PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED NOVEMBER 1, 2012

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. **08-O-14222**
	)	
CHARLOTTE SPADARO,	)	**OPINION**
	)	
A Member of the State Bar, No. 47163.	)	
	)	

This case illustrates some of the ethical problems confronting attorneys who are involved in business transactions with clients. Charlotte Spadaro practiced law for 37 years without discipline. Her present problems arose when she was retained by Phyllis Williams, who was facing possible criminal charges. Shortly thereafter, Spadaro solicited a series of loans from Williams to help with Spadaro's own personal expenses.

Over the course of several weeks, Williams loaned Spadaro a total of $9,000. Spadaro did not document these loans, provide for interest payments or specify a date for repayment. None of the loans was secured. Nor did Spadaro tell Williams to seek independent legal counsel to advise her about the fairness of the loans. Spadaro also solicited Williams to invest an additional $10,000 in two business ventures, both of which failed. Williams ultimately terminated Spadaro's services and asked for a refund of her fees and repayment of the loans and investments. Spadaro had repaid none by the time of her discipline trial.

The hearing judge found Spadaro culpable of: (1) failing to account for client funds; (2) failing to refund unearned fees; and (3) three counts of entering into improper business transactions with a client. The hearing judge dismissed a moral turpitude charge, finding

insufficient evidence of dishonesty. In mitigation, the hearing judge afforded Spadaro credit for her 37 years of discipline-free practice. In aggravation, he found multiple acts of misconduct, significant harm, and indifference towards rectification of or atonement for her misconduct. The recommended discipline included a six-month actual suspension and restitution in an amount equal to Spadaro's unearned fees and the loans she received from Williams, plus interest.

Spadaro seeks review, raising one principal issue on appeal. She contends that she never acted as Williams's attorney and therefore there are no factual or legal bases establishing culpability for the charged misconduct. The State Bar Office of the Chief Trial Counsel (State Bar) asks us to affirm the hearing judge's decision.

Having independently reviewed the record (Cal. Rules of Court, rule 9.12) and considered the specific factual findings raised by Spadaro (Rules Proc. of State Bar, rule 5.152(C)), we agree with the hearing judge's findings relating to culpability, mitigation, and aggravation. We find additional mitigation for Spadaro's commitment to public service and additional aggravation due to the overreaching that surrounded her misconduct. We adopt the hearing judge's discipline recommendation, including a six-month actual suspension and a restitution condition for Spadaro's unearned fees and the loans she obtained from Williams. However, we include additional restitution in the amount of Williams's investments in Spadaro's two failed business enterprises, and recommend that Spadaro remain suspended until all restitution is made. We conclude that this discipline is sufficient to protect the public, the courts, and the legal profession.

I. FACTUAL AND PROCEDURAL BACKGROUND

Spadaro was admitted to practice law in California in June 1970. For several years, she served as an elected public official: she was president and a member of a school board, a member of the city council in Beverly Hills, and later the mayor. For the past several years, she has been

involved in animal rescue activities. However, in 2006, she was subject to criminal prosecution for animal cruelty as the result of her operation of a kennel. Spadaro amassed significant legal fees in defending against the criminal charges and ultimately was convicted of a misdemeanor.

On July 26, 2007, a group of dog rescuers, including Phyllis Williams, was arrested for animal cruelty after a raid on an unlicensed kennel. Ninety-two dogs were seized and impounded by the police. Williams, who was a volunteer at the kennel, spent several hours in the Riverside County jail, along with another volunteer and the owner of the unlicensed kennel, Angie White. While White was incarcerated, she called Spadaro, who was a friend of hers. Spadaro arrived with a bail bondswoman to meet with the arrestees, and the three women were released after bail was posted.

A. Spadaro Meets with Williams

On July 28, 2007, the day after they were released from jail, Spadaro met with Williams at Williams's home. Williams, who had never been arrested before, was concerned about facing possible criminal charges and was worried about retrieving the seized dogs. Spadaro told Williams that she "was an expert in dog issues" due to Spadaro's own legal problems with her dog rescue operations.

Williams was impressed with Spadaro, agreed to hire her and wrote a check to her for $5,000 that included the notation "retainer" in the memo section. Spadaro did not memorialize the terms of the retention in writing, but Williams testified that she understood Spadaro would represent her "in whatever was necessary in the [animal cruelty] case that was pending to be charged against me."

Six days later, on August 3, 2007, Williams gave Spadaro a second check for $2,500, with the designation "Legal Svc." in the memo section. Williams believed that Spadaro would use these additional funds to hire an investigator to help recover the impounded dogs.

A short time later, in early August 2007, Spadaro met with Williams and White at Williams's house. Another attorney, Ann Cunningham, also attended the meeting to be interviewed as a potential attorney for White. When Cunningham arrived, Williams introduced Spadaro as her attorney and Spadaro did not object to or correct this description. The group met for approximately five hours and discussed their arrests, as well as the imminent post-seizure hearing and the possibility of regaining possession of the dogs. Spadaro advised Williams that she did not need to attend the upcoming post-seizure hearing since she was not the kennel owner. Spadaro further advised Williams to write a letter to the county contesting the $100 fee that Williams had paid for the kennel's code violations.

B. Spadaro Solicits Five Loans from Williams for her Personal Use

Less than two weeks later, Spadaro began asking Williams for a series of loans. Spadaro was under the impression that Williams was sympathetic to her work as a dog rescuer and had sufficient assets to underwrite Spadaro's legal expenses as well as the expenses to maintain Spadaro's rescue dogs. In reality, Williams had to borrow against her home each time she loaned money to Spadaro.

On August 9, 2007, Williams wrote two checks as loans to Spadaro in the amounts of $2,000 and $500. (She did not have $2,500 in a single account.) Over the next month, Williams agreed to four more loans totaling $6,500: (1) $500 on August 16; (2) $4,500 on August 18; (3) $1,000 on August 30; and (4) $500 on September 6, 2007. All of the loans were unsecured and Spadaro failed to provide written terms for repayment or advise Williams to seek the advice of an independent attorney regarding the fairness of the transactions.

C. Spadaro Solicits Money for Two Investments from Williams

At the same time Spadaro asked Williams for the loans, she also solicited Williams to invest in two commercial ventures. The two investments were in a residential remodeling

project in Redlands, California (the Redlands project) and in a business called the Foreclosure Co., which would provide legal advice to people with troubled foreclosures, lend them money, and buy and sell trust deeds and real property. Both ventures failed and Williams lost a total of $10,000.

1. The Redlands Project

Spadaro told Williams that her friend, Cliff Waldrep, and she were partners in remodeling a home in Redlands, California, which they intended to resell at a profit. She asked Williams to invest $5,000 to continue the project in exchange for $7,500 from Waldrep "upon completion of the job." Spadaro drafted and signed a three-paragraph agreement dated August 18, 2007, and gave it to Williams, who never signed it.[1] Nevertheless, Williams paid $5,000 to Spadaro, who deposited the funds into her personal account. The Redlands property was foreclosed upon and Williams lost her $5,000 investment. Spadaro did not advise Williams that she could seek independent counsel to advise her about the fairness of the Redlands project agreement.

2. The Foreclosure Company

One week after obtaining $5,000 for the Redlands project, Spadaro sought additional funds from Williams for a second business venture, the Foreclosure Co. Spadaro drafted a two-paragraph agreement, dated August 24, 2007, which provided that Williams would invest $5,000 "for which she will receive 25% ownership of Charlotte Spadaro's share of that company." Williams paid $5,000 to Spadaro by check dated August 25, 2007, and Spadaro deposited the

[1] Spadaro and Williams were unclear whether the $5,000 was a loan or an investment, although the August 18, 2007 agreement described the sum as an "investment" and we consider it as such. The characterization of the transaction as a loan or as an investment is not critical to our analysis of whether it was fair and reasonable under rule 3-300 of the State Bar Rules of Professional Conduct. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 165 [characterization as loan or investment not critical to whether transaction was fair and reasonable].)

funds in her personal account. Again, Spadaro did not advise Williams that she could seek independent counsel to advise her about the fairness of her investment in the Foreclosure Co. Spadaro never formed the company and Williams's investment was not repaid.

D. Williams Terminates Spadaro's Services

Spadaro met with Williams in November 2007 as she persisted in her efforts to obtain additional loans from Williams. After learning that Williams had no more available funds, Spadaro suggested that Williams borrow more money using Williams' s automobile as collateral so that she could continue to fund Spadaro's ongoing expenses. At that point, Williams realized that Spadaro had no intention of helping her but intended only to help herself.

In December 2007, Williams made the first in a series of verbal requests that Spadaro begin to repay at least a portion of the outstanding loans. In response, Spadaro gave Williams a document entitled "Demand in Escrow" that was intended to placate Williams about the return of the money. The document purported to instruct an escrow officer as follows: "Out of the proceeds of this escrow [to refinance a property located at 5920 Jasmine Street, Riverside CA], you are hereby authorized to pay $10,000 to Phyllis Williams." Spadaro signed the document on behalf of her son, Jonathan Spadaro, who was a partner in Jasmine Street Partners, which owned the property. Spadaro claims she was authorized to sign the document on Jonathan's behalf. However, no escrow was established because the Jasmine Street property was not refinanced, and the partnership lost the building in foreclosure.

On May 30, 2008, Williams was formally charged with 12 misdemeanor counts of animal cruelty. By then, she had lost confidence in Spadaro and hired Cunningham to defend her. Williams terminated Spadaro on June 4, 2008, and requested a refund of her attorney fees. After several futile conversations with Spadaro, Williams followed up with another request for the return of fees in a letter dated July 17, 2008. She also asked for repayment of the outstanding

loans plus interest. Spadaro contacted Cunningham in December 2008 to discuss a payment plan, but they could not agree on terms. To minimize her failure to repay Williams, Spadaro asserts that Williams did not need the money since she would not agree to a repayment plan. Spadaro did not provide an accounting or return the $7,500 advanced attorney fees to Williams. Nor did she repay the $9,000 in loans or the $10,000 in investments.

E. Proceedings in the Hearing Department

The State Bar filed a Notice of Disciplinary Charges (NDC) on May 20, 2011, alleging six counts of misconduct. Spadaro filed a response on June 7, 2011. Before trial, the hearing judge granted the State Bar's motion in limine to preclude Spadaro from introducing evidence or testimony that she had not disclosed during discovery. The matter proceeded to a two-day trial.

The hearing judge issued his decision, finding culpability for failing to account in violation of rule 4-100(B)(3) of the Rules of Professional Conduct;[2] failing to refund unearned fees in violation of rule 3-700(D)(2); and three counts of improper business transactions with a client in violation of rule 3-300. However, the hearing judge found insufficient evidence to establish culpability under Count Six, which alleged moral turpitude by reason of Spadaro's dishonesty in the solicitation of the Redlands project investment. The hearing judge further found that the State Bar's witnesses, Williams and attorney Cunningham, were credible while Spadaro was not. We give great weight to the hearing judge's credibility findings. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deferring to credibility determinations in absence of specific showing of error].)

Spadaro filed a motion for reconsideration, which the hearing judge denied. She then timely sought review.

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

II. DISCUSSION

A. Procedural Due Process Claim

As a preliminary matter, Spadaro argues that her due process rights were violated by the hearing judge's pretrial order granting the State Bar's motion in limine to preclude her from calling witnesses or introducing evidence that she did not produce during discovery. We review the hearing judge's order under an abuse of discretion standard. (*In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192, 198 [Supreme Court applies abuse of discretion standard for procedural motions in State Bar proceedings].) The preclusion of evidence is authorized by rule 5.65(H)(1) of the Rules of Procedure of the State Bar, and the hearing judge acted well within his broad discretion.

At the hearing below, Spadaro made no offer of proof as to the testimony or documents she wished to have admitted. (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 380, fn. 17 [respondent waived error regarding proposed testimony when he failed to make offer of proof].) And Spadaro did not raise a due process claim as to the issue of evidence preclusion either at trial or when she filed a motion for reconsideration. Spadaro has waived her right to raise her procedural due process claim on appeal.

B. Attorney-Client Relationship

The existence of the attorney-client relationship between Spadaro and Williams is a predicate to the charged misconduct in this case. Spadaro points to the absence of a written retainer agreement as proof that no such relationship existed. She argues that Williams was mistaken if she believed Spadaro was acting as her attorney. We disagree.

An attorney-client relationship may be established by written agreement or it may be inferred from the "totality of the circumstances." (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 732.) Clearly, "[i]n considering the totality of the circumstances, one should

not overlook the obvious." (*Id.* at p. 733.) Here, the day after Williams was released from jail, she met with Spadaro and agreed to pay her $5,000 as a retainer for advice about Williams's possible criminal charges for animal cruelty. She then paid an additional $2,500 one week later by check bearing the notation "Legal svc." Williams was not a friend of Spadaro's, yet Spadaro maintains that these payments were personal loans. Such argument strains credulity. "[O]ne of the most important facts involved in finding an attorney-client relationship is 'the expectation of the client based on how the situation appears to a reasonable person in the client's position.' " (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1733 [quoting Friedman, *The Creation of the Attorney-Client Relationship: An Emerging View* (1986) 22 Cal. W.L.Rev. 209, 231.) Williams testified that Spadaro "would be better to represent me than probably anybody because of her knowledge." Williams thus had a reasonable expectation that Spadaro was acting as her attorney. The evidence overwhelmingly establishes that an attorney-client relationship existed between Williams and Spadaro.

III. CULPABILITY

A. Count One: Failure to Render an Accounting (Rule 4-100(B)(3))

Williams paid Spadaro $5,000 as an advance on future services and $2,500 as an advance on costs. Spadaro failed to provide Williams with an accounting for these payments as required by rule 4-100(B)(3). Although Williams did not request an accounting, rule 4-100(B)(3) "does not require as a predicate that the client demand such an accounting." (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.) We thus find Spadaro culpable of violating rule 4-100(B)(3).

B. Count Two: Failure to Refund Unearned Fees (Rule 3-700(D)(2))

"Rule 3-700(D)(2) provides that an attorney whose employment has been terminated must promptly refund any unearned part of an advanced fee." (*In the Matter of Lais* (Review

Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 922.) Williams terminated Spadaro's services on June 4, 2008, and demanded the return of her fees. At the time of trial, Spadaro had not done so. We agree with the hearing judge's finding that Spadaro performed no services of significant value to Williams and thus her failure to repay the full $7,500 is a violation of rule 3-700(D)(2).

C. Count Three: Business Transaction with Client (Rule 3-300) (Personal Loans)
Count Four: Business Transaction with Client (Rule 3-300) (Foreclosure Co.)
Count Five: Business Transaction with Client (Rule 3-300) (Redlands Project)

"When an attorney enters into a business transaction with a client, the attorney must, at his or her peril, comply with rule 3–300." (*In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387, 394.) The rule requires that an attorney who enters into a business transaction with a client must ensure that: (1) the transaction is fair and reasonable to the client; (2) the terms are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (3) the client is advised that he or she may seek the advice of an independent lawyer and is given a reasonable opportunity to obtain that advice; and (4) the client consents in writing to the terms of the transaction. Spadaro did not comply with any of these basic requirements in her various business transactions with Williams.

First, the loans and investments were not fair and reasonable to Williams. All of the transactions were for Spadaro's personal benefit. (*In the Matter of Gillis*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 397 [sale of real property to client for attorney's personal benefit from transaction violated rule 3-300].) None of the loans was secured (*Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 373 [absence of security for loan indication of unfairness]), and none of them provided a due date for repayment of the funds. (*In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 307 [loans without due date not fair and reasonable].)

Second, the loans were not reduced to writing and the meager documentation of the two investments did not disclose the material terms or apprise Williams of the risks involved. As a

consequence, Williams had little or no understanding of the terms of the loans and the business investments. (*Hunniecutt v. State Bar, supra,* 44 Cal.3d at pp. 372-373 [attorney bears burden of showing that dealings were fully known and understood by client]; *Beery v. State* Bar (1987) 43 Cal.3d 802, 812 [violation of rule 3-300 to induce client to loan money if not apprised of risks].)

Finally, Williams was never advised to seek the advice of an independent lawyer and she did not consent in writing to the loans. The business transactions between Spadaro and Williams fall "squarely within the parameters" of rule 3-300. (*In the Matter of Hagen, supra,* 2 Cal. State Bar Ct. Rptr. at p. 166.) We therefore adopt the hearing judge's culpability findings as to Counts Three, Four, and Five.

D. Count Six: Moral Turpitude (Bus. & Prof. Code, § 6106)

Count Six alleges that Spadaro committed an act of moral turpitude because she was dishonest when she solicited the Redlands project investment from Williams with no intent to repay it from the proceeds of the sale of the property. The hearing judge did not find Spadaro culpable and we agree. The State Bar failed to offer clear and convincing proof[3] that Spadaro had no intent to repay Williams or was financially unable to do so. (See *In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 244-245 [financial inability to repay debt at time incurred is circumstantial evidence of moral turpitude].) We therefore dismiss this count with prejudice.

IV. MITIGATION AND AGGRAVATION

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Standards for Atty. Sanctions for Prof.

[3] 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.)

Misconduct, std. 1.2(b) and (e).)[4] The record establishes two factors in mitigation and four factors in aggravation.

A. MITIGATION

1. No Prior Record (Std. 1.2(e)(i))

The hearing judge found that Spadaro's lengthy period of practice without discipline was the sole factor in mitigation. We agree that her 37 years of practice without prior discipline is a significant mitigating factor. (Std. 1.2(e)(i); *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225 [30 years of discipline-free practice was "important" mitigating factor].)

2. Community Service

We agree with the hearing judge that Spadaro failed to present clear and convincing evidence of substantial pro bono activities. But we give considerable mitigative weight for her extensive community service as a member of the City Council, as mayor to the city of Beverly Hills, and as a member and President of the School Board. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [affording community service considerable weight in mitigation].)

B. AGGRAVATION

1. Multiple Acts of Misconduct (Std. 1.2(b)(ii))

We agree with the hearing judge that Spadaro committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Although her seven improper transactions involved repeated acts of self-dealing, her misconduct involved only one client and occurred over a short period of time. We thus consider this to be only moderately aggravating.

[4] Unless otherwise noted, all further references to "standard(s)" are to this source.

2. Significant Harm (Std. 1.2(b)(iv))

We agree with the hearing judge that Spadaro significantly harmed Williams. (Std. 1.2(e)(i).) In order to satisfy Spadaro's requests for loans and investments totaling $19,000 plus interest, Williams borrowed from her equity line of credit on her home and she has "been fighting to keep [her] home ever since."

3. Indifference (Std. 1.2(b)(v))

Spadaro has demonstrated indifference to the consequences of her misconduct. In spite of Williams's many requests for reimbursement, Spadaro maintains that repaying Williams is not her highest priority; taking care of her animals is of greater importance. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 ["failure to pay at least part of the money owed is a factor in aggravation as a demonstrated indifference toward rectification and atonement for respondent's misconduct"].)

4. Overreaching (Std. 1.2(b)(iii))

We find one additional factor in aggravation: Spadaro's misconduct was surrounded by overreaching. To obtain money from Williams, Spadaro preyed on Williams's love of rescue animals. "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed . . . is in a superior position to exert unique influence over the dependent party." (*Beery v. State Bar, supra,* 43 Cal.3d at p. 813.) Spadaro clearly exploited her position of trust with Williams.

V. DISCIPLINE ANALYSIS

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession. (Std. 1.3.) To determine the appropriate discipline, we begin with the standards, which we follow "whenever possible." (*In re Young* (1989) 49 Cal.3d 257,

267, fn. 11.) Our intent in following the standards is to ensure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220.)

Standard 2.8 provides for a suspension for a violation of rule 3-300 (improper business transaction with client) unless the extent of the member's misconduct or harm to the client is minimal. Standard 2.2(b) calls for a minimum three-month actual suspension irrespective of mitigating circumstances for a violation of rule 4-100 (failure to render accounting) that does not result in the willful misappropriation of entrusted funds or property. Standard 1.6(a) states that if there are two or more applicable sanctions, then the most severe of the sanctions shall be prescribed. In addition to the standards, we must also consider whether the recommended discipline is consistent with prior discipline decisions involving similar facts. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) We therefore consider those cases where an attorney with a lengthy record of discipline-free practice engaged in overreaching when entering into a business transaction with a client.

In recommending a six-month actual suspension, the hearing judge principally relied on *In the Matter of Gillis*, *supra*, 4 Cal. State Bar Ct. Rptr. 387. We agree that the *Gillis* case is apt. In that case, the attorney represented a client, who was unemployed and receiving welfare, in a wrongful death action. (*Id*. at p. 391.) We found the attorney violated rule 3-300 because he entered into an unfair business transaction for his own benefit when he sold his residential property to his client without disclosing significant encumbrances on the property. (*Id*. at pp. 396-397.) The attorney also deliberately attempted to mislead the State Bar investigator. (*Id*. at p. 399.) In mitigation, the attorney had practiced for 26 years without prior discipline; in aggravation, we found multiple acts of misconduct. (*Id*. at p. 400.)

Despite some factual differences between *Gillis* and the present case, we find that a six-month suspension is appropriate. Unlike *Gillis*, we do not find clear and convincing evidence of

acts of dishonesty involving moral turpitude in the instant matter. But we do find aggravation in Spadaro's numerous acts of overreaching of a sympathetic client and seven separate acts of self-dealing. The instant matter also involves a violation of rule 4-100, which suggests under standard 2.2(b) that Spadaro should be suspended for a minimum of three months irrespective of her evidence in mitigation. And Spadaro has been found culpable of failing to return unearned attorney fees.

Upon our independent review of the record, we conclude that the hearing judge's recommendation of six months' actual suspension is well within the parameters of the applicable standards and the decisional law. (*Hunniecutt v. State Bar, supra,* 44 Cal.3d 362 [90-day actual suspension for attorney with no prior discipline for acts of moral turpitude arising from improper solicitation of loan from client following settlement of personal injury action plus abandonment of two other clients]; *Rodgers v. State Bar* (1989) 48 Cal.3d 300 [2 years' actual suspension for attorney with no prior discipline who obtained 3 loans totaling $34,600 from client on behalf of attorney's former business partner without disclosing relationship, misrepresented that funds were adequately secured and would not be used for attorney's own benefit, concealed wrongful conduct from probate court in violation of § 6106, disobeyed court order, and commingled funds].)

We further adopt the hearing judge's recommendation that Spadaro pay restitution in an amount equal to her unearned legal fees and the loans she received from Williams. However, we add the additional requirement of repayment to Williams for her two investments totaling $10,000 in Spadaro's two failed business ventures. The meager documentation for the payment of $5,000 for the Redlands Project and an additional $5,000 to the Foreclosure Company characterized the funds advanced as investments. Restitution may be ordered when an attorney overreaches a client in soliciting an investment. (*Hunniecutt v. State Bar, supra,* 44 Cal.3d 362

[restitution ordered for investment that was neither fair nor reasonable]; *Beery v. State Bar, supra,* 43 Cal.3d 802 [restitution ordered for improper investment due to overreaching].) Restitution for the loans and investments is particularly appropriate in this case. "By forcing culpable attorneys to confront the consequences of their misconduct in a concrete way, restitution serves the state's interest in rehabilitating such attorneys and protecting the public. [Citation.]" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 537.)

VI. RECOMMENDATION

We recommend that Charlotte Spadaro be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for three years subject to the following conditions:

1. She must be suspended from the practice of law for a minimum of the first six months of probation, and she will remain suspended until the following requirements are satisfied:

    i. She makes restitution to Phyllis Williams (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payee, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles as follows:

        (1) $7,500 plus 10 percent interest per year from August 3, 2007;

        (2) $10,000 plus 10 percent interest per year from August 24, 2007; and

        (3) $9,000 plus 10 percent interest per year from September 6, 2007.[5]

    ii. If she remains suspended for two years or more as a result of not satisfying the preceding restitution condition, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

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

[5] These amounts represent: (1) $7,500 for the unearned legal fees; (2) $10,000 for the investments; and (3) $9,000 for the personal loans.

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. 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. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period. 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.

5. 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.

6. 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 passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending Ethics School.

7. 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 one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Charlotte Spadaro 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 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)(2).)

VIII. RULE 9.20

We further recommend that Charlotte Spadaro 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 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.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.