PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed March 12, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 07-O-12696 (07-O-13600);
	)	10-O-10811 (Cons.)
ARTHUR GOOTKIN LAWRENCE,	)	
	)	OPINION
A Member of the State Bar, No. 29554.	)	
	)	

Respondent Arthur Gootkin Lawrence has been an attorney since 1959, and is 81 years old. For nearly 60 years, he has suffered from a neuropathic disorder called tic douloureux (trigeminal neuralgia), which is characterized by episodes of extreme and debilitating facial pain. More recently, he suffered a traumatic brain injury and underwent a craniotomy. It is undisputed that these serious physical disabilities have caused or contributed to much of his professional misconduct, but the fact remains that this is Lawrence's fourth disciplinary proceeding.

Standard 1.7(b) provides that the degree of discipline imposed on an attorney with two prior records of discipline "shall be disbarment unless the most compelling mitigating circumstances clearly predominate."[1] Although Lawrence's extreme physical disabilities do not immunize him from discipline, they do establish the most compelling mitigating circumstances and justify deviating from the standard. Based on the limited nature and extent of his misconduct, a disbarment recommendation would be excessive and punitive. Thus, under the unique facts of this case, we conclude that the goals of attorney discipline will be best

[1] All further references to standards are to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

accomplished by a lengthy suspension that continues until Lawrence proves his rehabilitation, fitness to practice, and present learning and ability in the law.

I. ISSUES ON REVIEW

The hearing judge found Lawrence culpable of three of the four charges: failing to maintain $800 in client funds in trust; misappropriating those funds over a four-month period in 2004; and violating the terms of his disciplinary probation by failing to take Ethics School and file his final probation report. The hearing judge did not find him culpable of a commingling charge. Concluding that Lawrence's medical problems were compelling mitigation, the judge recommended an 18-month suspension with three years' probation. But he did not include a standard 1.4(c)(ii) requirement that Lawrence remain suspended until he proves his rehabilitation, fitness to practice, and present learning and ability in the law.

The State Bar seeks review and asserts that Lawrence must be disbarred. It challenges the hearing judge's finding that Lawrence was not culpable of commingling, and disagrees with the weight given to the mitigating and aggravating evidence. The State Bar argues that Lawrence "has failed to show that he has his medical issues permanently under control so that they are not likely to cause future misconduct" and thus he "is a significant danger to cause future misconduct if he is not disbarred." Lawrence did not seek review, but requests a shorter actual suspension period and agrees to remain suspended until he satisfies standard 1.4(c)(ii).

Based on our independent review (Cal. Rules of Court, rule 9.12), we find that Lawrence is culpable of commingling funds in his trust account in 2006. We also affirm the hearing judge's findings for the 2004 trust account violations and the 2011 probation violations. Ultimately, we find that Lawrence's extreme physical disabilities establish the most compelling mitigating circumstances that clearly predominate and support a deviation from the standard's

presumptive disbarment for repetitive discipline. We recommend that Lawrence be suspended for three years and until he establishes the rehabilitation requirements of standard 1.4(c)(ii).

II. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

As stated, Lawrence has suffered from tic douloureux for nearly 60 years. It is characterized by episodes of extreme and debilitating facial pain, originating from the trigeminal nerve. In an attempt to control his condition, Lawrence has undergone at least 11 surgeries. In addition, he has tried to manage his condition with pain medications such as hydrocodone or vicodin. Due to the severity of his medical condition, Lawrence agreed to be placed on involuntary inactive status in his first disciplinary proceeding in 1981. He remained inactive and not entitled to practice until 1992.

Starting in January 2010, Lawrence's tic douloureux was again causing him severe pain and headaches. He testified that he was a "basket case" and was unable to obtain relief from the pain. He took prescription pain medication, but even increased dosages did not provide a reprieve. Thus, after seeking different treatment options, Lawrence underwent a sterotactic radiosurgery using the gamma ray knife in May 2010.

Shortly thereafter, in August 2010, Lawrence suffered a traumatic brain injury after falling at the federal courthouse in Los Angeles. He was diagnosed as suffering from a left subdural hematoma (acute) and underwent a craniotomy on the same day. Lawrence remained in the hospital for about a month and then was transferred to a convalescent hospital. While there, his right arm started to turn brown. He was sent back to the hospital for a second procedure to treat a cranial left-sided epidural abscess in October 2010. After each surgery, Lawrence was unconscious for most of his hospital stay.

In November 2010, Lawrence was released from the hospital and returned to the convalescent hospital for recovery. One month later, his neurosurgeon indicated that Lawrence

"had a decreased energy level and desire to perform his daily functions" and that he "would benefit from acute physical, speech, and occupational rehabilitation." When Lawrence met with his neurosurgeon in January 2011, the doctor noted that Lawrence still had "very subtle memory difficulty." Lawrence was discharged on February 20, 2011, but he testified that he had not regained "total clear-headedness."

Lawrence also had cataracts, and after the surgeries, he experienced trouble with his vision and had difficulty reading. In December 2011, he obtained a cornea transplant in his right eye.

Due to these serious health problems, the hearing judge abated this proceeding from February 1, 2010 to June 15, 2011, and then again from November 22, 2011 to February 24, 2012. Trial was held in March 2012.

A. The Orendorff Matter (Case No. 07-O-12696)

In September 2001, Lawrence represented Maria Orendorff in a claim she brought against Vivian Schaffer. Schaffer was insured by Mercury Insurance Company. After Lawrence settled the claim, Mercury issued a $2,500 check payable to Lawrence and Orendorff dated November 17, 2003.

In December 2003, Lawrence deposited the check into his client trust account (CTA) at Bank of America (BOA 3213). He wrote Orendorff an $800 check for "final settlement" on April 26, 2004, and she withdrew the funds on May 3, 2004. Over the four months from the deposit to payment, Lawrence was required to hold Orendorff's $800 in BOA 3213, but his CTA fell below that amount 24 times, with a balance as low as $60.07 within a month of the deposit.

Count One: Failure to Maintain Client Funds in Trust (Rules Prof. Conduct, rule 4-100(A))[2]
Count Two: Moral Turpitude (Bus. & Prof. Code, § 6106)[3]

Lawrence willfully violated rule 4-100(A) by failing to maintain $800 in his CTA on behalf of Orendorff. The rule requires an attorney to deposit and maintain in a CTA all funds received or held for the benefit of a client. The mere fact that the balance of BOA 3213 repeatedly fell below the $800 Lawrence should have held for Orendorff during a four-month period is a violation of the rule.

The recurring CTA deficiencies also support the moral turpitude finding by the hearing judge. (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 712 ["[T]he repeated dipping of respondent's trust account below the required balance constituted a basis for a finding of moral turpitude under section 6106 . . ."].) Lawrence ignored his CTA bank statements and failed to maintain a trust account recordkeeping system or otherwise manage his CTA, all of which is required by the trust account rules. (Rule 4-100(C), Trust Account Record Keeping Standards 1.) His grossly negligent conduct clearly constitutes moral turpitude in violation of section 6106. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475 [attorney's poor CTA management and careless supervision of staff involved gross carelessness constituting moral turpitude].) Although Lawrence violated both rule 4-100(A) and section 6106, we assign no additional weight to the rule violation in our discipline analysis because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) violation when same misconduct addressed by § 6106].)

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[2] All further references to rules are to the State Bar Rules of Professional Conduct unless otherwise stated.

[3] All further references to sections are to the Business and Professions Code unless otherwise stated.

B. The Inocenscio and Sisson Matter (Case No. 07-O-13600)

In 2006, Lawrence represented Carmelita Inocenscio and Mary Ann Sisson. On October 13, 2006, he deposited $11,750 in settlement funds on their behalf into a separate CTA at Bank of America (BOA 2134). On October 23, 2006, Lawrence withdrew $8,006 from BOA 2134 to issue a $8,000 cashier's check to Inocenscio and Sisson, and cover the $6 fee for the cashier's check.

Lawrence's attorney fees totaled $2,250, but he did not withdraw the fees from his CTA at one time. Instead, he withdrew $1,250 on October 16, 2006, $750 on January 7, 2007, and $250 on February 23, 2007. He also issued a $750 check dated January 4, 2007, payable to Rhonda Walker, an attorney who worked on the case. In addition to withdrawing the attorney fees over several months, Lawrence wrote himself a $228.96 check dated October 27, 2006 for "Costs to Daily Journal," but there is no indication it was related to this or any other case.[4]

Count Five:[5] Commingling Personal Funds (Rule 4-100(A))

Rule 4-100(A)(2) requires an attorney to withdraw funds undisputedly belonging to the attorney or firm from his CTA at the "earliest reasonable time" after the attorney's right to those funds becomes fixed, thereby precluding the commingling of funds. The State Bar alleged that Lawrence commingled funds in his CTA by failing to promptly remove his attorney fees once the interest in the funds became fixed. The hearing judge found insufficient evidence of commingling because Lawrence could not recall the case or when his fees became fixed and the evidence was limited to the bank records from BOA 2134. We reverse the hearing judge's determination and find that Lawrence commingled funds in violation of this rule.

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[4] It is clear that $11,006 of the settlement was distributed to the clients and for attorney fees. The parties did not address at trial the remaining $744.

[5] The State Bar dismissed counts three and four prior to trial.

Due in part to Lawrence's traumatic brain injury, he does not recall what the Inocenscio and Sisson matter involved. He does not have a client file, written ledger, or any other records documenting the disbursements. Likewise, he does not recall and cannot document whether the $228.96 check for "Costs to Daily Journal" was related to this case. He was unable to say or document when his $2,250 in fees became fixed.[6] But the records establish that by October 23, 2006, Lawrence had distributed all funds associated with the case other than the attorney fees. Thus, we can infer that his fees became fixed well before he made the last fee withdrawal in February 2007. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 776 [where attorney unable to document or recall, implied finding that attorney's interest in fees became fixed "well before" attorney withdrew fees from trust account two months after last disbursement to clients].)

Lawrence clearly violated the rule and standards regarding preservation of the identity of client funds by failing to maintain adequate CTA records. "It would be a distortion of justice to permit a trustee, or attorney handling funds of a client, to escape responsibility by the simple act of not keeping any record or data from which an accounting might be made" and misconduct proved. (*Bruns v. State Bar* (1941) 18 Cal.2d 667, 672 [fiduciary duty to client includes maintaining adequate records to account for entrusted funds].) Lawrence's head injury and resulting memory problems illustrate the need to properly maintain these records. We find that Lawrence commingled funds in violation of rule 4-100(A) by failing to promptly withdraw his fees after his interest became fixed.

C. The Probation Matter (Case No. 10-O-10811)

Pursuant to a June 10, 2009 Supreme Court discipline order, Lawrence was suspended for six months subject to a one-year stayed suspension and two years of probation for failing to

[6] We reject Lawrence's claim that he was not required to maintain the records because the case is more than five years old. (Rule 4-100(B)(3) [attorney must maintain CTA records for no less than five years].) The final distribution occurred in 2007 and the discipline charges were filed in 2009. Lawrence was clearly on notice to preserve all relevant records.

comply with the probation conditions ordered in his 2006 discipline case. The probation conditions in the 2009 discipline order included filing quarterly reports, filing a final report, and successfully completing Ethics School within one year. Lawrence's probation was from July 2009 to July 2011.

1. First year of probation: July 2009 to July 2010

Starting in January 2010, Lawrence's tic douloureux disorder was worsening. He had gamma ray surgery in May 2010. During this time, Lawrence did not submit his quarterly reports due January 10, April 10 and July 10, 2010, and he did not attend State Bar Ethics School by July 9, 2010, as required by the Supreme Court's 2009 discipline order. He submitted his delinquent quarterly reports on July 20, 2010, but he failed to attend Ethics School.

2. Second year of probation: August 2010 to July 2011

Lawrence suffered the traumatic brain injury in August 2010. He was not discharged until February 2011, and was not fully recovered at that time. During this time period, Lawrence failed to timely submit his October 10, 2010, and January 10, April 10, and July 10, 2011 quarterly reports and his final report. Ultimately, a close friend of Lawrence's helped him correspond with the Probation Department and fill out the delinquent reports. He filed his four quarterly reports on January 26, 2012, including the July 10, 2011 quarterly report that covered April through June 2011. However, he never filed his "final report," which also was due on July 10th and covered the limited period of July 1 to 10, 2011. Lawrence still has not completed Ethics School, stating he would take the exam as soon as he obtains a driver's license.

Count One: Failure to Comply with Probation Conditions (§ 6068, subd. (k))

The State Bar charged Lawrence with probation violations for failing to timely file his 2010 and 2011 quarterly reports, failing to submit his final report, and failing to attend Ethics School. The hearing judge found that Lawrence was unable to fulfill his probation reporting

obligations from January 2010 to at least February 2011 due to his severe physical problems and therefore did not base his culpability determination on the untimely reports. But he found Lawrence culpable for failing to provide proof that he attended Ethics School and failing to file his final probation report due in July 2011. (§ 6068, subd. (k) [attorney required "[t]o comply with all conditions attached to any disciplinary probation.") The State Bar does not dispute the more limited culpability finding on review, and we see no reason to disturb it.

III. MITIGATION OUTWEIGHS AGGRAVATION

The appropriate discipline is determined in light of the relevant circumstances, including aggravating and mitigating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must establish aggravation by clear and convincing evidence (std. 1.2(b)), while Lawrence has the same burden to prove mitigating circumstances. (Std. 1.2(e).) We find two factors in aggravation and one in mitigation. Our analysis, however, is not limited merely to counting the number of factors proven, but includes carefully evaluating the strength and quality of those factors on a case-by-case basis. We conclude that Lawrence's mitigation is compelling and outweighs his aggravation.

A. Two Factors in Aggravation

We agree with the hearing judge's finding of two factors in aggravation – Lawrence's prior discipline record and multiple acts of misconduct.

1. Prior Discipline Record (Std. 1.2(b)(i))

Taken as a whole, Lawrence's three prior disciplines are a significant aggravating factor.

a. Lawrence Is Privately Reproved in 1981

In November 1981, Lawrence acknowledged misconduct that occurred between 1971 and 1976 in four client matters. He stipulated to two counts of entering into an improper business transaction with a client, three counts of accepting employment without disclosing his

relationship with an adverse party and having an interest in the subject matter of employment, acquiring an interest adverse to a client, improperly representing conflicting interests, and failing to act competently. His misconduct was mitigated by his tic douloureux and his inability to make interest payments on loan transactions with his clients because his assets were in receivership due to pending litigation. There were no aggravating factors. He was privately reproved for his misconduct and agreed to be enrolled as an inactive member under section 6007(b) (inactive enrollment due to insanity, mental infirmity, or illness). Lawrence remained inactive for almost 10 years, until April 1992.

The hearing judge reduced the weight given to this discipline record due to the remoteness in time. The misconduct occurred over 20 years before the misconduct in Lawrence's second discipline case and before the misconduct in this matter. The State Bar disputes reducing any weight given to the 1981 reproval.[7] We affirm the hearing judge's determination that the weight given to Lawrence's 1981 private reproval is diminished due to the remoteness in time.

b. Lawrence Is Suspended for 30 Days in 2006

On April 18, 2006, the Supreme Court suspended Lawrence for 30 days, subject to a six-month stayed suspension and two years of probation. Lawrence stipulated to misconduct occurring between 2001 and 2004 in three separate matters. He failed to competently perform legal services, failed to keep his client informed of significant developments, failed to cooperate

[7] The State Bar's current position conflicts with the findings in Lawrence's 2009 discipline case, where the hearing department held: "The State Bar concedes that respondent's first imposition of discipline is exceedingly remote in time and the misconduct involved was determined to be minimal in severity, as evidenced by the private reproval ordered by the court. This court agrees and finds the imposition of a private reproval, occurring more than 20 years previous to the misconduct at issue in this proceeding, is too remote in time to merit significant weight on the issue of degree of discipline." (*In the Matter of Lawrence* (Sept. 10, 2008, State Bar Ct. case no. 07-O-11145), p. 13.) The State Bar now disputes this finding and argues the reproval is more akin to a year suspension since Lawrence stipulated to his inactive enrollment. We decline to reevaluate findings that are final from a prior record.

with the disciplinary investigation, and commingled funds in his CTA. His aggravating factors included a prior record of discipline, misconduct involving trust account violations, and indifference toward rectification. There were no mitigating factors.

The trust account violations in the Orendorff matter occurred between December 2003 and May 2004, which overlap with the time Lawrence commingled funds in his second disciplinary proceeding. Since the misconduct in the Orendorff matter occurred before Lawrence was aware of or disciplined for trust account violations in his second prior, he did not have the "opportunity to 'heed the import of that discipline.' [Citation.]" (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) As a result, we consider the totality of the misconduct to determine what discipline would have been recommended had all charges been brought together. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) We find that Lawrence's $800 misappropriation by gross neglect would not have significantly increased the prior discipline in light of the commingling violations during the same period. Thus, we diminish the weight given to the prior discipline when considering the appropriate level of discipline for the trust account violations in Orendorff. (*Ibid.*)

c. Lawrence Is Suspended for Six Months in 2009

In his third discipline, on June 10, 2009, the Supreme Court suspended Lawrence for six months, subject to a one-year stayed suspension and two years of probation. In that matter, Lawrence was culpable of violating the terms of his disciplinary probation. He failed to timely file his quarterly reports, file his CPA reports, join the State Bar Law Practice Management and Technology Section, engage in mandatory arbitration, and make restitution. His misconduct was tempered by good faith, his tic douloureux condition, and his candor and cooperation with the State Bar. It was aggravated by his prior record of discipline and multiple acts of wrongdoing.

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

Lawrence committed multiple acts of misconduct in three matters by misappropriating and commingling funds, and committing probation violations. Considering the nature and extent of his misconduct, these multiple acts moderately aggravate this case.

B. Compelling Mitigation

The hearing judge found two factors in mitigation: extreme physical disabilities at the time of the misconduct; and candor and cooperation during the disciplinary proceedings. We find Lawrence is entitled to mitigation credit for his extreme physical disabilities, but decline to afford mitigation for his candor and cooperation.

1. Extreme Physical Disabilities (Std. 1.2(e)(iv))

Standard 1.2(e)(iv) allows for mitigation for extreme physical disabilities that contributed to the misconduct if the attorney establishes "through clear and convincing evidence that he or she no longer suffers from such . . . disabilities." The State Bar concedes that Lawrence's serious disabilities "have caused or contributed to his misconduct for thirty years." Nevertheless, it contends that he is not entitled to any mitigating credit because "there is just no clear and convincing evidence that Lawrence's illnesses have permanently vanished or are completely under control." However, to require evidence that a disability or illness has "permanently vanished" places too high a burden on an attorney and is inconsistent with the standard.

Recognizing that some physical disabilities are permanent, standard 1.2(e)(iv) must be considered in the context of an attorney's fitness and ability to practice law. The hearing judge found, "[s]ince his October 23, 2010 surgery, respondent has not suffered from the effects of tic douloureux." Further, Lawrence credibly testified that by February 2012 he had regained "total clear-headedness" following his head injury and surgeries in 2010. As he argues on review, after 60 years with the illness, he is in the best position to discuss the impact, if any, he is currently

experiencing from the disorder. Approximately 15 months elapsed from Lawrence's last surgery to his testimony in March 2012. While this may not be long enough to establish that his condition has permanently subsided, we find that it is sufficient time to establish that Lawrence is rehabilitated from the severity of the illnesses that contributed to his misconduct.

Finally, any of Lawrence's remaining health concerns can be addressed in a standard 1.4(c)(ii) proceeding, which will require him to establish his ongoing rehabilitation and fitness to practice. He will not be entitled to practice law until he complies with this requirement. Accordingly, in light of their severity and duration, we find that Lawrence's extreme physical disabilities provide compelling mitigation that clearly predominates in this case.

2. No Credit for Spontaneous Candor and Cooperation (Std. 1.2(e)(v))

The hearing judge gave Lawrence mitigation credit for his cooperation with the State Bar and because he "testified candidly before the court." There is no evidence in the record that Lawrence displayed "spontaneous candor and cooperation . . . to the State Bar" as required by standard 1.2(e)(v). His cooperation and testimony fulfilled his "legal and ethical duty" to cooperate with the State Bar's disciplinary investigation (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2), and to participate in the disciplinary proceeding. (§ 6068, subd. (i).) Thus, while Lawrence is not entitled to mitigation for his candor and cooperation, we consider the hearing judge's findings when weighing Lawrence's overall credibility, including on issues of his medical problems.

IV. MISCONDUCT DOES NOT CALL FOR DISBARMENT

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. 1.3.) Our analysis begins with the

standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) Several standards call for suspension to disbarment.[8] But we focus on standards 1.7(b) and 2.2(a), which are the most severe.

Standard 2.2(a) calls for disbarment when an attorney willfully misappropriates entrusted funds unless the amount is insignificantly small or the most compelling mitigating circumstances clearly predominate. The first exception to standard 2.2(a) applies since Lawrence misappropriated by his gross neglect $800, a relatively small amount of funds, which he repaid fairly quickly and before involvement by the State Bar. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 223 [$1,300 considered "relatively small sum" under std. 2.2(a)].) Therefore, we direct our focus to standard 1.7(b).

Standard 1.7(b) provides that an attorney who has two or more prior discipline records shall be disbarred unless the most compelling mitigating circumstances clearly predominate. "[T]he critical issue is whether compelling mitigating circumstances clearly predominate to warrant an exception to the severe penalty of disbarment. [Citations.]" (*In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 196.) Lawrence's medical problems over the years have been severe and extensive. He has been ineligible to practice law for roughly 15 of the last 30 years due to his extreme physical disabilities. While they do not

[8] Applicable standards: std. 1.6(a) directs that when the misconduct calls for different sanctions, we apply the most severe; std. 2.2(b) provides for at least a three-month suspension for trust account violations under rule 4-100; std. 2.3 provides for actual suspension to disbarment for moral turpitude violations under section 6106; and std. 2.10 provides for reproval or suspension for rule or section violations not specified in the standards.

excuse Lawrence's ethical lapses, the compelling circumstances clearly predominate and compel us to look beyond a strict application of the standard.[9]

It is necessary to "examine the nature and chronology of respondent's record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) Lawrence's progressive discipline includes: a private reproval in 1981 for misconduct in four matters that were "minimal" in severity; a 30-day suspension in 2006 for three separate matters, including failing to competently perform, keep his client informed and cooperate with the disciplinary investigation, and commingling funds in his CTA; and a six-month suspension in 2009 for probation violations. While his current misconduct includes additional CTA and probation violations, as in his prior disciplines, there is no evidence of client harm, evil intent or bad faith. (*Arm v. State Bar, supra,* 50 Cal.3d 763, 768 [despite three prior discipline records, 18-month actual suspension for misleading a judge and commingling client funds, when tempered by "compelling mitigating circumstances" including lack of significant harm and absence of bad faith; misconduct "not sufficiently egregious" to warrant disbarment].) Viewed holistically, we agree with the State Bar's general assessment that Lawrence's extreme physical disabilities "lessen the moral culpability of his misconduct." Thus, after weighing the standards, case law, and factors in mitigation and aggravation, we conclude that the public will be adequately

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[9] Even in the absence of such compelling mitigation, the Supreme Court has not always ordered disbarment for recidivism. (*Conroy v. State Bar* (1991) 53 Cal.3d 495 [despite two prior discipline records, one-year actual suspension for withdrawing as counsel without cooperating with successor, failing to communicate with client, making misrepresentations to client, and failing to perform competently; attorney had no mitigation and "several" aggravating factors]; *Blair v. State Bar* (1989) 49 Cal.3d 762 [despite three prior discipline records, two-year actual suspension for failing to perform with competence in three client matters; misconduct aggravated by five factors and one "marginal" mitigating factor].)

protected by a lengthy suspension that will continue until Lawrence proves his rehabilitation, fitness and ability to practice.

V. RECOMMENDATION

For the foregoing reasons, we recommend that Arthur Gootkin Lawrence be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on four years of probation subject to the following conditions:

1. He must be suspended from the practice of law for a minimum of the first three years of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law under standard 1.4(c)(ii).

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct and all of the conditions of this probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

4. 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.

5. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of 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 any applicable privilege, he must fully, promptly and truthfully answer all inquiries of the State Bar's Office of Probation, and any probation monitor assigned under these conditions, that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of both 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 he shall not receive MCLE credit for attending Ethics School.

8. 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 he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

We do not recommend that Lawrence be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE). He was ordered to take and pass the exam in his prior discipline and is suspended, effective September 18, 2007, until he complies with that requirement.

We recommend that Lawrence be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable as provided in section 6140.7 and as a money judgment.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.