance proceeds. Thereafter, Lopez repeatedly called for status updates as to distribution of the funds, but testified she did not receive a response. She became "frustrated" and eventually complained to the State Bar.

In February 2015, Nia provided Lopez with a disbursement sheet stating that Lopez was due \$6,025.73, and asked her to sign it. But the document did not account for the advance payments Nia made to Lopez in June 2012 or the \$1,012.15 property damage award. Before Lopez signed, Nia emailed her that the recovery would be reduced by \$1,121.35 (for the \$409.35 and \$712 advances). On March 4, 2015, Nia paid Lopez \$4,904.38 (\$6,025.73 minus \$1,121.35) and she paid Carmona his full net recovery of \$1,672.77. As noted above, Nia disbursed the \$1,012.15 property damage award months later in September 2015.

3. State Bar Complaint

Lopez testified that Nia began "pressuring" her to dismiss the complaint to the State Bar. Lopez, who spoke fluent English, repeatedly refused, and testified that Nia would call her at work "insisting" that she reconsider. Lopez described it as "harassing," and estimated that Nia called her six times in one day.

On October 7, 2014, during a telephone call with the State Bar complaint analyst, Rosemary Almaguer, Nia told her that Lopez wanted to withdraw her complaint. Almaguer informed Nia that Lopez would have to contact the State Bar to do so.

That same day, Nia called Lopez and they spoke for 30 minutes. Lopez credibly testified that Nia was “threatening” and “harassing” and repeatedly asked why Lopez was pursuing the matter. Nia again asked her to withdraw her complaint, and Lopez again declined.

The next morning, Nia called Lopez twice, and left messages. Shortly thereafter, around 11:30 a.m., Nia called Almaguer at the State Bar and told her she was on a three-way conference call with a woman Nia identified as “Lopez,” who wanted to withdraw her complaint. Nia explained that Lopez spoke Spanish and offered to translate. Since Almaguer was fluent in Spanish, she asked the person directly if she wanted to withdraw the complaint against Nia. When the woman expressed reservation, Nia interjected, explaining that the two of them had discussed it, and Lopez wanted to rescind it. Almaguer believed Nia was pressuring the person on the phone and terminated the three-way conversation to speak with Lopez privately.

A few minutes later, Almaguer spoke with the woman, who confirmed she had been on the three-way call. However, this “Lopez” was actually Sylvia Lopez, who had hired Nia to represent her in a 2013 car accident, did not have a son, and lived in Sylmar, not Van Nuys, California. She had never filed a complaint with the State Bar against Nia. The record is unclear as to whether Sylvia Lopez understood why she had been included in the conference call.

Next, Almaguer obtained the phone number for Patricia Lopez, the actual complaining witness, from the complaint form, and contacted her. Patricia Lopez disclosed that Nia had called her that morning asking her to withdraw the complaint. She told Almaguer that she did not want to do so and faxed Almaguer a confirming letter.

At trial, Nia testified that she thought Patricia Lopez was on the three-way call. She testified that she had not spoken to Patricia Lopez in some time and had forgotten that she spoke English. Nia further testified that she could not find Patricia Lopez’s number, and the first entry that came up when she initiated a computer search was Sylvia Lopez. She then called Sylvia

Lopez thinking it was Patricia Lopez. The hearing judge did not find her testimony credible. Instead, the judge found that Nia initiated the three-way call with Almaguer and “intentionally misrepresented that Patricia Lopez was on the phone seeking to withdraw the complaint . . . , which was untrue.”

B. CULPABILITY

1. Count Thirteen: Section 6106 (Moral Turpitude/Misappropriation) Count Five: Rule 4-100(B)(4) (Failing to Promptly Pay Client Funds)

In Count Thirteen, Nia was charged with misappropriating \$1,012.15 from Lopez through dishonesty or gross negligence. The hearing judge dismissed this count, as do we. No evidence shows that Nia’s CTA ever fell below the \$1,012.15 required to be held in trust or that the funds were ever removed. Instead, they remained in Nia’s CTA from July 2012 until she disbursed them to Lopez a week before trial in this matter in September 2015. The record does not support the misappropriation charge, but rather that Nia failed to promptly pay Lopez (Count Five)—misconduct Nia stipulated to, the hearing judge accepted, and we affirm.

2. Count Seven: Rule 4-100(B)(1) (Failing to Notify Clients of Receipt of Funds)¹⁵

We agree with the hearing judge that Nia is culpable of failing to promptly notify her clients that she received their personal injury settlement checks totaling \$22,500. Nia received the funds in December 2013, and admits that she did not notify Lopez or Carmona until Lopez inquired over a year later. Nia believes she complied with her notification requirements because she claims to have timely told Carmona’s father. The hearing judge found a lack of clear and convincing evidence that Nia actually informed Carmona’s father of the \$22,500 or that she was ever authorized to communicate with him about the accident claims. We adopt and affirm the hearing judge’s findings.

¹⁵ Rule 4-100(B)(1) provides that an attorney shall “[p]romptly notify a client of the receipt of the client’s funds, securities, or other properties.”

3. Count Eight: Rule 3-310(C)(1) (Engaging in Potential Conflict/Representing Multiple Clients)¹⁶

The hearing judge found that Nia failed to inform Lopez and Carmona about the potential conflict of interest when she accepted representation of both of them and failed to obtain each one's written consent. As noted earlier, Nia conceded this in her Stipulation and in her trial testimony. We affirm culpability.

4. Count Ten: Section 6090.5, Subdivision (a)(2) (Seeking Agreement to Withdraw Discipline Complaint)¹⁷

The hearing judge dismissed Count Ten on the bases that: (1) Nia's attempt to convince Lopez to withdraw her State Bar complaint was not related to a civil settlement agreement; and (2) Nia was not a plaintiff, as required by section 6090.5, subdivision (a)(2). (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 372, 381-383 [respondent culpable of violating § 6090.5 by conditioning civil settlement agreement upon withdrawal of State Bar disciplinary complaint].) OCTC does not challenge the hearing judge's findings, and we affirm the dismissal of this count.

5. Count Twelve: Section 6106 (Moral Turpitude/Misrepresentation)

The hearing judge found Nia culpable of committing an act of moral turpitude by misrepresenting to the insurance company that Lopez and Carmona had personally signed the settlement releases when, in fact, Nia's paralegal prepared and executed the documents at Nia's instruction. We affirm. Even though Nia was legally authorized to sign on behalf of Lopez and Carmona pursuant to a special power of attorney, the releases did not indicate that they were

¹⁶ Rule 3-310(C)(1) provides: "A member shall not, without the informed written consent of each client: [¶] . . . [a]ccept representation of more than one client in a matter in which the interests of the clients potentially conflict"

¹⁷ Section 6090.5, subdivision (a)(2), provides that it is a disciplinable offense for an attorney "to agree or seek agreement" that "[t]he plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the disciplinary agency." This "applies to all settlements, whether made before or after the commencement of a civil action." (§ 6090.5, subd. (b).)

executed in a representative capacity. In fact, the accompanying letter to ACI stated the contrary—that the releases were “properly signed . . . by our clients, Patricia Lopez and Anthony Carmona.”

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct¹⁸ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Nia to meet the same burden to prove mitigation. The hearing judge gave Nia relatively little mitigation, which we diminish further. We also find significantly more aggravation than the hearing judge did.

A. AGGRAVATION

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

We agree with the hearing judge that Nia’s five acts of misconduct are an aggravating circumstance, to which we assign significant weight. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

2. Bad Faith and Dishonesty (Std. 1.5(d)); Lack of Candor (Std. 1.5(l))

We agree with the hearing judge that Nia’s attempt to deceive the State Bar constitutes bad faith and dishonesty, a significant aggravating circumstance.¹⁹ Nia intentionally misrepresented to Almaguer that Patricia Lopez was on the conference call and wanted to

¹⁸ All further references to standards are to this source.

¹⁹ OCTC knew of Nia’s impersonation scheme during the investigation phase of this case, yet did not charge it as an act of moral turpitude in the NDC. Because OCTC failed to properly plead this charge, we are limited to evaluating Nia’s dishonesty as an aggravating factor. In this context, we find that her dishonesty surrounds and aggravates all her misconduct in the Lopez Matter because Nia intended to deceive the State Bar into dismissing the entire disciplinary complaint. (See std. 1.2(h) [“‘Aggravating circumstances’ are factors surrounding a member’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard”].)

withdraw her State Bar complaint. Nia knew that Sylvia Lopez was the person on the phone, and, significantly, that Patricia Lopez, the actual complaining witness, had clearly declined to withdraw the complaint. Nia's actions are exacerbated by the fact that she had previously called Patricia Lopez on numerous occasions and "harassed" her to withdraw her complaint. When Lopez refused, Nia resorted to this impersonation tactic.

We also agree with OCTC that Nia's lack of candor on this issue at trial further aggravates her misconduct. She testified that she inadvertently called Sylvia Lopez, and did not realize she had the wrong Lopez on the phone. The hearing judge rejected Nia's account, and, upon our independent review, we also find Nia's version of events implausible. Nia had called Patricia Lopez several times in close proximity to the conference call with the State Bar, including the day before, when she spoke with her for 30 minutes. Nia obviously knew her phone number, her voice, and her English language skills, and, particularly, that Patricia Lopez did not want to withdraw her complaint.

Given Nia's initial dishonesty to the State Bar during the investigation of Lopez's complaint, we find significant gravity in her continued lack of candor during these proceedings. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [respondent's deliberate misrepresentation to State Bar investigator and deliberately false testimony in State Bar Court considered strong aggravating circumstance]; *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522.) The Supreme Court has repeatedly noted that "deception of the State Bar may constitute an even *more serious offense* than the conduct being investigated. [Citations.]" (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 (dis. opn. of Lucas, J.), original italics; accord *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Worth v. State Bar* (1978) 22 Cal.3d 707, 711.)

B. MITIGATION

1. Good Faith (Std. 1.6(b))

The hearing judge gave Nia mitigation credit for her honest and reasonable belief that she was entitled to Lukens's loss of use payment as fees. However, we afford no mitigation credit under standard 1.6(b) because the misappropriation charge in the Lukens Matter was dismissed, and thus there is no related misconduct to mitigate.

2. Extreme Physical/Mental Difficulties (Std. 1.6(d))

Extremely stressful family circumstances may be a mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [marital problems considered mitigating]; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702 [depression due to stress of son's emotional turmoil considered in mitigation].) Nia and her aunt testified that Nia's parents became ill in 2011, and Nia, who lived with them, became their primary caregiver. Her mother has diabetes and arthritis, and her father also has diabetes and suffered kidney failure. In 2014 and 2015, her father's health worsened, resulting in frequent hospital stays. Nia became very distracted and stressed during this time. Based on this testimony, the hearing judge gave Nia moderate weight in mitigation for the emotional difficulties of dealing with her parents' health issues. We agree, but diminish the import since Nia presented only lay testimony. Moreover, she did not provide clear and convincing evidence that those concerns no longer pose a risk of future misconduct. (Std. 1.6(d); *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 ["some mitigating weight" assigned to personal stress factors established by lay testimony]; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073 ["Without assurance that [respondent's] emotional problems are solved, we must be concerned that routine . . . stresses or medical emergencies in the future will trigger similar behavior"].) We assign only minimal

weight, and emphasize that her emotional difficulties do not explain or lessen her dishonesty and lack of candor, which remain significant factors in aggravation.

3. Cooperation with State Bar (Std. 1.6(e))

The hearing judge gave Nia slight weight in mitigation for her cooperation with the State Bar. We agree. This case proceeded to trial on nine counts of misconduct in two client matters. Nia stipulated to limited facts that were easily provable and to culpability for only one count of misconduct (Count Five in the Lopez Matter [failing to promptly pay client funds]). (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation is appropriate when culpability as well as facts admitted].)

4. Good Character (Std. 1.6(f))

We agree with the hearing judge that Nia's good character evidence, based on the testimony of four witnesses (a workers' compensation hearing representative, a former employee, and two attorneys—one of whom was her aunt) merits minimal weight in mitigation. While we give serious consideration to the testimony of attorneys (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have "strong interest in maintaining the honest administration of justice"]), Nia's witnesses overall do not constitute "a wide range of references in the legal and general communities." (Std. 1.6(f); see *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of four character witnesses, all attorneys, afforded diminished weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys did not constitute broad range of references and warranted only limited mitigation].)

5. Community Service and Pro Bono Activities

The hearing judge afforded Nia modest weight in mitigation for her community service and pro bono involvement with: (1) Southwestern Law School's annual fundraiser; (2) the board

of directors of the San Fernando Valley Bar Association and its committee on attorney referral programs; and (3) the Universalist Church. Although Nia testified to her affiliation with these groups, the hearing judge found that her level of contribution and service could not be quantified from the record. We agree. Nia’s trial testimony provides very little detail about the scope of her endeavors. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where respondent testified but evidence fails to demonstrate level of involvement].)

V. DISCIPLINE²⁰

Our disciplinary analysis begins with the standards, which promote the uniform and consistent application of disciplinary measures, and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) While not strictly bound by the standards, we recommend sanctions falling within the range they provide unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline. (Std. 1.7.)²¹ If we depart from the standards, we must articulate our reasons for doing so. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [stating clear reasons for departing from standards helpful to Supreme Court and member being disciplined].)

²⁰ 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.)

²¹ Standard 1.7(b) provides: “On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to confirm to ethical responsibilities.” Standard 1.7(c) provides: “On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.”

In its opening brief on review, OCTC urged a one-year period of actual suspension based, in part, on its position that Nia misappropriated funds in two client matters.²² Having dismissed those misappropriation counts, we turn to the standards applicable to the found misconduct, taking into consideration all aggravation and mitigation.

Standard 2.11 addresses Nia's most serious charged offense—misrepresenting to ACI that her clients personally signed the settlement releases, an act of moral turpitude.

Standard 2.11 provides that:

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

No clear and convincing evidence showed any harm to the insurance company, but Nia's misconduct was directly related to her practice of law. Due to the broad range of discipline encompassed in standard 2.11 (disbarment or actual suspension), the hearing judge consulted the following cases for guidance: *Hallinan v. State Bar* (1948) 33 Cal.2d 246 (three-month actual suspension where attorney intentionally and falsely led opposing counsel to believe client personally signed settlement papers; also obtained acknowledgment of signature in improper manner); *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 (public reproof for commingling and failure to promptly pay funds to client due to honest mistake); and *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716 (private reproof for mistakenly billing client \$1,753.94 as cost advanced in litigation).

Unlike the hearing judge, we are not persuaded by *Dudugjian* and *Respondent E*. We find that those cases are not directly analogous to Nia's circumstances given her multiple and varied acts, and, as a result, the levels of discipline in those cases are inapt. Instead, we use

²² At oral argument, OCTC indicated that a one-year actual suspension was the appropriate level of discipline regardless of the misappropriation counts.

Hallinan as a starting point. Considering Nia’s failure to promptly pay client funds in two client matters, we also find direction in standard 2.2(a), which provides that: “Actual suspension of three months is the presumed sanction for . . . failure to promptly pay out entrusted funds.” Thus, at a minimum, Nia’s misconduct warrants a three-month (90-day) actual suspension. However, given her misrepresentation, her two rule 4-100(B)(4) counts, and her other counts of misconduct, a lengthier period of actual suspension is called for.

In addition, we are mindful of Nia’s significant aggravation and negligible overall mitigation. Her dishonesty during the investigation of her disciplinary complaint is serious, and we find Nia’s lack of candor at trial even more disconcerting. Taken together, we heed the Supreme Court’s message that ongoing deceitfulness to the State Bar may eclipse the underlying offenses: “[F]raudulent and contrived misrepresentations to the State Bar may perhaps constitute a greater offense than [the original misconduct]. [Citation.]” (*Chang v. State Bar, supra*, 49 Cal.3d at p. 128; accord *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) There is no question that such behavior “violate[s] the high ethical standards that members of the bar are expected to maintain.” (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147 [dishonest acts manifest ““abiding disregard of ““the fundamental rule of ethics—that of common honesty—without which the profession is worse than valueless in the place it holds in the administration of justice.”” [Citation].’ [Citation.]”.)

In this vein, we are aided by several pre-standards cases that impose significant discipline for comparable acts. In *Olguin v. State Bar* (1980) 28 Cal.3d 195, the State Bar recommended a 90-day actual suspension for an attorney with one prior private reproof, who failed to use reasonable diligence and sound judgment in protecting a client’s interest. He also presented false statements and fabricated documents to the State Bar during the investigation of the disciplinary complaint. The Supreme Court found that the recommended discipline was too lenient and aptly

framed the case as such: “We deal here with the conduct of an attorney whose violation of his duty to a client has been aggravated by his deception directed at the very body whose function it is to determine his fitness to practice.” (*Id.* at pp. 200-201.) The Supreme Court held that the attorney’s dereliction of duty to his client would, by itself, warrant a 90-day suspension (*id.* at p. 199), but since his misconduct was aggravated by deceptive acts on at least two occasions, it was proper to fix the period of actual suspension at six months. (*Id.* at p. 201.)

In *Phillips v. State Bar* (1975) 14 Cal.3d 492, the Supreme Court ordered a one-year actual suspension for an attorney who failed to promptly notify his client of receipt of funds, but, more notably, falsified a letter to the client to deceive the State Bar during the investigation of the disciplinary complaint. The attorney had one prior public reproof.

Disbarment was deemed appropriate in *Warner v. State Bar* (1983) 34 Cal.3d 36, where an attorney, inter alia, mishandled and misappropriated client funds and gave false testimony before the State Bar hearing panel. The Supreme Court found that the attorney’s “numerous misrepresentations not only to the State Bar but also in the course of judicial proceedings further support[ed] [its] conclusion that disbarment [was] appropriate” since the attorney “ha[d] followed a course of deceit designed to mislead investigative factfinders during formal proceedings and in so doing ha[d] attempted to evade his responsibility for his acts to the detriment of his clients and in violation of his oath. [Citation.]” (*Id.* at p. 48.)

Finally, in *In re Lamb* (1989) 49 Cal.3d 239, an attorney was disbarred for an impersonation scheme arising out of a criminal conviction, where she pretended to be her husband and took the bar examination for him. She ultimately “pled nolo contendere to two felony counts of false personation to obtain a benefit. [Citation.]” (*Id.* at p. 241.) The Supreme Court held that even though her misconduct allegedly “stemmed from overwhelming physical and psychological pressures,” including trying to save her marriage,

her deceitful acts were of such “exceptional gravity” and were “so morally serious” that she failed to sustain her heavy burden of overcoming her breach of professional standards. (*Id.* at pp. 245-246.)

We view Nia’s misconduct as more serious than *Olguin* (failure to perform diligently), but less serious than *Warner* (misappropriation) and *Lamb* (criminal behavior). Instead, we find her misconduct most akin to *Phillips*, where the attorney failed to promptly notify his client of receipt of funds and sought to deceive the State Bar. Although *Phillips* involved an attorney with a prior public reproof, Nia’s aggravation is much more substantial. On balance, we view the level of discipline in *Phillips* (one-year actual suspension) as most on point.

In light of Nia’s multiple acts of misconduct, aggravated by her dishonesty and lack of candor during the investigation and hearing stages of this proceeding, we find that a one-year actual suspension is warranted and necessary to protect the public and the legal profession.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Tina Amouei Nia be suspended from the practice of law for two years, that execution of that suspension be stayed, and that she be placed on probation for two years on the following conditions:

1. She must be suspended from the practice of law for the first year of her probation period.
2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms

and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

5. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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 period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Nia be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order 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).)

VIII. RULE 9.20

We further recommend that Nia be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order in this proceeding. 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 section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.