STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

FRANCIS E. JONES, III

A Member of the State Bar

No. 88-O-14338

Filed May 10, 1993

SUMMARY

Respondent, while employed as a full-time associate in a law firm, entered into an agreement with a non-lawyer to set up a law corporation and to split fees with the non-lawyer. Over a two-year period, the non-lawyer handled all aspects of the personal injury practice without proper supervision from respondent. As a result, the non-lawyer used illegal means to solicit clients and, without respondent's knowledge, engaged in the practice of law in respondent's name, collected attorney fees in respondent's name without any attorney having performed any services, and misused settlement funds which were withheld to pay medical liens. Eventually, respondent reported the non-lawyer to the police, turned himself in to the State Bar, and cooperated fully both in the criminal prosecution of the non-lawyer and in his own disciplinary matter.

The hearing judge found respondent culpable of aiding the unauthorized practice of law, splitting fees with a non-lawyer, forming a law partnership with a non-lawyer, recklessly failing to act competently by failing to supervise the non-lawyer's activities adequately, and breaching his fiduciary duties to an extent that amounted to moral turpitude. The judge dismissed charges that respondent had violated his trust account duties in two specific cases, because the record did not establish that respondent knew about the non-attorney's mishandling of client trust funds in those cases. The judge also found that respondent's use of his own funds to satisfy unpaid medical liens did not constitute a trust account violation. Finding that respondent did not know about or condone the non-lawyer's capping practices, had been candid and cooperative with his victims, the State Bar, and law enforcement officials, and had engaged in pro bono and community activities, the hearing judge recommended a two-year suspension, stayed on conditions of two years probation and a six-month actual suspension. (Hon. Ellen R. Peck, Hearing Judge.)

The Office of Trials requested review, contesting the recommended degree of discipline. The review department affirmed the culpability findings of the hearing judge, but found that respondent's misconduct was very serious in that it created a great risk of harm to clients, third parties, and the public. Also, while respondent did not condone the non-lawyer's use of cappers, the record showed that he failed to take realistic action to end the practice even after receiving reliable information that it was probably occurring. Nor was respondent's mitigating evidence as significant as that produced in comparable cases, especially in that he had not established that he had taken adequate steps to avoid a recurrence of the misconduct. In order to protect the public, the review department increased the recommended discipline to a three-year stayed suspension, with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice law, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

COUNSEL FOR PARTIES

For Office of Trials: Millicent L. Rolon

For Respondent: Gert K. Hirshberg

HEADNOTES

[1] **204.10 Culpability—Wilfulness Requirement**
280.00 Rule 4-100(A) [former 8-101(A)]
Where respondent established a law practice in total disregard of the principles of the rule requiring client funds to be held in trust accounts, respondent could have been charged with and found culpable of violating that rule based on mishandling of trust funds by non-lawyer who ran practice, at least as to cases which respondent was aware were being handled in respondent's name.

[2] **130 Procedure—Procedure on Review**
151 Evidence—Stipulations
166 Independent Review of Record
The review department will not consider disputed, extrinsic evidence on review. Where respondent's counsel referred at oral argument to respondent's current activity, the review department permitted the parties an opportunity to file a stipulation regarding this subject, but when no stipulation was reached, the review department declined to consider the parties' separate declarations setting forth their individual views of the facts.

[3] **163 Proof of Wilfulness**
204.10 Culpability—Wilfulness Requirement
252.20 Rule 1-310 (former 3-103)
695 Aggravation—Other—Declined to Find
Where an attorney permitted a non-lawyer to misuse the attorney's name to conduct a large personal injury practice, the attorney could not be held separately culpable for each item of harm that resulted, without proof of his or her actual knowledge.

[4 a, b] **221.00 State Bar Act—Section 6106**
252.20 Rule 1-310 (former 3-103)
Where respondent, oblivious to the Rules of Professional Conduct, intentionally created a personal injury practice in conjunction with a non-lawyer without adequate controls, and inadequately supervised the non-lawyer's conduct of the practice over a two-year period, acting with gross neglect and in a manner bordering on extreme recklessness, respondent's conduct violated the statute prohibiting acts of moral turpitude.

[5] **252.30 Rule 1-320(A) [former 3-102(A)]**
The ethical prohibition against fee-splitting between lawyer and non-lawyer is directed at the risk posed by the possibility of control of legal matters by the non-lawyer, interested more in personal profit than the client's welfare.

[6] **280.00 Rule 4-100(A) [former 8-101(A)]**
420.00 Misappropriation
The trust fund and trust account rules are designed to safeguard client funds from the serious risk of loss or misappropriation, whether through carelessness or design.

[7 a-c] **735.10 Mitigation—Candor—Bar—Found**
745.10 Mitigation—Remorse/Restitution—Found
750.52 Mitigation—Rehabilitation—Declined to Find
833.40 Standards—Moral Turpitude—Suspension
901.10 Standards—Miscellaneous Violations—Suspension
Where respondent almost completely abdicated to a non-lawyer his professional duties with respect to a personal injury practice; failed to take prompt, realistic action to stop the non-lawyer's capping practices, and had not presented clear evidence regarding rehabilitation and necessary changes in his practice, then despite mitigating factors including respondent's cooperation with law enforcement and State Bar and satisfaction of medical liens out of his own funds, appropriate discipline for protection of public was three-year stayed suspension with three years probation and actual suspension for two years and until proof of rehabilitation, fitness to practice, and learning in the general law.

[8] **173 Discipline—Ethics Exam/Ethics School**
252.20 Rule 1-310 (former 3-103)
Where respondent had passed professional responsibility examination 10 years earlier, but seemed to have learned nothing from that experience which would have helped him avoid disciplinary proceeding arising out of his abdicating responsibility for his law practice to a non-lawyer, it was appropriate to require respondent to take and pass California Professional Responsibility Examination prior to expiration of his actual suspension.

[9] **176 Discipline—Standard 1.4(c)(ii)**
252.20 Rule 1-310 (former 3-103)
Where respondent had been found culpable of misconduct arising from his abdication of responsibility for his law practice to a non-lawyer, review department recommended that hearing regarding respondent's fitness to return to practice focus on adequate assurance that respondent could institute a law practice with appropriate ethical safeguards.

[10] **176 Discipline—Standard 1.4(c)(ii)**
179 Discipline Conditions—Miscellaneous
Where review department recommended that respondent be required to establish entitlement to return to good standing under standard 1.4(c)(ii) before actual suspension could be terminated, continuing education requirement recommended by hearing judge as condition of probation was not adopted by review department, because standard 1.4(c)ii) inquiry would evaluate steps respondent had taken to establish fitness to practice and present learning.

ADDITIONAL ANALYSIS

Culpability
Found
221.12 Section 6106—Gross Negligence
252.01 Rule 1-300(A) [former 3-101(A)]
252.21 Rule 1-310 [former 3-103]
252.31 Rule 1-320(A) [former 3-102(A)]
270.31 Rule 3-110(A) [former 6-101(A)(2)/(B)]
Not Found
280.05 Rule 4-100(A) [former 8-101(A)]

Aggravation

Found

521 Aggravation—Multiple Acts—Found
584.10 Harm to Public
586.11 Harm to Administration of Justice

Mitigation

Found

730.10 Candor—Victim
740.10 Good Character
765.10 Pro Bono Work

Found but Discounted

710.33 No Prior Record

Standards

801.30 Effect as Guidelines
802.30 Purposes of Sanctions

Discipline

1013.09 Stayed Suspension—3 Years
1015.08 Actual Suspension—2 Years
1017.09 Probation—3 Years

Probation Conditions

1024 Ethics Exam/School
1025 Office Management
1030 Standard 1.4(c)(ii)

Other

106.40 Procedure—Pleadings—Amendment
220.40 State Bar Act—Section 6105
243.00 State Bar Act—Sections 6150-6154

OPINION

STOVITZ, J.:

This case underscores the need for members of the State Bar to heed fundamental lessons taught in law school professional responsibility courses as well as the learning acquired in preparation for the professional responsibility examination. It is also a classic example of the extensive harm which may be unleashed on an unknowing public when a lawyer abdicates basic professional responsibilities and allows a non-lawyer almost free rein to perform such responsibilities in the lawyer's name. In this case, respondent, Francis E. Jones, III a member of the State Bar with less than three years of practice, through his inexcusable ignorance of the law and recklessness or gross negligence, allowed a non-lawyer to operate a large scale personal injury practice involving capping, forgery and other illegal and fraudulent practices.

The only issue raised by the State Bar Office of Trials' request for review in this disciplinary proceeding is the recommended degree of discipline. There is no dispute that in 1982, respondent, while employed full-time as an associate in another firm, entered into an agreement with a non-lawyer, Yue K. Lok, to set up a law corporation and to split fees with Lok. Respondent delegated to Lok, without proper supervision, all aspects of a plaintiff personal injury practice for over a two year period which resulted in Lok using illegal means to solicit clients. Unknown to respondent, Lok engaged in acts constituting the practice of law in respondent's name, handled millions of dollars, collected over $600,000 in attorney fees in respondent's name but without any attorney's performance of services and misused nearly $60,000 withheld from client settlements for payment to medical providers.

To his credit, respondent turned Lok in to the police which resulted in Lok's felony conviction for forgery and respondent also turned himself in to the State Bar. After trial, and deeming this case most similar to our decision in *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, the hearing judge recommended that respondent be suspended from practice for two years, with execution stayed on conditions of two years probation and a six-month actual suspension. The Office of Trials' examiner argues that this case presents facts far more serious than the facts in our previous *Nelson* decision and is more similar to *In re Arnoff* (1978) 22 Cal.3d 740. On the authority of *In re Arnoff, supra*, the Office of Trials urges us to recommend a two-year actual suspension as part of a three-year stayed suspension. On review, respondent argues that the hearing judge's less severe recommendation was appropriate.

Our independent review of the record leads us to conclude that respondent's misconduct was considerably more serious than in *Nelson* particularly in creating a far greater risk of harm to clients, third parties and the public. Although Arnoff had two serious surrounding circumstances not present here, his mitigation was greater than respondent's. As discussed *post*, our primary goal in recommending discipline is the protection of the public.

Unlike either *Nelson* or *Arnoff* this record gives us no clear evidence that respondent has indeed put in place necessary law practice changes. We believe that the two-year actual suspension urged by the Office of Trials, followed by a showing of rehabilitation, learning in the law and fitness to practice under standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct,[1] is clearly warranted and we so recommend to the Supreme Court.

I. FACTS

A. Background.

Respondent had lived in Taiwan for two years, was fluent in Mandarin Chinese and knew many in the Chinese-American community in Los Angeles. He was admitted to practice law in June 1982 and has no record of prior discipline. After several short-term

1. See Transitional Rules of Procedure of the State Bar, division V ("standards").

jobs with Los Angeles law firms doing insurance defense work, respondent became an associate in a large downtown Los Angeles firm specializing in this type of work. In late 1984, at the time he met Lok, he was working about 60 hours per week for this firm.

B. Culpability.

The charges involve one general count and two additional counts concerning named clients. We deal with the general count first. In late 1984, Lok was an insurance agent. He approached respondent with a business venture: Respondent would work part-time in a new plaintiff personal injury practice which Lok would administer. Respondent had practiced law for only about two years at the time and had no experience in plaintiff's personal injury cases. Given Lok's contacts with many in the Chinese-American community, Lok anticipated referring a large number of prospective clients to the practice. Respondent and Lok each envisioned the new practice as a part-time venture. Respondent planned to and did continue to work for the large law firm which employed him.[2] In late 1984, respondent and Lok entered into an agreement, never reduced to writing, to establish this new plaintiffs' personal injury practice. They agreed that half of all attorney fees collected would go to office upkeep and overhead, a quarter would go to respondent and Lok would keep the remaining quarter as his compensation.

Respondent decided to incorporate the new practice, signed articles of incorporation and gave them to Lok for filing. However respondent did not understand and comply with legal requirements for a professional corporation and was unaware that Lok had filed documents with the Secretary of State describing Lok as president and chief executive officer of the corporation. As late as mid-1987 respondent believed that Lok was only the administrator of the practice. When respondent and Lok opened this practice, respondent completed a signature card for an account at the Cathay Bank. However, at the time, respondent was not aware of the distinction between a trust account and a general, office operating account and was not sure which type of account Lok opened. As it turned out, Lok opened a general, non-trust account. Respondent testified that while in law school, he took a course in legal ethics, and, as required, passed the professional responsibility examination prior to his admission to practice law. However, he had no familiarity with trust account principles as the large law firm which employed him took care of those responsibilities. He also had no recollection of the rules of ethics prohibiting fee-splitting with non-lawyers.

An office for respondent's part-time practice was opened in Alhambra, about 10 miles east of respondent's full-time employment. Respondent authorized Lok to interview prospective clients, file informal claims with insurers and negotiate a settlement subject to respondent's approval. According to respondent, Lok complied with these directions. However, it is also undisputed that Lok accepted and handled on his own, but in respondent's name, hundreds of clients more than respondent was aware of. Respondent had no key to the office and he made only about 10 to 15 visits to it during the nearly two years the practice existed. During those visits, respondent met about 10 to 15 clients of the practice, which is about all he believed existed. He also reviewed the Cathay Bank's statements of the account and reviewed the flow of funds into and out of the account but did not reconcile the account statements. He testified that he reviewed the client files regarding the propriety of disbursements; but as noted, he was unaware that Lok was handling far more cases than respondent realized. Respondent never instructed Lok to deposit any funds received from insurers in trust accounts and it appears that none of the considerable sums received by Lok on behalf of clients was ever deposited in a trust account. Respondent received about $9,000 in fees from the cases he was aware Lok handled in this practice. Respondent never had an idea of the expenses of the Alhambra office and made no demand on Lok for an accounting of expenses.

2. No evidence was introduced to show whether or not respondent was permitted to engage in a law practice outside his employment.

Although the record is not precise as to the exact time frame, it appears that in early or mid-1985, not long after this Alhambra practice started, respondent got some general information that Lok might be using cappers to get cases for this practice.[3] Lok first denied using cappers, but sometime in 1986, he later became open with respondent about the practice. Also, at some time, the office was moved to another location in Alhambra.

In December 1986, respondent terminated the arrangement with Lok in order both to consolidate his law practice and to ensure that Lok did not pay cappers for cases. Respondent told Lok not to accept any new cases in respondent's name and Lok gave respondent 15 to 20 files which Lok identified as the remaining cases of this venture. That same month, respondent told Lok to remove respondent's name from the building directory. Lok did so but kept an office in the building listed in the directory under the designation "law office." Respondent did not object to this designation although he knew of no other attorney for whom Lok worked.

In about June 1987, respondent received rumors for the first time that doctors were not paid for medical treatment given clients in the Alhambra practice. At about the same time, an employee of Lok told respondent that Lok was still taking cases in respondent's name. The next day, respondent, accompanied by several others, went to Lok's office during office hours and seized all files and documents bearing respondent's name. The seized material included 200 to 300 client files of which about 50 were active. When respondent reviewed these records, he saw for the first time that Lok had forged respondent's signature in opening another bank account for the Alhambra practice at the Asian-American Bank. In contrast to the relatively low activity in the Cathay Bank account, Lok deposited over 400 insurance settlement checks into the Asian-American bank account between July 1985 and May 1987, exceeding a total of $2.15 million.

Shortly after seizing files from Lok's office, respondent returned to Lok's office and saw more items pertaining to law cases Lok was handling in respondent's name. A few days later, respondent reported the situation to police and Lok was ultimately convicted of forgery. Using his own funds, respondent paid $57,000 to medical providers who had not been paid by Lok for treatment rendered clients taken in by Lok in respondent's name.

Respondent testified that he reviewed the settlements Lok made in the cases he found in Lok's office in 1987 and concluded that they were good settlements for the client, even better than some of the settlements he had obtained when he embarked on his own private practice after leaving the large Los Angeles firm sometime before 1987.

In addition to the foregoing general findings the hearing judge made findings as to two specific client matters charged in the notice to show cause.

In the Truong matter, the hearing judge found that in late 1985, without respondent's knowledge, Lok accepted the personal injury case of Hiep Truong. Truong had signed a lien in favor of medical providers who had treated his injuries. Respondent was unaware of this lien or any aspect of the case until 1988 and Lok did not sign the lien. Without knowledge of Truong or respondent, Truong's case was settled for $14,060. This sum was deposited into the general account Lok had set up in the Asian-American bank. Promptly after depositing the $14,060, Lok paid Truong $5,667 as his full share. An equal amount, $5,667, was held as attorney fees. Lok did not pay the medical provider lienholder the $4,139 it claimed and the balance in the general account holding Truong's recovery fell to as low as $304.50 shortly after Lok paid Truong his share. After respondent first learned of the unpaid medical lien, he negotiated a compromise of it and paid it using personal funds he had placed in a trust account to replace funds which should have been kept in trust but were not.

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3. A capper is one who acts as an agent of an attorney to solicit or procure business for that attorney. (Bus. & Prof. Code, § 6151 (a); *In the Matter of Nelson*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 182, fn. 3.)

In the Wong matter, the hearing judge found that in about October 1986, without respondent's knowledge, Lok accepted the personal injury case of See Yai Wong. As in the Truong matter, respondent had not met Wong, was unaware of a medical lien in favor of Wong's treating doctor and unaware of the April 1987 $10,000 case settlement which Lok concluded on his own. Lok paid Wong $3,878. Legal fees of $3,333 were withheld but the $2,210 bill owed Wong's treating doctor was not paid. Although the hearing judge found that the balance in the general bank account into which respondent had deposited the Wong settlement funds fell below $2,210, we regard that finding as based on an error. The date referred to by the judge on which the balance was insufficient was prior to the date of deposit of Wong's funds and the record does not show an inadequate balance after deposit. Respondent first learned of the Wong case when he visited Lok's office in June 1987. When respondent learned later that the treating doctor had not been paid, respondent negotiated a compromise of the bill and paid the doctor the agreed amount of $1,105.

With the minor exception noted above, we adopt the hearing judge's culpability findings. As we have already observed, neither party disputes the findings or the following conclusions which we also adopt.

In all three counts the judge concluded that respondent wilfully violated rule 3-101(A) of the former Rules of Professional Conduct[4] (aiding the unauthorized practice of law) by placing Lok in a position whereby he could represent clients without adequate supervision. She concluded that respondent also wilfully violated rule 3-102(A) by dividing fees with Lok and rule 3-103 by forming a partnership with Lok the principal activity of which was law practice. By recklessly failing to supervise Lok's activities in the Alhambra practice, respondent wilfully violated rule 6-101(A)(2) (intentional or reckless failure to act competently) and breached his fiduciary duties amounting to an act of moral turpitude proscribed by Business and Professions Code section 6106. The hearing judge found respondent not culpable of charges in the Truong and Wong matters of wilful violations of rule 8-101 regarding trust account duties in view of his lack of knowledge that Lok had established the mishandled accounts or accepted the cases resulting in loss to clients. The hearing judge also held that respondent's repayment of the doctors from his own funds was not a trust account violation.[5] **[1 - see fn. 5]**

C. Evidence and findings bearing on degree of discipline.

Respondent cooperated fully in the prosecution of Lok even though aware that his testimony would result in the State Bar learning of his role in the Alhambra practice. Two letters from prosecuting attorneys attested to this cooperation. Respondent reported the matter on his own to the State Bar before testifying in Lok's criminal trial and was cooperative in the State Bar proceedings.

At the time of the hearings below, respondent was in a sole law practice emphasizing civil litigation and immigration matters. He offered no details of how this practice was conducted and the only witness who added anything about this practice was respondent's wife, a part-time employee in respondent's office, who testified that respondent sought to avoid any improper activities.[6] **[2 - see fn. 6]** Respondent has rendered some legal services pro bono. He was also active in Lions Club and political activities and had assisted City of Los Angeles trade delegations with language translation.

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4. Unless noted otherwise, all references to rules are to the provisions of the Rules of Professional Conduct in effect from January 1, 1975, to May 26, 1989.

5. **[1]** Respondent was not charged in the first count with a violation of rule 8-101(A). However, since he established his practice with Lok in total disregard of that rule's principles, he could have been charged with and, if so charged, found culpable of such a violation, at least as to the handful of cases of which he was aware Lok handled in respondent's name.

6. **[2]** At oral argument counsel for respondent alluded to respondent's current activity. Since that subject was outside the record, we deferred submission of the matter for one week to permit the parties to file a stipulation as to this subject. We received no stipulation within the allotted time. Instead, the parties attempted to file separate declarations setting forth the individual party's view of the facts. In light of guiding decisions, we decline to consider such disputed, extrinsic evidence on review. (See, e.g., *In re Rivas* (1989) 49 Cal.3d 794, 801; *Coppock* v. *State Bar* (1988) 44 Cal.3d 665, 682-683.)

The hearing judge found these factors in aggravation: respondent's multiple acts of wrongdoing over a three-year period (std. 1.2(b)(ii)); the considerable harm to medical lien holders caused by respondent's gross neglect, and his failure to observe minimal standards of professional responsibility for the operation of a law practice. (Std. 1.2(b)(iv).) The judge made it clear that she did not deem aggravating that each of the counts showed violations of the same Rules of Professional Conduct regarding dividing fees with non-lawyers, aiding the unauthorized practice of law and forming a partnership with Lok for the practice of law.

In mitigation, the hearing judge gave very little weight to respondent's prior discipline-free record as he was in practice just over two years when his misconduct began. (See std. 1.2(e)(i); *Amante* v. *State Bar* (1990) 50 Cal.3d 247, 255-256.) However, the judge gave significant mitigating credit to respondent's substantial, spontaneous candor and cooperation with the State Bar, law enforcement and potential victims even though respondent was warned that his cooperation might implicate him. (Std. 1.2(e)(v).) In the latter regard, the hearing judge's decision noted that were it not for respondent's initiative in pursuing Lok's prosecution with law enforcement, Lok might have "simply moved on to misappropriate another attorney's name, with resulting harm to the public and to the administration of justice." Also found mitigating were respondent's good character and community activities (std. 1.2(e)(vi)) and his objective steps to make lienholders whole upon learning that they had not been paid by Lok. (Std. 1.2(e)(vii).)

Nevertheless, the hearing judge pointed out that the "full extent" of the harm resulting from Lok's acts is unknown and may never be known. She also set forth in her decision the many ways in which respondent's misconduct allowed Lok to misuse the name and status of an attorney. She nevertheless found that respondent had implemented office practices which would prevent the recurrence of such misconduct as had been found here. As to the latter finding in mitigation, the deputy trial counsel asserted at oral argument that it was not supported by the record and we agree. No evidence established the methods of respondent's practice or what his office practices were at the time of the hearing. However, the record supports all other mitigation and aggravation findings of the hearing judge and we adopt those other findings.

The judge reviewed a number of Supreme Court decisions over the years in cases of attorney misconduct involving similar violations to those found here. She found the present record to be most analogous to our decision in *In the Matter of Nelson*, *supra*, 1 Cal. State Bar Ct. Rptr. 178; and, based on the extensive mitigation she found in this case, she recommended the same discipline we recommended and the Supreme Court imposed in *Nelson*: a two-year suspension, stayed on conditions of a two-year probation including a six-month actual suspension. She opined that without the extensive mitigation, she would have been inclined to recommend two years of actual suspension; and, in the absence of our *Nelson* decision, she would have recommended a one-year actual suspension.

II. DISCUSSION

Although this case is not founded on improper solicitation as was *Nelson*,[7] we agree with the hearing judge that there are a number of similarities to the record we reviewed in *Nelson*. Yet as we shall discuss, there are very important differences as well. In *Nelson*, as in the present case, a relatively inexperienced member of the State Bar ignored basic precepts of attorney professional responsibility learned in law school and entered into an agreement with a non-lawyer to administer a new legal practice using the attorney's name with legal fees to be divided between the attorney and the non-lawyer. Both respondent and Nelson learned at some point

7. Respondent was not charged with unethical conduct regarding capping (Bus. & Prof. Code, § 6152) in the original notice to show cause and no culpability was found as a result. In her pre-trial statement, the examiner referred to an amendment to add a capping charge as a potential one she would make. She did move to so amend the notice on the day of trial. On objection of respondent, the hearing judge denied the motion to amend as prejudicially untimely. On review, the examiner does not dispute this ruling.

that the non-lawyer was using cappers to steer cases to the law practice, yet did not immediately end the practice. Both failed to supervise adequately the non-lawyers' actions in fundamental respects, resulting in improper practices. In both situations, problems developed after the attorneys ceased their involvement in the practice. Also, both were completely cooperative with the State Bar.

In urging that we impose substantially greater suspension than in *Nelson*, the Office of Trials points to several aspects of this case urged to be different from *Nelson*: the egregiousness of respondent's delegation of his professional duties to Lok, the far greater duration of respondent's arrangement with Lok compared to Nelson's with non-lawyer Carr, the more lax practices of respondent when he finally decided to terminate his arrangement with Lok compared to the decision by Nelson to turn his cases over to another member of the State Bar and finally, the far lesser evidence of rehabilitation shown by respondent. Indeed, in *Nelson*, the Office of Trials did not dispute the respondent's rehabilitation as attested to by an attorney with whom Nelson worked after he relocated from Los Angeles to Sacramento and diligently performed in a new legal practice for over five years. In contrast, respondent urges that we view this case as warranting the same degree of discipline as imposed in *Nelson* despite his failure to provide any unrelated witnesses to his alleged rehabilitation.

Despite some of the similarities we have found between this case and *Nelson*, we agree with the Office of Trials' analysis of the differences between the two cases and we find two additional significant differences as well. Nelson planned to move over to the office where non-lawyer Carr had started to administer the law practice on Nelson's behalf and proved that he supervised Carr about an hour each day although he was not always on site. In contrast, respondent set up his venture with Lok without intending to make it the location of his regular law practice and without intending to provide frequent supervision. He did not even obtain a key to the premises. Although Nelson established a proper trust account for the practice which Carr administered, respondent was oblivious to trust account regulations and did not even supervise adequately the incorporation of the practice.

[3] We agree with the aspect of the hearing judge's decision declining to hold respondent separately responsible for each item of harm which occurred without proof of his actual knowledge. Yet as the hearing judge appropriately observed, the true extent of harm which occurred in this case may never be known. From the records obtained from the criminal prosecution of Lok, we know that his misuse of respondent's name and status of attorney was massive, spanning over two years, involving over 350 cases and $2.15 million in collected settlements. It appears that Lok deducted a one-third attorney fee from each of these cases. Thus about $716,000 of what was paid by insurers went to attorney fees although the record shows that neither respondent nor any other attorney provided any legal services in these cases. While we have no evidence that any of these 350 or more personal injury claims either was not bona fide or resulted in an inadequate settlement, the complete absence of an attorney's involvement certainly increased the risk of these possibilities.

[4a] Respondent's obliviousness to the Rules of Professional Conduct and his inadequate supervision of Lok over a two-year period made possible exactly what transpired here. The rules with which respondent failed to comply were designed to prevent the very problems of lay control and diversion of funds which occurred. **[5]** Prior to respondent's admission to practice law, our Supreme Court observed that the ethical prohibition against fee-splitting between lawyer and non-lawyer was directed at the risk posed by the possibility of control of legal matters by the non-lawyer, interested more in personal profit than the client's welfare. (See *In re Arnoff*, *supra*, 22 Cal.3d at p. 748, fn. 4, citing *Gassman* v. *State Bar* (1976) 18 Cal.3d 125, 132.) **[6]** The Rules of Professional Conduct requiring attorneys' correct handling of trust funds and trust accounts have long been directed at prohibiting the more serious risk of loss or misappropriation of those funds, whether through carelessness or design. (See, e.g., *Heavey* v. *State Bar* (1976) 17 Cal.3d 553, 558; *Silver* v. *State Bar* (1974) 13 Cal.3d 134, 144-145.) **[4b]** More importantly, the magnitude of respondent's gross neglect was very serious, bordering on extreme recklessness. (See *Coppock* v. *State Bar*, *supra*, 44 Cal.3d at pp. 680-681.) Respondent intentionally created the Alhambra practice without any adequate

controls and he must bear considerable responsibility under Business and Professions Code section 6106 for what ensued.[8]

[7a] We do not overlook respondent's mitigation in first cooperating fully with the prosecution of Lok, although warned that this very proceeding could ensue, and then reporting the matter to the State Bar. Respondent paid $57,000 of his own funds to medical lien holders stemming from Lok's misconduct and he has shown the same abstinence from further misconduct as Nelson. His pro bono and community service activities are also factors in his favor. Urging that we not see this case as more serious than *Nelson*, respondent claims, inter alia, that respondent neither condoned nor knew of the capping activities of Lok. We agree that the record shows that respondent did not condone that conduct, but the record also shows that respondent did indeed acquire reliable information that Lok was probably using cappers, yet took no realistic action to end the practice or his arrangement with Lok until a later time.[9] In any event, the gravaman of this case is not capping, but almost complete abdication to a non-lawyer of respondent's professional duties with respect to the personal injury practice he set up.

As pointed out correctly by respondent's counsel, Arnoff's conduct also involved the extensive use of fraudulent medical reports either known to be false by Arnoff or about which Arnoff was grossly negligent. No such evidence appears in the present record. **[7b]** Yet both Arnoff and Nelson presented clear evidence to establish rehabilitation, particularly as to changes which had been made in the nature of their practices. Evidence that would give us similar confidence in respondent's belated understanding of the duties of an attorney is absent in this case.

Viewing the Standards for Attorney Sanctions for Professional Misconduct as guidelines (e.g., *Gary* v. *State Bar* (1988) 44 Cal.3d 820), respondent's commission of acts of moral turpitude could warrant recommendation of either disbarment or suspension (std. 2.3) depending upon the magnitude of the misconduct and the degree to which it related to the practice of law. We have detailed the magnitude of respondent's misconduct and note that it occurred in the law practice he authorized be run in his name. Under the standards, respondent's violation of any of the four rules of professional conduct he transgressed could warrant reproval or suspension depending on the gravity of the offense or the harm to victims. (Std. 2.10.)

[7c] The protection of the public is the key reason for imposing attorney discipline. (See *Rhodes* v. *State Bar* (1989) 49 Cal.3d 50, 58-59; *Kapelus* v. *State Bar* (1987) 44 Cal.3d 179, 198.) Based on our analysis of the serious misconduct involved in this matter and considering the aggravating and mitigating factors, we believe that the appropriate degree of discipline in this case is that urged by the Office of Trials: a three-year suspension, stayed, on conditions of a three-year probation and an actual suspension for two years and until respondent proves his rehabilitation, fitness to practice and learning in the law pursuant to the procedures established under standard 1.4(c)(ii). We shall also recommend compliance with most of the other conditions of probation and duties recommended by the hearing judge in her decision below.

[8] Respondent took the professional responsibility examination over 10 years ago but seemed to have learned nothing from that experience which would have helped him avoid this proceeding. We must therefore follow our usual recommendation, given that lapse of time, and we shall recommend that he be ordered to pass the California Professional Responsibility Examination prior to the end of his actual suspension. (Cf. *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.) **[9]** Without seeking to limit or prescribe the scope of

8. Business and Professions Code section 6105 makes it an independent ground of suspension or disbarment for an attorney to lend his name to be used as an attorney to a non-attorney. (See, e.g., *McGregor* v. *State Bar* (1944) 24 Cal.2d 283.) Respondent was not charged with this offense and we need not decide on this record whether or not he is culpable of it.

9. Although in comparing this case to *Nelson*, the hearing judge referred to respondent's lack of knowledge of Lok's engaging in capping activities, as noted *ante*, she had earlier found that respondent had received reliable information that Lok was so engaged.

the standard 1.4(c)(ii) inquiry, we recommend that it particularly focus on adequate assurance that respondent is able to institute a law practice with appropriate ethical safeguards before terminating his actual suspension.

III. FORMAL RECOMMENDATION

For the foregoing reasons, we recommend that respondent, Francis E. Jones, III, be suspended from the practice of law in this state for a period of three (3) years, that execution of such suspension be stayed and that respondent be placed on probation for a period of three (3) years on the following conditions:

1. That respondent shall be actually suspended for the first two (2) years of his period of probation and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

2. That respondent shall comply with conditions 2 through 8 and 10 of the conditions of probation recommended by the hearing judge, contained on pages 32-36 of her decision, with the exception that respondent shall satisfy the law office management organization plan requirement of condition 8 prior to applying for termination of his actual suspension under standard 1.4(c)(ii) and with the further modification that references in all the conditions of probation to the former Probation Department of the State Bar Court shall instead be deemed to refer to the newly-created Probation Unit in the Office of Trials. **[10]** In view of our recommendation that respondent be required to establish his entitlement to return to good standing under standard 1.4(c)(ii), we have not adopted condition 9 requiring certain continuing education as the standard 1.4(c)(ii) inquiry will evaluate the steps respondent has taken to establish his fitness to practice and present learning.

3. That at the expiration of the period of probation, if respondent has complied with the terms of probation, the order of the Supreme Court suspending him from the practice of law for a period of three (3) years shall be satisfied and the suspension shall be terminated.

We also recommend that respondent be required to pass the California Professional Responsibility Examination and provide proof of passage to the State Bar prior to the expiration of his actual suspension.

Finally, we recommend that respondent be required to comply with the provisions of rule 955, California Rules of Court and pay costs in the manner set forth on page 37 of the hearing judge's decision.

We concur:

PEARLMAN, P.J.
NORIAN, J.