STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

RUDOLPH LOUIS DYSON

A Member of the State Bar

[No. 86-O-11410]

Filed December 18, 1990

SUMMARY

After respondent settled a personal injury case for two clients, he cashed the settlement checks and paid each client their portion of the funds. He deposited the remainder of the funds in his personal checking account, including approximately $4,700 which was owed to the clients' doctor under a medical lien.

About six months later, the doctor learned about the settlement from the insurer, and contacted respondent to request payment. Respondent gave the doctor a check drawn on respondent's personal account, with the words "subject to verbal confirmation" handwritten on the check. The doctor deposited the check twice and it was returned both times for insufficient funds. Respondent did not pay the doctor in full until almost a year and a half later, after the doctor had hired legal counsel and contacted the State Bar.

Respondent was found culpable of failing to deposit the funds to pay medical liens into his trust account, commingling entrusted and personal funds in his personal bank account, failing to pay the doctor promptly upon demand, and committing acts involving moral turpitude. Based on these findings, the hearing referee recommended a three-year stayed suspension, three years probation, and a six-month actual suspension. (Byron C. Finley, Hearing Referee.)

Both parties sought review. The review department declined to credit respondent's contention that at the time of his misconduct, he believed he was entitled to treat the doctor as his own creditor based on his prior practice of paying the doctor out of his own general account. The court concluded that respondent had an ongoing fiduciary duty to his client to hold in trust the remaining settlement funds and that there was no excuse for placing the funds subject to the medical liens in his own general account at any time because at no time did the funds belong to respondent.

On the question of appropriate discipline, the review department gave little weight to respondent's pro bono activities as mitigation because the evidence was insufficient. It rejected the referee's finding of mitigation based on restitution, because the payment was made after a State Bar complaint had been filed and a lawsuit threatened. Respondent's lack of prior discipline also was not a significant mitigating factor because he had only been in practice for eight years. However, the review department concluded that since the dishonored check was drawn in a way that labelled it as non-negotiable, its issuance was not a factor in

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Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

aggravation. Based on Supreme Court precedent in cases involving a single act of misappropriation, the review department increased the recommended actual suspension period from six months to one year. The review department also modified the probation conditions to require detailed trust account reporting.

COUNSEL FOR PARTIES

For Office of Trials: Mara Mamet

For Respondent: Rudolph L. Dyson, in pro. per.

HEADNOTES

[1 a-c] **194 Statutes Outside State Bar Act**
490.00 Miscellaneous Misconduct
545 Aggravation—Bad Faith, Dishonesty—Declined to Find
605 Aggravation—Lack of Candor—Victim—Declined to Find
695 Aggravation—Other—Declined to Find

Under applicable provisions of Commercial Code, handwritten notation on attorney's check stating that it was issued "subject to verbal confirmation" destroys its negotiability and prevented attorney from being criminally liable for issuance of check drawn on insufficient funds. Dishonor of such check due to insufficient funds was not an aggravating factor, because check was issued in non-negotiable form and there was no clear evidence that payee was misled regarding nature of check.

[2 a-c] **280.00 Rule 4-100(A) [former 8-101(A)]**
430.00 Breach of Fiduciary Duty

An attorney's practice of paying personal injury clients' doctor out of the attorney's own general account, including in some instances making such payments even before the clients' cases had closed, did not entitle the attorney to treat the doctor as the attorney's own creditor. The debt to the doctor was owed by the clients, and the attorney had a duty to honor the clients' agreement. Even with the doctor's consent, the attorney could not transform settlement funds earmarked for payment of medical liens into general funds.

[3 a, b] **280.00 Rule 4-100(A) [former 8-101(A)]**
430.00 Breach of Fiduciary Duty

Attorney's fiduciary duty to personal injury clients did not end with payment to them of their share of the recovery in their cases; the attorney had an ongoing fiduciary duty to hold in trust the remaining settlement funds, subject to clients' directions regarding disbursement. This duty did not end until the clients' debt to their treating physician was paid.

[4] **280.00 Rule 4-100(A) [former 8-101(A)]**
430.00 Breach of Fiduciary Duty

Assuming that an attorney was entitled to delay payment to a medical lienholder until resolution of a dispute with the clients' insurance company regarding settlement funds, the attorney was required nonetheless to place the amount earmarked for satisfaction of the medical lien in the attorney's trust account until payment to the lienholder in accordance with the terms of the lien.

[5] **221.00 State Bar Act—Section 6106**
280.00 Rule 4-100(A) [former 8-101(A)]
280.50 Rule 4-100(B)(4) [former 8-101(B)(4)]
420.00 Misappropriation
Respondent's conduct in placing trust funds in his personal account, using such funds, and delaying payment thereof to his clients' medical lienholder for a year and a half after demand for payment constituted commingling and misappropriation and involved moral turpitude.

[6] **745.51 Mitigation—Remorse/Restitution—Declined to Find**
Restitution coming on the heels of threats of a lawsuit and after a State Bar complaint has been filed is not a mitigating factor.

[7] **710.53 Mitigation—No Prior Record—Declined to Find**
An attorney's unblemished record for eight years prior to the attorney's misconduct was not long enough to constitute strong mitigation.

[8] **165 Adequacy of Hearing Decision**
765.31 Mitigation—Pro Bono Work—Found but Discounted
Where attorney testified to involvement in pro bono activities, but hearing referee's findings did not specify extent of such involvement and evidence in record was sketchy, review department accorded such evidence little weight as mitigation.

[9] **165 Adequacy of Hearing Decision**
545 Aggravation—Bad Faith, Dishonesty—Declined to Find
605 Aggravation—Lack of Candor—Victim—Declined to Find
Where referee made no finding that respondent misled clients' doctor about status of clients' case, and evidence in record was unclear, review department declined to find such misrepresentation as an aggravating factor.

[10] **801.30 Standards—Effect as Guidelines**
The Standards for Attorney Sanctions for Professional Misconduct are guidelines for the State Bar Court and are not applied in "talismanic fashion" by the Supreme Court.

[11] **822.39 Standards—Misappropriation—One Year Minimum**
1091 Substantive Issues re Discipline—Proportionality
Pursuant to Supreme Court precedent, only the most serious instances of repeated misconduct and multiple instances of misappropriation have warranted actual suspension, much less disbarment; a year of actual suspension, if not less, has been more commonly the discipline imposed in cases involving but a single instance of misappropriation.

[12] **807 Standards—Prior Record Not Required**
822.10 Standards—Misappropriation—Disbarment
1092 Substantive Issues re Discipline—Excessiveness
A single act of very serious misconduct can and has resulted in disbarment even absent a prior disciplinary record; where a respondent's culpability is egregious and inexplicable, disbarment is appropriate even for a single misappropriation.

[13] **822.39 Standards—Misappropriation—One Year Minimum**
A one-year actual suspension was appropriate where respondent had committed a single act of misappropriation and had fully participated in the disciplinary proceedings, and there was no strong mitigating evidence justifying departing from the standards by recommending a shorter suspension.

[14] **174 Discipline—Office Management/Trust Account Auditing**
Requirement of detailed trust account reporting as condition of probation was appropriate in matter involving misappropriation of entrusted funds.

ADDITIONAL ANALYSIS

Culpability

Found

221.19 Section 6106—Other Factual Basis
280.01 Rule 4-100(A) [former 8-101(A)]
280.51 Rule 4-100(B)(4) [former 8-101(B)(4)]
420.19 Misappropriation—Other Fact Patterns
430.01 Breach of Fiduciary Duty

Not Found

213.15 Section 6068(a)
220.15 Section 6103, clause 2

Discipline

1013.09 Stayed Suspension—3 Years
1015.06 Actual Suspension—1 Year
1017.09 Probation—3 Years

Probation Conditions

1022.10 Probation Monitor Appointed
1024 Ethics Exam/School
1026 Trust Account Auditing

OPINION

PEARLMAN, P.J.:

Before us is a hearing referee decision concluding that respondent Rudolph L. Dyson misappropriated approximately $4,700 in trust funds subject to medical liens and recommending that respondent be suspended for three years, stayed, subject to a three-year probationary term, with conditions including a six-month actual suspension, passage of the Professional Responsibility Examination, and a trust fund reporting requirement. Both the Office of Trial Counsel and the respondent have requested review of the decision. The examiner argues that a lengthier suspension is warranted in light of the misconduct found and also requests imposition of rule 955 reporting requirements. The respondent contends that he did not, at the time he acted, believe he was engaging in misconduct by delaying payments to the doctor for nearly two years after depositing trust funds payable to the doctor into his own personal account and, in any event, the recommended discipline is too severe.

We find that the record supports the finding that respondent committed serious misconduct in his handling of funds subject to the doctor's liens at issue here; and that in accordance with Supreme Court precedent the recommended discipline should be increased to one year actual suspension, with the addition of a rule 955 reporting requirement (Cal. Rules of Court, rule 955) and detailed trust account reporting for a period of three years.

FACTS

We adopt the essential findings of the referee below, restate them and make more specific findings as follows. Respondent was admitted to practice on November 29, 1978, and has no prior record of misconduct. Respondent represented two individuals, Clarence Clemons, III and Maria Reeves, who were injured in an automobile accident in June 1986. Each was medically treated by Dr. Arnold Ellis. To pay for the doctor's services, respondent's clients executed respective lien agreements on June 26, 1986 (exhs. 5 and 6) directing respondent to withhold from any settlement proceeds funds sufficient to pay their medical bills. The respondent admits to signing one of the liens (exh. 6; R.T. p. 16), has identified as his secretary's writing the signature on the second lien (exh. 5; R.T. p. 16) and acknowledged that he authorized his secretary to sign doctor liens. (*Ibid.*) He also admitted signing the letter that returned both executed agreements to Dr. Ellis. (Exh. 7; R.T. pp. 16-17.)

Respondent negotiated settlement of the client matters with the Farmer Group of Insurance Companies in November 1986 and two checks dated November 14, 1986, were issued; one for $6,900 was payable to respondent and Clarence Clemons, III (exh. 8), and a second payable to respondent and Maria Reeves for $7,700. (Exh. 9.) On or about that same date, the respondent accompanied his clients to his bank, cashed both checks and paid each their portion of the settlements (Clemons $2,100; Reeves $3,500). The respondent deposited the remainder of the settlement funds in his personal checking account. (Exh. 4; R.T. pp. 15-16.) The funds deposited to respondent's personal account included approximately $4,700 in funds payable to Dr. Ellis pursuant to his medical lien.[1]

At the time respondent cashed the checks at his bank and paid his clients their portion of the settlement, according to respondent, an unresolved problem had occurred which impacted the settlement. The insurance company representative belatedly realized that one of the plaintiffs, Maria Reeves, was still a minor[2] and had threatened to dishonor the bank drafts until a guardian ad litem was appointed. (R.T. p. 18.) Respondent had informed his clients of the situation before he cashed the checks. Respondent took the risk of personal liability to his bank if the

1. The exact amount of the lien is disputed. Dr. Ellis submitted bills to respondent totalling $4,770. (Exhs. 12 and 13.) There are handwritten notations on each billing excluding a total of $90 in reporting fees charged by a physician consulted by Dr. Ellis. The respondent eventually paid Dr. Ellis $4,670, plus his attorney's fees. (Exhs. 17 and 18.)

2. Maria Reeves was seventeen at the time she received her portion of the settlement of her case. (R.T. p. 19.)

checks were not honored by the insurance company. (R.T. pp. 19-20.)

The record does not reflect the precise date at which the insurance company decided to forego the requirement of a guardian ad litem, although it apparently did so well before April of 1987. Dr. Ellis had not been informed by respondent about the receipt of the checks in November, but was advised when he contacted the insurance company that the case had been settled "a few months" earlier. (R.T. p. 41.)

After contacting respondent in April 1987 and being told at that time that the case was settled, Dr. Ellis was given a check for $4,600 drawn on the respondent's personal account with the words "SUBJECT TO VERBAL CONFIRMATION" handwritten on the bottom below the signature line. (R.T. pp. 41-42; exh. 11.)[3] **[1a - see fn. 3]** Respondent testified that at the time respondent gave the check to Dr. Ellis, he advised Dr. Ellis that there were not sufficient funds in the account to cover it and asked him to wait to deposit it. The referee below made no finding on this issue, but such testimony is consistent with the legend on the check. Dr. Ellis denied being told this, and we are not in a position to resolve their conflicting testimony on this point. Dr. Ellis deposited the check twice and it was returned both times for insufficient funds. Thereafter, Dr. Ellis hired legal counsel and was paid by respondent in full, plus legal fees, in September 1988, after Dr. Ellis had also contacted the State Bar. (Exhs. 16, 17 and 18; R.T. pp. 52-53, 55-56.)[4] **[1b - see fn. 4]**

The State Bar filed a notice to show cause against respondent on February 2, 1989, charging respondent with one count of failure to perform services for a different client which was later dismissed, and one count of misappropriation from Dr. Ellis. The referee found that respondent had failed to deposit the funds to pay Dr. Ellis's liens into his trust account, contrary to former rule 8-101(A),[5] commingled entrusted and personal funds in his personal bank account, in violation of rule 8-101(A), failed to deliver to Dr. Ellis the client funds to pay the lien promptly, contrary to rule 8-101(B)(4), committed acts involving moral turpitude contrary to Business and Professions Code section 6106, and violated section 6068 (a).[6]

ISSUES ON REVIEW

Culpability

[2a] On review, respondent argues that, while he now regrets his action, at the time he acted he believed he was entitled to treat Dr. Ellis as his own

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3. **[1a]** For a check to be a negotiable instrument, it must (1) be in writing, (2) be signed by the maker or drawer, (3) be drawn on a bank, (4) be payable on demand to order or bearer, and (5) contain an unconditional promise to pay or order to pay a sum of money *and no other promise*, except as provided in the California Uniform Commercial Code. (Cal. U. Com. Code, §§ 3104, 3112.) A promise or order is not unconditional if it states that it is subject to or governed by any other agreement. (Cal. U. Com. Code, § 3105; 3 Witkin, Summary of Cal. Law (9th ed. 1987) Negotiable Instruments, §§ 40-41, pp. 306-308.) Handwritten terms control over printed or typed terms. (Cal. U. Com. Code, § 3118(b).) The handwritten statement "subject to verbal confirmation" on respondent's check destroys the check's negotiability because it is subject to the respondent's subsequent affirmance and is not payable on demand.

4. **[1b]** Dr. Ellis also went to the Inglewood Police Department to press criminal charges against respondent for the returned check. (R.T. p. 43.) After investigation, he was advised by the police detective that because the check had the words "subject to verbal confirmation" on it, there was no criminal case against the respondent. (R.T. pp. 50-51.) Under Penal Code section 476 (checks, drafts, orders on banks; insufficient funds) there must be a showing of specific intent to defraud, and disclosure of present insufficiency of funds to cover the check is a defense to the criminal charge. (*People* v. *Poyet* (1972) 6 Cal.3d 530.)

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

6. The notice to show cause on count two also charged respondent with a violation of Business and Professions Code section 6103. (All further statutory references are to the Business and Professions Code unless otherwise noted.) The referee made no finding on that charge and the State Bar has not sought review on that issue. We find that the charge should be dismissed since section 6103 defines no duties. (*Baker* v. *State Bar* (1989) 49 Cal.3d 804, 815; *Sands* v. *State Bar* (1989) 49 Cal.3d 919, 931; *Middleton* v. *State Bar* (1990) 51 Cal.3d 548, 561.)

creditor based on his prior practice of payment to Dr. Ellis out of his own general account. He contends that, contrary to the express provisions of the medical liens which he co-signed (exhs. 5 and 6), that he and Dr. Ellis had developed a business relationship where, in many instances, checks were issued by respondent to Dr. Ellis prior to the close of the case and on respondent's business account.[7] Respondent also challenges any separate attribution of misconduct based on the dishonored check.

There is scanty evidence in the record to support respondent's description of his "open book" reimbursement procedure with Dr. Ellis (R.T. p. 17) which the referee rightfully rejected as a defense in any event. **[2b]** Respondent's argument entirely misperceives the nature of his fiduciary duty and the nature of Dr. Ellis's claim. The debt to Dr. Ellis was not incurred by respondent but by respondent's clients, who remained obligated to Dr. Ellis despite respondent's agreement to honor Dr. Ellis's medical liens. This continuing obligation is specified in the lien agreements themselves. (Exhs. 5 and 6.)

[3a] Respondent appears to have lost sight of the scope of his duty to his clients. It did not end with payment to them of their ultimate share of the recovery. He had an ongoing fiduciary duty to his clients to hold in trust the remaining settlement funds subject to their directions regarding disbursement. **[2c]** Even with Dr. Ellis's consent, respondent could not transform the settlement funds earmarked for payment of the medical liens into general funds. Respondent's responsibilities to his clients required him to honor the clients' agreements with Dr. Ellis. He thereby undertook the same duty as he was obligated to undertake with any other client funds: to segregate the funds in a trust account, maintain and render complete records and pay or deliver the funds promptly on request. (*Guzzetta* v. *State Bar* (1987) 43 Cal.3d 962, 979; *Rose* v. *State Bar* (1989) 49 Cal.3d 646, 652; *Kennedy* v. *State Bar* (1989) 48 Cal.3d 610, 612-614, 617; *Vaughn* v. *State Bar* (1972) 6 Cal.3d 847; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1.)

[3b] Respondent's duty to his clients to use *their* settlement funds to discharge *their* debt to Dr. Ellis remained unmet until Dr. Ellis was paid. **[4]** Even assuming that respondent was entitled to delay payment to Dr. Ellis until the insurance company dispute was fully resolved, respondent was still unquestionably required to place the amount earmarked for satisfaction of the liens in his trust account until payment to Dr. Ellis in accordance with the terms of the liens respondent agreed to honor. Respondent simply has no excuse for placing the funds subject to the medical liens in his own general account at *any* time because at *no* time did the funds belong to him.

[5] Respondent's conduct in placing trust funds in his personal account, using such funds and delaying payment to the doctor for a year and a half after demand for payment constitutes commingling and misappropriation and involves moral turpitude. (*Friedman* v. *State Bar* (1990) 50 Cal.3d 235, 240-241, 245; *Hipolito* v. *State Bar* (1989) 48 Cal.3d 621, 624, 626; *Bowles* v. *State Bar* (1989) 48 Cal.3d 100, 109.) Based on these findings, there is sufficient evidence in the record to support the referee's conclusions that respondent violated rule 8-101(A) and section 6106. The record also supports respondent's culpability under rule 8-101(B)(4) for failure to pay the funds to Dr. Ellis promptly on demand after the insurance company dropped its objection. (See *Guzzetta* v. *State Bar*, *supra*, 43 Cal.3d at p. 979; *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 10.)

We do, however, modify the decision to find that respondent's misconduct does not amount to a separate violation of his duties under section 6068 (a) to "support the Constitution and laws of the United States and of this state." (*Bates* v. *State Bar* (1990) 51 Cal.3d 1056, 1060; see also *Middleton* v. *State Bar*, *supra*, 51 Cal.3d 548; *Sands* v. *State Bar*, *supra*, 49 Cal.3d 919.)

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7. The State Bar has not charged respondent with any misconduct in connection with this admission concerning his prior practices.

Findings in Aggravation and Mitigation

The referee made no findings in aggravation. He did find in mitigation that respondent repaid the funds in full after a proceeding was filed with the State Bar Court. He also described pro bono activity testified to by the respondent, but apparently did not attribute much significance to it.

[6] We agree with the examiner that respondent's eventual restitution coming on the heels of threats of a lawsuit and after a State Bar complaint has been filed is not a mitigating factor. (*Rosenthal* v. *State Bar* (1987) 43 Cal.3d 658, 664; *Howard* v. *State Bar* (1990) 51 Cal.3d 215, 222; *Hipolito* v. *State Bar*, *supra*, 48 Cal.3d at p. 628.) **[7]** Respondent had an unblemished record for eight years prior to the present incident which is not long enough to constitute strong mitigating evidence. (*In re Naney* (1990) 51 Cal.3d 186, 196; *Matthew* v. *State Bar* (1989) 49 Cal.3d 784, 792; *Ridge* v. *State Bar* (1989) 47 Cal.3d 952, 963-964.) **[8]** Respondent did testify to and was found by the referee to have been involved in pro bono activities, although the findings did not specify the extent of his involvement and the evidence in the record was sketchy. We therefore accord it little weight. (*Morgan* v. *State Bar* (1990) 51 Cal.3d 598, 607-608.)

The examiner argues that the record discloses factors in aggravation which were not found by the referee. We have carefully considered her arguments but cannot agree. **[1c]** We are unable to conclude that the dishonored check is a factor in aggravation here since it was non-negotiable (see fn. 3, *ante*), nor is the evidence clear that Dr. Ellis was misled as to the nature of the check. **[9]** Nor can we conclude that respondent misrepresented the status of the case to Dr. Ellis absent any finding by the referee in that regard since Dr. Ellis's testimony was vague on dates and the record does not indicate when the insurance company notified respondent that it considered the matter closed.

Sufficiency of Recommended Discipline

Unfortunately, the referee's decision is devoid of any discussion of how he arrived at the recommendation of six months actual suspension, either by application of the standards or analysis of comparable cases. We start our analysis with the Standards for Attorney Sanctions for Professional Misconduct (Trans. Rules Proc. of State Bar, div. V ["standards"]). They provide that where a member is found to have wilfully misappropriated entrusted funds, disbarment is the appropriate sanction unless there is a finding of compelling mitigating circumstances or misappropriation of an "insignificantly small" amount of funds, in which case, the standards recommend no less than one year of actual suspension irrespective of mitigating circumstances. (Standard 2.2(a).)

The amount of funds misappropriated, $4,700, was not insignificantly small. **[10]** However, the standards are guidelines for the State Bar Court and are not applied in "talismanic fashion" by the Supreme Court. (*Howard* v. *State Bar*, *supra*, 51 Cal.3d at p. 221; *In re Young* (1989) 49 Cal.3d 257, 268.)

The examiner has ably analyzed both the standards and the case law and recognizes that disbarment is inappropriate here in light of relevant precedent. Rather she argues for lengthier suspension in this case based on *Hipolito* v. *State Bar*, *supra*, 48 Cal.3d at p. 628; *Lawhorn* v. *State Bar* (1987) 43 Cal.3d 1357, 1366; *Alberton* v. *State Bar* (1984) 37 Cal.3d 1, 15, and on this department's decision, *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. 1.

In *Hipolito*, the attorney had likewise engaged in a single act of misappropriation ($2,000) from a client. In addition, he abandoned another client. The Supreme Court imposed only the minimum actual suspension called for by standard 2.2(a), despite the fact that the amount misappropriated was not "insignificantly small." In ordering Hipolito suspended for a period of three years, stayed, with actual suspension of one year, the court noted that: **[11]** "This conclusion is consistent with our prior cases, in which only the most serious instances of repeated misconduct and multiple instances or misappropriation have warranted actual suspension, much less disbarment. [Citations.] A year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation." (*Hipolito* v. *State Bar*, *supra*, 48 Cal.3d at p. 628,

citing *Lawhorn* v. *State Bar*, *supra*, 43 Cal.3d at pp. 1367-1368.)[8]**[12 - see fn. 8]**

In addition to the Supreme Court decisions, the examiner also relies on our prior decision in *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. 1. There, an attorney misappropriated funds to pay doctor liens from two separate client settlements—acts involving moral turpitude, dishonesty and corruption, contrary to section 6106 and rule 8-101(A)(2)—and failed to promptly pay the doctor and client involved, contrary to rule 8-101(B)(4). We found as aggravating evidence, Mapps's failure to participate in the formal disciplinary proceedings and his act of bad faith subsequent to the misappropriation in providing a bad check to his client. We rejected disbarment as inappropriate under controlling Supreme Court precedent in light of mitigating evidence in the record, including lack of a prior record of discipline, prompt acknowledgement of the debts to the parties, initiation of payments to the doctor and client before a complaint was filed with the State Bar, and full payment made to both prior to the filing of the notice to show cause. (*Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 12-14.) Instead, we recommended that Mapps be suspended from practice for five years, stayed, with an actual suspension of two years, probation conditions be imposed and a showing be made under standard 1.4(c)(ii) prior to Mapps's resumption of the practice of law. Our recommendation was adopted by the Supreme Court on November 29, 1990. (*In the Matter of Mapps*, order filed Nov. 29, 1990 (S016265).)

[13] In this case, we are not dealing with multiple acts of misappropriation by a defaulting respondent but a single act of misappropriation and a respondent who has fully participated in these proceedings. In light of all these circumstances, it is our view that, as in *Hipolito* and numerous other Supreme Court decisions involving a single instance of misappropriation of the type here, the recommended discipline of one year actual suspension is appropriate. This is consistent with the minimum set forth in standard 2.2(a). The referee's recommendation of six months actual suspension is not supported by strong mitigating evidence, as was the case in *Howard*, and such departure from the standards does not appear justified on this record. (Cf. *Bates* v. *State Bar*, *supra*, 51 Cal.3d 1056, 1061 fn. 2.) **[14]** We therefore increase the recommended actual suspension from six months to one year and also modify the recommended sanction in this case to require detailed trust account reporting as a condition of his three-year probationary term.

FORMAL RECOMMENDATION

For the foregoing reasons, we recommend that respondent, Rudolph Louis Dyson, be suspended from the practice of law in the State of California for a period of three years, that execution of the suspension order be stayed, and that respondent be placed on probation for three years under the following conditions:

1. That during the first year of said period of probation, he shall be suspended from the practice of law in the State of California;

2. That during the period of probation, he shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;

3. That during the period of probation, he shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Probation Department, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by

8. In *Hipolito*, the Court was addressing single acts of misappropriation of similar magnitude to that involved here. **[12]** Although not discussed in *Hipolito*, a single act of very serious misconduct can and has resulted in disbarment even absent a prior disciplinary record. (See *Kelly* v. *State Bar* (1988) 45 Cal.3d 649; see also *In re Rivas* (1989) 49 Cal.3d 794; *In re Lamb* (1989) 49 Cal.3d 239.) The Supreme Court held in *Kelly* that where a respondent's culpability is both "egregious and inexplicable," disbarment is appropriate even for a single charged count of misappropriation. (In that case approximately $20,000 was depleted from a client's account over a five-month period.) (*Kelly* v. *State Bar*, *supra*, 45 Cal.3d at p. 657 and fn. 9.)

affidavit or under penalty of perjury (provided, however, that if the effective date of probation is less than 30 days preceding any of said dates, he shall file said report on the due date next following the due date after said effective date):

(a) in his first report, that he has complied with all provisions of the State Bar Act, and Rules of Professional Conduct since the effective date of said probation;

(b) in each subsequent report, that he has complied with all provision of the State Bar Act and Rules of Professional Conduct during said period;

(c) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) thereof;

4. That he shall be referred to the Department of Probation, State Bar Court, for assignment of a probation monitor referee. Respondent shall promptly review the terms and conditions of his probation with the probation monitor referee to establish a manner and schedule of compliance consistent with these terms of probation. During the period of probation, respondent shall furnish such reports concerning his compliance as may be requested by the probation monitor referee. Respondent shall cooperate fully with the probation monitor to enable him/her to discharge his/her duties pursuant to rule 611, Rules of Procedure of the State Bar;

5. That subject to assertion of applicable privileges, respondent shall answer fully, promptly and truthfully any inquiries of the Probation Department of the State Bar Court and any probation monitor referee assigned under these conditions of probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with these terms of probation;

6. That he shall promptly report, and in no event in more than ten days, to the membership records office of the State Bar and to the Probation Department all changes of information including current office or other address for State Bar purposes as prescribed by section 6002.1 of the Business and Professions Code;

7. That if he is in possession of clients' funds, or has come into possession thereof during the period covered by each quarterly report, he shall file with each report required by these conditions of probation a certificate from a Certified Public Accountant or Public Accountant certifying:

(a) That respondent has kept and maintained such books or other permanent accounting records in connection with his practice as are necessary to show and distinguish between:

(1) Money received for the account of a client and money received for the attorney's own account;

(2) Money paid to or on behalf of a client and money paid for the attorney's own account;

(3) The amount of money held in trust for each client;

(b) That respondent has maintained a bank account in a bank authorized to do business in the State of California at a branch within the State of California and that such account is designated as a "trust account" or "clients' funds account";

(c) That respondent has maintained a permanent record showing:

(1) A statement of all trust account transactions sufficient to identify the client in whose behalf the transaction occurred and the date and amount thereof:

(2) Monthly total balances held in a bank account or bank accounts designated "trust account(s)" or "clients' funds account(s)" as appears in monthly bank statements of said account(s)'

(3) Monthly listings showing the amount of trust money held for each client and identifying each client for whom trust money is held;

(4) Monthly reconciliations of any differences as may exist between said monthly total bal-

ances and said monthly listings, together with the reasons for any differences;

(d) That respondent has maintained a listing or other permanent record showing all specifically identified property held in trust for clients;

8. That the period of probation shall commence as of the date on which the order of the Supreme Court in this matter becomes effective;

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

We further recommend that within one year of the effective date of the Supreme Court's order in this case, respondent be required to take and pass the examination in professional responsibility prescribed by the State Bar and provide proof thereof to the Clerk of the State Bar Court, Los Angeles.

Finally we recommend that respondent be required to comply with the provisions of rule 955, 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's order in this case.

We concur:

NORIAN, J.
STOVITZ, J.