PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed October 15, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 13-O-16057; 14-O-03616
	)	(15-O-15856; 16-O-10804)
JAMES DEAGUILERA,	)	(Consolidated)
	)	
A Member of the State Bar, No. 166315.	)	OPINION AND ORDER
	)	

After a four-day trial, a State Bar Court hearing judge found James DeAguilera culpable of five instances of professional misconduct in two client matters. In one of the matters, DeAguilera was found to have violated ethical rules by failing to deposit into a proper client trust account (CTA) $50,000 of cash being held for his client's business venture, and to have committed two acts of moral turpitude, first, by misappropriating $22,600 of his client's trust funds, and second, by misrepresenting facts to his client. In a second client matter, the hearing judge found that DeAguilera failed to give his client a prompt accounting of advance fees he had received; and, in jointly representing this client and another, failed to follow the ethical rules to disclose to both clients the potential conflicts of interest they could face and to obtain their written consent to continued representation as required by the ethical rules.

Since DeAguilera was admitted to practice in 1993, he was disciplined twice; more recently by a two-year probation and 90-day actual suspension in 2012, revealing professional misconduct in six client matters, including failing to account for unearned fees. Considering the seriousness of the misconduct found in the present matter, and that aggravating circumstances adduced at trial overwhelmed mitigating ones, the hearing judge recommended disbarment.

DeAguilera seeks review of the hearing judge's decision. As to the first client matter, he claims that his admitted failure to deposit in a CTA his client's cash was due to a good faith defense of impossibility. He denies misappropriating funds or that he engaged in willful misrepresentation of facts. In the second client matter, he now concedes that he failed to timely account to his client for advance fees but urges that there was not a potential conflict between his clients and he did not violate the relevant ethical rule. He argues that he is entitled to greater mitigation; and that an unspecified, lower discipline is adequate.

The State Bar's Office of Chief Trial Counsel (OCTC) supports the hearing judge's culpability findings and contends that the evidence of the findings of misappropriation and misrepresentation show DeAguilera's willful and intentional misconduct. OCTC also supports disbarment, pointing to minimal mitigation and considerable aggravation, including DeAguilera's two prior disciplines and his introducing an exhibit in this proceeding as authentic, which had obvious discrepancies causing the hearing judge to properly conclude that DeAguilera was not candid to the court.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12). We hold that, except for the rule violation of a failure to disclose a potential conflict of interest in the second client matter, clear and convincing evidence[1] supports all of the hearing judge's findings and conclusions of culpability, and that the found misappropriation and misrepresentation did arise from willful misconduct. We reject DeAguilera's defenses as unsupported. We determine that his misappropriation was serious enough to warrant disbarment even if he had no prior discipline. But since rehabilitative measures of prior discipline did not prevent the present misconduct, which started even before his probationary period had ended, and considering the

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

serious aggravating evidence and minimal mitigation, we can only protect the public, courts, and legal profession adequately by recommending disbarment, as did the hearing judge.

I. PROCEDURAL BACKGROUND

This formal proceeding against DeAguilera started in June 30, 2014, with the filing of a Notice of Disciplinary Charges (NDC) of two allegations of professional misconduct in the Chera matter. However, about two months later, OCTC and DeAguilera jointly requested an abatement of these charges, due to a pending civil matter related to the underlying disciplinary facts. In August 2014, the Chera matter was abated.

In January 2017, formal charges were filed in an additional NDC, involving a total of 11 counts in three client matters: the Madison, Jaramillo, and Chavez/Ghazaryan matters.

In March 2017, the abatement of the Chera matter was ended, and the two NDCs were consolidated for State Bar Court trial. The parties did not enter into a pretrial stipulation of facts. Prior to or during trial, held between July 11 and 14, 2017, OCTC moved to dismiss two of the five counts charged in the Jaramillo matter, both counts in the Madison matter, and two of four counts in the Chavez/Ghazaryan matter. The hearing judge granted OCTC's dismissal motions.

After weighing the evidence and considering the parties' posttrial briefs, the hearing judge dismissed both counts in the Chera matter, and found DeAguilera culpable of three counts of misconduct in the Jaramillo matter and two counts of misconduct in the Chavez/Ghazaryan matter. We discuss those findings below.

II. FACTUAL AND CULPABILITY FINDINGS

A. INTRODUCTION

The overall factual background rests on the trial testimony, extensive documentary evidence, and the hearing judge's factual and credibility findings, to which we accord great weight. (Rules Proc. of State Bar, rule 5.155(A).) Despite the lack of a stipulation of facts, our

independent record review demonstrates that the key facts in the two matters tried in which culpability was found (Jaramillo and Chavez/Ghazaryan) are established clearly and convincingly. Many foundational facts were not subject to dispute.

All three matters arose from DeAguilera's representation of clients seeking to operate medical marijuana dispensaries (MMDs) in Southern California, in 2013–2015, pursuant to California Proposition 215 and augmenting state laws. At that time, Proposition 215 allowed the dispensing of marijuana to medical patients. However, federal and state law provided criminal sanctions for the use, possession, cultivation, and transportation of marijuana. The medical marijuana laws did not preempt California cities from enacting land use controls prohibiting or strictly regulating the placement and operation of MMDs. (See generally *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 737–740, 762–763.)

DeAguilera had extensive experience in California municipal government and land use matters commencing long prior to his admission to practice law in 1993. He testified that he had served, inter alia, as Assistant City Manager of Victorville, City Manager of Adelanto just after its incorporation, Planning Director of Loma Linda, Environmental Review Board Officer of San Bernardino County, and Planning Officer for the redevelopment and conversion of Norton Air Force Base in San Bernardino County to civilian use. He had also worked on water, land use, and redevelopment matters, respectively, in the Lake Tahoe area and with the City of Los Angeles. By 2013, he was quite familiar with the state of the law affecting the authority of local government to regulate MMDs, including the Supreme Court's decision in *City of Riverside*, *supra*.

B. THE RECORD IN THE CHERA MATTER WARRANTS UPHOLDING THE HEARING JUDGE'S FINDINGS AND CONCLUSIONS FOR DISMISSAL

The hearing judge's decision to dismiss both charges in Chera matter rested on a lack of clear and convincing evidence offered at trial that DeAguilera failed to perform competently or

respond to client requests as charged. OCTC has not appealed these dismissals. On our independent review, we affirm the dismissals, as supported by the record.

C. THE JARAMILLO MATTER

Carlos Jaramillo graduated from high school in 1997 and had worked in several businesses. One was in the medical field and another was as a manager in the car wash field. He also worked in retail business. He saw himself as having leadership talent, had saved earnings from his previous employment, and wanted to venture into his own business. By 2014, he saw the MMD field as having good potential, but had no experience in it.

1. Jaramillo Hired DeAguilera to Represent Him in Opening an MMD and Paid Him $6,000 in Fees

In June 2014, Jaramillo hired DeAguilera for "corporate services" to create a mutual benefit nonprofit corporation enabling Jaramillo and his uncle and partner in the business, Santiago Espinoza, to own and operate a MMD. On June 11, 2014, Jaramillo signed the first of three fixed-fee agreements prepared by DeAguilera. This agreement, like the two Jaramillo would sign later, only briefly mentioned the type of employment (e.g., "Phase of Legal Representation: Corporate Services"). DeAguilera covered the agreement with a letter that provided no further detail of the scope of legal services but did point out to Jaramillo that DeAguilera would bill him for each phase of the legal representation as it was undertaken. The agreement was consistent with this. Jaramillo paid DeAguilera the $1,000 called for as a fixed-fee retainer.

DeAguilera's fee agreement form had conflicting provisions as to whether client payments were true retainer fees or advances for fees for legal work.[2]

[2] Clause III, par. 6, provided that some or all of Jaramillo's initial fee payment may be deposited in a CTA and Jaramillo authorized DeAguilera to withdraw from the CTA sums to pay fees and costs. Initial deposit retainers may be requested in some cases. All unused funds remaining in trust will be refunded promptly to the client after DeAguilera's work for the client was complete. In contrast, Clause V, par. 4, referred to the retainer fee as a "true retainer paid to hold the attorney available to [Jaramillo] and for this reason is not refundable."

The nonprofit corporation for Jaramillo's MMD venture was called Green Star Remedies, Inc. (Green Star). DeAguilera dealt interchangeably with Jaramillo as an individual and Green Star in its corporate capacity.

Around late July 2014, Jaramillo found a location for his MMD in South Central Los Angeles (South Central). This property had previously operated as a copy store but another was operating at that site as an MMD. Jaramillo learned that the purchase price of the MMD was $50,000 and told DeAguilera. DeAguilera looked into this property and learned that the City of Los Angeles had cited the current MMD lessor and was seeking to evict the tenant operating the MMD under local ordinances known as Proposition D. DeAguilera advised Jaramillo not to purchase the property but to execute a new lease with the lessor, which Jaramillo agreed to do.

On July 31, 2014, Jaramillo signed another fee agreement with DeAguilera for a $5,000 fixed fee, earned when received. This agreement simply covered fees for a "complaint for declaratory relief." As with the previous retainer agreement, its cover letter and agreement text stated that DeAguilera would bill for each phase of the representation as undertaken. Jaramillo paid the $5,000 because he believed that this was for all of the services needed to get him in business at the South Central location. He did not understand what a declaratory relief action was and relied on DeAguilera's explanation that this was necessary to open the MMD business at the location.

On August 6, 2014, DeAguilera presented Jaramillo with the third of the series of his fixed-fee retainer agreements. The work covered by this agreement was to be done for a fixed fee of $5,000 as an earned-when-paid retainer, and was described simply as "Set up Medical Marijuana Business at [South Central location]." The cover letter and fee agreement stated that DeAguilera would bill for each phase of the representation as it was undertaken. Although Jaramillo signed this agreement, he did not pay any of the $5,000, as he believed that the $6,000

he had previously paid DeAguilera covered all necessary services to launch the MMD at the South Central location.

2. In August 2014, DeAguilera Accepted $50,000 from Jaramillo. Although DeAguilera Failed to Deposit It in a Trust Account, He Repeatedly Assured Jaramillo and the Property Lessor that He Held It for the MMD Business.

Jaramillo had on hand $50,000 in cash saved up from previous earnings to use for either purchase or a new lease of the South Central MMD. He was going to bring it directly to the lessor but DeAguilera urged him to bring it to his law office so that DeAguilera could keep it for Jaramillo's purchase or lease. Jaramillo told DeAguilera that this $50,000 was not for legal fees and if there were any added legal fees, to bill for them and he would pay those separately.

On August 6, 2014, DeAguilera gave Jaramillo a receipt for the $50,000 in cash and wrote on the receipt inconsistently that it was a "retainer payment" and that it was a "deposit in to trust for Sale of Medical Marijuana business."

It is undisputed that DeAguilera never deposited any part of the $50,000 into a client trust account (CTA). Instead, he placed it in a locked cash box in a locked cabinet in his Redlands law office. As of August 7, 2014, he had planned to deposit the cash into a CTA but because of the large sum, he first requested Jaramillo to provide documentation of the source of the cash or come to his office so that Jaramillo could retrieve the cash. Jaramillo did not provide the requested information, and DeAguilera claimed that Jaramillo had told him that he had grown marijuana as a wholesaler in order to supply MMDs.

DeAguilera's previous bank had closed his accounts when he deposited a large sum of cash into his office account, representing earned fees.[3] He did not want to risk the same fate by depositing Jaramillo's $50,000 into his CTA, so he never attempted it. He did not present any evidence that he had sought other lawyers' or experts' advice about such a deposit to his CTA.

[3] DeAguilera's bank at the time told him that the account closure was due to the source of the fees he deposited being attributed to illegal marijuana transactions.

Close examination of DeAguilera's testimony at trial shows that he had another reason for not depositing Jaramillo's $50,000 in his CTA, beyond the question of the source of the funds. That other reason was that, in DeAguilera's mind, the character of the cash changed quite rapidly from being for the purchase of the South Central MMD to being for advance legal fees; and, citing Green Star's organizational minutes of September 5, 2014, it was also intended to allow Green Star to be able to lease the MMD property.

However, despite DeAguilera never depositing the $50,000 in his CTA, he assured Jaramillo by letter of August 7, 2014, and the lessor of the South Central MMD by letter of August 27, 2014, that he held this full amount for the purchase price of the MMD.[4] DeAguilera also wrote to Jaramillo on September 16, 2014, that he had finalized lease terms with the lessor for an advance payment of $27,400, and, per Jaramillo's directions, would use part of the $50,000 for that.[5] DeAguilera reminded Jaramillo that he had yet to provide the requested information as to the source of the $50,000, so that sum was still being held. He closed this letter with the unexplained reference, "There are also the attorney fees." By this time, DeAguilera had filed no litigation for Jaramillo and had not billed him for any added fees.

[4] To the lessor of the South Central property, DeAguilera wrote in this August 27, 2014 letter that he understood that the lessor requested assurance from him that the $50,000 provided by Jaramillo "is still being held and will continue to be held" by DeAguilera. DeAguilera wrote to the lessor that this was correct, and that these monies were available to pay the rent and tenant improvements as soon as the lease was signed. He added that since the lessor was being cited by the City of Los Angeles based on the existing use of the property by a previous tenant for a MMD, and wanted an indemnification by Jaramillo as part of the lease agreement, DeAguilera also stated that he and the lessor would reach agreement on the amount they would continue to hold for indemnification.

[5] The finalized lease payment terms combined required advance rent payments and improvements totaling $27,400, with another $5,000 for tenant improvements to be paid to the lessor in 30 days. The lease was not subject to any litigation resolution or City of Los Angeles approvals regarding MMDs.

3. In Late September 2014, DeAguilera Used Only $27,400 of Jaramillo's $50,000 for Lease of the MMD and Met Jaramillo's Demands for Accountings and Refund with Misrepresentations and Unilateral Claims for Fees.

On September 24, 2014, DeAguilera used $27,400 of the $50,000 to purchase a cashier's check from his bank for the lease payment due, and that same day, he gave it to Jaramillo, who gave it to the lessor. The next day, DeAguilera wrote to Jaramillo that, as the two of them had discussed earlier, DeAguilera was representing other MMDs in suits against the City of Los Angeles alleging that its Proposition D restricting MMDs was unconstitutional. In order for Jaramillo to operate a MMD at the just-leased location, he would also have to file a declaratory relief action and the portion of the monies remaining and being held will, "per our agreement," be used for this lawsuit and related motions and appeals.

As noted, DeAguilera's September 25 letter about planned use of the remaining funds for legal fees was contrary to assurances DeAguilera gave separately to Jaramillo and the lessor. Moreover, at this time, DeAguilera was still committed to paying the lessor an additional $5,000 for tenant improvements, which was due about October 18, 2014. It was also contrary to Jaramillo's position persistently taken with DeAguilera that none of the $50,000 was to be used for attorney fees—a position Jaramillo reiterated to DeAguilera as late as October 1, 2014.

As of late September 2014, Jaramillo realized that operating his MMD would require additional funds, so he sent DeAguilera a handwritten schedule of disbursements from the $50,000 and requested that DeAguilera refund him $3,600, a sum which the hearing judge found to be well under what Jaramillo was then entitled to. In response to Jaramillo's request for a refund, on September 30, 2014, DeAguilera sent Jaramillo an e-mail accounting, which was both inaccurate and misleading. It overstated by $5,000 the sum of tenant improvements due the lessor which DeAguilera was obligated to hold and it claimed attorney fees and filing and attorney service fees for litigation to which Jaramillo had not agreed and for which litigation had

not been filed. The next day, October 1, 2014, DeAguilera sent Jaramillo an email stating incorrectly that "[w]e have filed your complaint for declaratory and injunctive relief." As the record shows, this action was not filed until October 10. Less than 20 minutes later, Jaramillo replied that any fees that DeAguilera decided to charge had to be put in writing and sent to Jaramillo and he would take it to his uncle and partner, Espinoza, and pay the fees. But he wanted DeAguilera to first refund the rest of the money he was holding.

It is undisputed that DeAguilera never refunded to Jaramillo any funds remaining from the $22,600 that he held for Jaramillo's MMD. Nor did he pay the lessor the $5,000 due by mid-October for tenant improvements. We adopt the hearing judge's finding that DeAguilera spent the entire balance of the $22,600 of funds remaining after September 24 on legal fees or matters unrelated to tenant rents, improvements, or other expenses of Jaramillo's MMD.

On October 15, 2014, DeAguilera wrote to Jaramillo that he filed the declaratory relief action on October 10; and, as he was moving to the next phase of legal representation of Jaramillo, his contribution to the legal expenses to oppose the City of Los Angeles response was an additional $5,000.

Shortly after this letter from DeAguilera, Jaramillo realized that he did not have the capital to run the MMD. He located a buyer of the business, Omar Gonzales. Jaramillo and his uncle resigned as directors of Green Star and transferred the business to Gonzales in mid-November 2014.

Meanwhile, Jaramillo sought, without success, for the next two years to recover funds from the balance of the $50,000 he had given DeAguilera. On April 17, 2015, DeAguilera sent Jaramillo an email which stated that $50,000 was paid to the lessor, was used for legal fees for filing the lawsuit against the City of Los Angeles and the appeal, for fees for Green Star, and for

Jaramillo's transfer of the business. In this email, DeAguilera recalled that he had earlier provided Jaramillo an accounting and would provide him another.

A month later, DeAguilera sent Jaramillo a letter which focused solely on the chronology of the litigation and claimed fees: $5,000 for the complaint for declaratory relief (which Jaramillo had paid to DeAguilera many months earlier), additional legal fees due him of $5,000 to oppose the City of Los Angeles position in the lawsuit, and an additional $10,000 due for the appeal and seeking of a writ. These services were provided in late 2014 and early 2015.

In late 2015, Jaramillo complained to the State Bar and in December 2015, DeAguilera replied to a State Bar investigator who sought DeAguilera's explanation of the uses of Jaramillo's $50,000. While admitting that he held the $50,000 in cash until disbursed, he gave both a different—and incomplete—explanation about the disbursements and fees owed him than he had given to Jaramillo about six months earlier. To the State Bar investigator, DeAguilera wrote that he had incurred $5,000 for negotiating the MMD lease with the lessor, $10,000 for the filing of the complaint for declaratory relief and motion hearings, $10,000 for the pursuit of the appeal and a writ, and $5,000 for legal services for Green Star corporate services. DeAguilera did not explain that he had separate fee agreements with Jaramillo for certain of the enumerated services and had already received $6,000 for fees per those agreements.

D. IN THE JARAMILLO MATTER, DEAGUILERA VIOLATED HIS DUTIES TO KEEP HIS CLIENT'S $50,000 IN A PROPER TRUST ACCOUNT, WILLFULLY MISAPPROPRIATED $22,600 OF THOSE FUNDS, AND MISREPRESENTED FACTS TO HIS CLIENT.

In counts 3, 4, and 7 , the NDC alleged, respectively, that DeAguilera willfully violated rule 4-100(A), Rules of Professional Conduct,[6] intentionally or with gross neglect; willfully

[6] All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

violated Business and Professions Code, section 6106,[7] by misappropriating $22,600 of the funds Jaramillo was entitled to receive; and further violated section 6106 by misrepresenting, intentionally or with gross neglect, that between September 25, 2014, and May 18, 2015, DeAguilera held monies for Jaramillo, including $10,000 for tenant improvements to the MMD, and that on October 1, 2014, DeAguilera filed a declaratory relief action for Jaramillo against the City of Los Angeles.

As to count 3, it is undisputed that DeAguilera never deposited any portion of Jaramillo's $50,000 cash tender for purchase or lease of the MMD into a proper trust account, but held the cash in an office locked box for over two months until it was all used. DeAguilera repeatedly assured his client and the lessor of the South Central MMD that these funds were held for the client's rent and building improvement payments. These uses made them undisputedly trust funds. Thus, DeAguilera clearly violated rule 4-100(A)'s requirement that "all funds received or held for the benefit of clients by a member [of the State Bar] . . . shall be deposited" in an identifiable bank account labeled as a trust account.

Rule 4-100(A) is a significant prophylactic rule, designed to establish ethical standards for the bar. Accordingly, the lack of harm to clients, the alleged good faith of the attorney, or even the lack of knowledge of the rule or its ambit are not defenses to the rule's willful violation. (*Silver v. State Bar* (1974) 13 Cal.3d 134,145 [former predecessor rule 9]); *Zitny v. State Bar* (1966) 64 Cal.2d 787, 793 [same].) As stated by the Supreme Court, the vital purpose of this rule is to prevent even the possibility or probability of the loss or misappropriation of trust funds, which actually occurred here. (*Silver v. State Bar, supra*, 13 Cal.3d at pp. 144–145, quoting *Peck v. State Bar* (1932) 217 Cal. 47, 51.)

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

DeAguilera urges a defense of good faith, claimed impossibility of depositing the cash into a trust account, citing several publications discussing the refusal of banks to accept money arising from marijuana ventures. But none of those sources deals with attorney trust accounts, and DeAguilera did not adduce evidence below from bankers or other attorneys who represent MMD clients that would have barred him from depositing Jaramillo's $50,000 into his CTA. DeAguilera's previous problem with a bank account closure occurred several years earlier when he sought to deposit cash payments for fees into his office or personal bank account.

Here, DeAguilera never even sought to deposit the cash into his CTA. Nor did he follow his own written direction to Jaramillo that if he did not explain the source of the cash, DeAguilera would return it to Jaramillo. Significantly, DeAguilera reported no difficulty in September 2014 of having his bank accept $27,400 of Jaramillo's cash in order to issue a cashier's check to the MMD lessor for the rent and tenant improvement expenses.

The Supreme Court's observation in an earlier opinion involving predecessor rule 9, *Walter v. State* Bar (1970) 2 Cal.3d 880, 888, in which that attorney also held trust funds in cash, is apt to the matter we review here: "An attorney's duty to hold money received in trust inviolate and separate from his own was well established long prior to [Walter's] admission to the bar; and [Walter] was no neophyte in the practice of law . . ." For the reasons set forth above, we uphold the hearing judge's conclusion that DeAguilera willfully violated rule 4-100(A)(1).

As to the charges of misappropriation in count 4 of the NDC, the hearing judge concluded that DeAguilera did violate section 6106 but did not specify whether he acted willfully or with gross neglect. DeAguilera denies that he engaged in misappropriation, citing to the evidence that he notified Jaramillo repeatedly of the importance of proceeding with litigation against the City of Los Angeles and Jaramillo's obligations to pay the legal fees for that service.

OCTC supports the hearing judge's conclusion of misappropriation and argues that it was willful and not merely grossly negligent. For several reasons, we agree with OCTC.

In our view, DeAguilera's failure to put Jaramillo's $50,000 in a bank trust account set the stage for his misappropriation of those funds. It enabled DeAguilera to choose when and how much of this money to withdraw unilaterally for legal fees without leaving any evidence thereof through checks or bank account transactions. DeAguilera never offered any contemporaneous ledgers or records of his use of Jaramillo's cash. His later accountings were inaccurate and inconsistent. The Supreme Court has previously noted that an attorney's "failure to keep adequate records or proper accounts is 'inherently' suspicious and can support an inference that [the attorney's] testimony is untrue." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 311.) His steadfast refusal to return any of the $22,600 portion of the $50,000 not authorized by Jaramillo further supports his intentional misappropriation of that sum.

For all the reasons below, we have concluded that DeAguilera intentionally invaded the remainder of the $22,600 of cash he was holding, for unagreed legal fees and willfully misappropriated that sum. As long-time case law has held, an attorney may not unilaterally determine fees and satisfy them from trust funds in the attorney's possession, even if he is entitled to attorney fees. (*Crooks v. State Bar* (1970) 3 Cal.3d 346, 358; *Most v. State Bar* (1967) 67 Cal.2d 589, 597.) This unilateral conduct of depriving a client of trust funds is a violation of section 6106's prohibition against acts of moral turpitude and dishonesty. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033–1034; *Jackson v. State Bar* (1975) 15 Cal.3d 372, 380–381.)

On review, DeAguilera has attacked the consistency of Jaramillo's testimony. However, we find overall that it was internally consistent and also consistent with the weight of the documentary evidence. As the attorney familiar with the legal issues of operating MMDs, drafting attorney client retainer agreements, and complying with client trust obligations, DeAguilera was in

a far better position than his client, who had a high school education and no experience running an MMD, to set forth and adhere to the parties' attorney-client responsibilities. While Jaramillo was willing to pay DeAguilera attorney fees separately for agreed work performed, he consistently opposed DeAguilera taking those fees from the $50,000 in cash, and made that clear to DeAguilera promptly, repeatedly, and in writing. That was consistent with DeAguilera's fee agreements that he would quote to and agree with Jaramillo for the fee for each later stage of the representation in the three different fee agreements. It was also consistent with DeAguilera's own several written assurances that he was holding the $50,000 for the MMD rent and tenant improvements. There is no evidence that DeAguilera followed the terms of his fee agreement and reached agreement with Jaramillo on later stages of representation and then billed for them before unilaterally invading the $22,600 remaining in his office.

DeAguilera also points to the Green Star organizational minutes of September 5, 2014, which he drafted, as proof that he had authority to use the $50,000 not only for MMD rental, improvements, and operations, but to use that sum for legal fees. We disagree with the breadth of DeAguilera's reading of those minutes. First, as we discuss *post* under Aggravation, issues raised at trial, and reflected in the hearing judge's decision, call into serious question the authenticity and probative value of these September 2014 minutes. Second, if we consider the merits of those minutes, the most that we can glean from them is that the $50,000 which DeAguilera held in cash belonged to Green Star, and that it was seen as a proper corporate purpose should Green Star (through its directors, Jaramillo and Espinoza) choose to decide to use those funds for the costs of litigation and corporate services.

We now discuss the hearing judge's findings and conclusions as to whether DeAguilera misrepresented facts to Jaramillo, as charged in count 7. We uphold the hearing judge's exoneration of DeAguilera of allegations that he misrepresented that he would use the sums from

the $50,000 for litigation. The decision below found that this alleged misstatement did not rest on clear and convincing evidence. On review, OCTC does not take issue with the judge's decision, and we adopt it.

However, the hearing judge found adequate evidence to draw the conclusion that DeAguilera misrepresented that he was holding $10,000 for payment to the lessor for tenant improvements at the South Central MMD; and that, on October 1, 2014, he had filed Jaramillo's declaratory relief action against the City of Los Angeles. We agree with the hearing judge and further find that the misrepresentations were intentional, which can be determined from the hearing judge having found DeAguilera fully aware of the true facts and the repeated instances of the misrepresentation that he was holding $10,000 for tenant improvements.

DeAguilera does not dispute that both of his representations were incorrect. However, he claims that they were not intentional deceits nor were they material. As to the statement of holding the $10,000, he claims that it was based on a mistake which Jaramillo had made in a handwritten accounting sent to DeAguilera and that DeAguilera did not catch the mistake. However, DeAguilera repeated this misrepresentation to Jaramillo in an email the next day.

As to DeAguilera's statement that he had filed an action 10 days before it had been filed, his explanation was that he had drafted the complaint, and, by October 1, 2014, had given it to his staff to give to his attorney service to file with the court. But he admitted that at the time he represented the filing date to Jaramillo, he did not know if the attorney service had received it or the Superior Court had filed it.

We determine that these statements were material to DeAguilera's attempt to convey to Jaramillo that he had earned legal fees and to the duty of an attorney to properly account for trust funds. We uphold the hearing judge's findings; and, as in the misappropriation of funds, give great weight to the hearing judge's evaluation of the evidence. DeAguilera was centrally

involved in the negotiation of the lease with the lessor and the payment schedule, and had records and emails of that work. Similarly, he was an experienced attorney who knew that the filing of a complaint in a court was a term of art, quite different from the act of asking a staff member to give a complaint to an attorney service to take to a court clerk's office.

E. THE CHAVEZ/GHAZARYAN MATTER

In fall of 2014, Makar Ghazaryan operated an MMD in the Studio City area of the City of Los Angeles, known as Pure Medical Collective. He was a sublessee of Rafael Chavez, who had no part in operating this MMD.

In October 2014, Ghazaryan hired DeAguilera for "corporate services," the extent of which are not clear in the record. Ghazaryan signed a fixed-fee agreement identical in nature to the form which DeAguilera used in the Jaramillo matter, which provides that a fixed fee, negotiated and agreed upon with the client, is charged for each phase of the legal representation. Also, as in the Jaramillo matter, DeAguilera's cover letter to this retainer agreement referred to the $1,000 fee requested as a "true retainer" fee. In this matter, the corporate services are not defined. Ghazaryan paid the $1,000 to DeAguilera.

By November, 2014, an unlawful detainer action had been filed against Chavez for allowing an MMD to operate in violation of City of Los Angeles Proposition D. Ghazaryan was also receiving violation notices from the City of Los Angeles because of Proposition D and wanted DeAguilera to file a declaratory relief action. Both Ghazaryan and Chavez retained DeAguilera, who prepared a single retainer agreement covering both the unlawful detainer defense of Chavez and the pursuit of the declaratory relief for Ghazaryan against the City of Los Angeles. Each client paid DeAguilera half of the $5,000 joint fixed fee requested.

It is undisputed that in accepting both Chavez and Ghazaryan as concurrent clients, but in separate matters, DeAguilera did not disclose to both clients that potential conflicts could exist

between them, and to obtain their informed written consent before undertaking the employment. DeAguilera testified that he did not envision any such potential conflict.[8]

DeAguilera obtained a dismissal of the first unlawful detainer action against Chavez but a new action was filed. He also drafted a declaratory relief complaint, which Ghazaryan verified.[9] Yet he did not file the declaratory relief action because, by spring 2015, Ghazaryan saw that his overriding problems in running the MMD were with criminal enforcement by the City of Los Angeles rather than civil land use issues. When law enforcement raided Ghazaryan's MMD and charged him with criminal violations, he ceased operations. That obviated the filing of the declaratory relief action.

Near the end of 2015, Ghazaryan hired another attorney to contact DeAguilera and seek an accounting and refund of fees paid for the declaratory relief action which was not filed. No such accounting was tendered until 2017, about a year after Ghazaryan complained to the State Bar. At trial, DeAguilera deemed that since his fee agreement for these services provided that the fixed fee of $5,000 was a retainer fee and was earned when paid, he had no reason to account earlier beyond citing to his fee agreement. As noted, on review, DeAguilera no longer disputes this conclusion of the hearing judge that he willfully failed to promptly account to Ghazaryan.

F. IN THE GHAZARYAN MATTER, DEAGUILERA VIOLATED HIS DUTIES TO PROMPTLY ACCOUNT TO HIS CLIENT FOR ADVANCE FEES, BUT DID NOT VIOLATE RULE 3-310(C)(1)

The NDC charged DeAguilera with four counts of misconduct in this matter. Two counts charged willful violations of rules 3-700(D)(1) and 3-700(D)(2), by, respectively, failing to return to Ghazaryan his file and documents and to refund unearned fees after employment

[8] However, the record shows that, in the Chera matter *ante*, when DeAguilera represented jointly both the operator of the MMD and the owner of the building in which the MMD was located in the same litigation, he did follow the disclosure and written consent provisions of rule 3-310(C).

[9] This proposed declaratory relief complaint was substantially identical to the one DeAguilera filed in October 2014 for Jaramillo's MMD, *ante*.

ceased.[10] The rule 3-700(D)(1) charge was dismissed by the hearing judge on OCTC's motion. The rule 3-700(D)(2) charge was dismissed by the hearing judge for lack of clear and convincing evidence that the fees DeAguilera kept were unearned, pointing to the variety of services he performed under this retainer agreement for unlawful detainer defense and declaratory relief. On review, OCTC does not dispute these dismissals, and we adopt them.

However, we adopt the hearing judge's conclusion that DeAguilera is culpable of willfully violating rule 4-100(B)(3)[11], as charged in count 9 of the NDC by not giving Ghazaryan or his new counsel a prompt accounting of $2,500 of advance fees which he paid. On review, DeAguilera has not disputed his culpability, and the record supports the hearing judge's conclusion.

DeAguilera could not ethically consider his fixed retainer fee to be a true retainer rather than advanced legal fees which were accountable under rule 4-100(B)(3). As concluded by the hearing judge, DeAguilera had not perfected a limited, permissible, true retainer agreement supported by proof that he had set aside blocks of time and refused business which would conflict with the time needed to perform the contracted services. (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 789; *Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164 [definition of true retainer fee]; *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950–951; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757–758.)

[10] Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

[11] Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

Finally, rule 4-100(B)(3)'s requirement for rendering appropriate accounts was clearly not met by DeAguilera's providing an accounting well over a year after its request. (See *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 415 [attorney did not account to clients until a year after settlement of case which yielded recoveries; rule 4-100(B)(3) violated].)

However, we reverse the conclusion of the hearing judge that DeAguilera willfully violated rule 3-310(C)(1)[12] as alleged in count 8 of the NDC.

DeAguilera contends that rule 3-310(C)(1) does not apply to this representation because he was representing his two clients in separate matters: only Ghazarayan (and his corporation) in the declaratory relief action and only Chavez in defending the unlawful detainer action. We agree with DeAguilera, noting that the record makes it clear that they were concurrently represented by DeAguilera in separate actions.

Our interpretation of rule 3-310 (C)(1) is that its focus is limited to representing clients in the same matter. The Discussion of rule 3-310(C)(1) immediately following the rule's text does define broadly the term "matter" to cover various litigation and non-litigation representation. However, nothing in this Discussion broadens the elements of the rule to cover concurrent representation in separate matters (Compare, rule 3-310 (C)(3).) Moreover, all of the examples of matters offered by the Discussion as to rule 3-110 (C)(1) are of multiple representation in the same matter and the opening sentence of the Discussion as to rule 3-310 (C)(1) and (C)(2) supports that. Finally, we have found no authority which has applied this rule to a situation revealed by the record. (See *In the Matter of Guzman* (Review Dept. 2014) 5 Cal.

[12] Rule 3-310(C)(1) provides that an attorney must not, without the informed written consent of each client, accept representation of more than one client in a matter in which the clients' interests potentially conflict.

State Bar Ct. Rptr. 308, 313 [attorney violated rule 3-110(C)(1) when representing multiple clients jointly in same plaintiff personal injury matter].)

Although the hearing judge found culpability of this violation, he did not focus on this element of rule 3-310(C)(1). When DeAguilera raised it in his brief on review, OCTC did not respond to it nor did it offer a position on it when this court raised at oral argument the issue of the elements of rule 3-310 (C)(1).

III. CONSIDERABLE, SIGNIFICANT AGGRAVATION OUTWEIGHS VERY LIMITED MITIGATION

In the process of recommending the appropriate degree of discipline, OCTC must establish aggravating circumstances by clear and convincing evidence (std. 1.5). And DeAguilera has the same burden to prove mitigation (std. 1.6).

A. AGGRAVATION

1. Prior Record of Discipline (Std. 1.5(a))

As the following summary of the record shows**,** DeAguilera has been disciplined twice in the past. He was privately reproved in March 2007, and he was actually suspended for three months, and placed on probation for two years, effective August 15, 2012.

DeAguilera I.[13] On March 5, 2007, DeAguilera was privately reproved for misconduct in two matters. He was required to take the Multistate Professional Responsibility Exam and to attend the State Bar's ethics school course. His misconduct occurred between September 2005 and March 2006. This discipline was based on a stipulated disposition between DeAguilera and OCTC and approved by a hearing judge. In one matter, DeAguilera willfully failed to report timely to the State Bar, per section 6068, subdivision (o)(3), that he had been sanctioned by the Placer County Superior Court for having filed a frivolous motion. In that same matter, he willfully failed to obey that court order, as required by section 6103, because he failed to timely

[13] State Bar Court Case Nos. 06-O-10692 and 06-O-12695.

comply with it. In the other matter, DeAguilera had also issued an advertising circular which appeared in the Spanish language and misled readers as to the status of a federal guest worker statute. He admitted that he willfully violated rule 1-400(D)(1)-(2). No aggravating circumstances were presented. In mitigation, DeAguilera had no prior discipline, expressed remorse for his conduct, and no harm occurred. As to the advertisement, he discontinued its use a month after it first appeared.

DeAguilera II.[14] Effective August 15, 2012, the Supreme Court suspended DeAguilera for one year, stayed that suspension, but ordered him placed on probation until August 15, 2014, on condition that he be actually suspended for 90 days; make restitution of a total of $22,288 to three former clients; and, inter alia, complete the Bar's ethics school and trust accounting school programs, and pass the Multistate Professional Responsibility Exam. As did *DeAguilera I*, this prior rested on a stipulated disposition which considered no mitigating circumstances but the one aggravating circumstances of his prior private reproval.

DeAguilera II involved a total of 16 admitted acts of professional misconduct spread over six separate client matters occurring between June 2008 and January 2011: DeAguilera's failing to act with competence, per rule 3-110(A), in four of the client matters; his improper withdrawal from employment, per rule 3-700(A)(2), in two of the client matters; his failure to keep clients sufficiently informed of significant developments in matters he handled for four of the clients, per section 6068, subdivision (m); his failure to refund unearned fees to two of his clients after he had withdrawn from employment, per rule 3-700(D)(2); and his failure to promptly account to five of his clients for funds he had received for them, per rule 4-100(B)(3).

Standard 1.5(a) provides that a record of prior discipline may be an aggravating factor. The hearing judge found that DeAguilera's two prior discipline records are a significant

[14] Supreme Court Case No. S201793.

aggravating factor. We agree, especially since DeAguilera's 2012 suspension involved some of the same serious misconduct we find in this proceeding now before us, notably his failure to promptly account to clients for funds he held on their behalf.

Moreover, DeAguilera started to engage in the misconduct in his second proceeding just 15 months after his reproval. His misconduct in the Jaramillo matter in the current proceeding started just a week before the end of his probationary period in *DeAguilera II*.

2. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found correctly that DeAguilera was culpable of multiple acts of wrongdoing. In addition to misappropriating Jaramillo's $22,600, he engaged in two acts of deceit and willfully violated rule 4-100(A) by keeping Jaramillo's $50,000 outside of a CTA. In the Ghazarayan/Chavez matter, he failed to timely account to Ghazarayan for advance fees. We assign moderate aggravating weight to this factor.

3. Indifference to Rectifying the Consequences of Misconduct (Std. 1.5(l))

We agree with the hearing judge that DeAguilera lacked insight into his misconduct and did not present evidence of rectification or remorse. He has yet to refund to Jaramillo any of the $22,600 he misappropriated. Until he filed his brief on review, he did not acknowledge his failure to provide a timely accounting to Ghazaryan. As the judge aptly noted, instead of learning from his 2012 suspension for, inter alia, five counts of failing to account to clients for use of their funds, and from the rehabilitative duties of ethics and CTA courses which were imposed on him, he committed some of the misconduct in this proceeding while under his earlier probationary supervision. We assign significant aggravating weight to this factor.

4. Significant Harm to Client (Std. 1.5(j))

We also agree with the hearing judge that DeAguilera significantly harmed Jaramillo. Depriving him of access to nearly half of the $50,000 which Jaramillo counted on to open and

operate the MMD, caused him to cease business operations just a few months after opening. Although the record is unclear whether Jaramillo sold the business at a gain or loss, the lack of use of his $22,600 was a moderately aggravating circumstance.

5. Lack of Candor to State Bar Court (Std. 1.5(l))

The hearing judge's finding in aggravation that DeAguilera lacked candor during the trial was fully warranted. It centered around his misrepresentations of fact and his offering as genuine an exhibit which had been obviously fabricated, but which DeAguilera represented as true.

Near the end of the third day of trial, DeAguilera offered as genuine a copy of the corporate minutes of Green Star which he had drafted on September 5, 2014, and which bore the purported signatures of Jaramillo and Sanchez as Green Star directors. (Exhibit 1068.) Although an unsigned copy of these minutes had been introduced by the State Bar as Exhibit 73 on the trial's third day, DeAguilera testified that the signed copy was a true and correct copy of the original and that he saw Jaramillo sign the document. Jaramillo was asked only whether he recognized and signed the Green Start minutes of November 11, 2014. He testified that he recognized the document and signed it.

We agree with the hearing judge's finding that DeAguilera's Exhibit 1068 was a fabricated document, caused when the signatures of the two Green Star directors were copied from the signed minutes of the later, November 11, 2014, meeting of Green Star directors (Exhibit 51) and pasted onto a copy of the unsigned September 5 minutes.

After careful review of the exhibit, the hearing judge found that there were three obvious discrepancies between the unsigned September 5 minutes (Exhibit 73) and Exhibit 1068, which DeAguilera represented to be genuinely signed: (1) on the signed copy, the vertical spacing for the signature area was notably greater than on the unsigned copy, in order to accommodate the pasted signatures, and DeAguilera was unable to explain such a difference and did not even

acknowledge that he saw such a difference when shown the two exhibits at trial; (2) the two director signatures on the signed copy were the identical signatures to those on the later, November 11, set of minutes (Exhibit 51); and (3) in an attempt to mask that the uppermost parts of the November 11 signature of Jaramillo crossed into the printed date line in that document (Exhibit 51), when those signatures were pasted to form Exhibit 1068, those uppermost portions of Jaramillo's signature were noticeably cut off. We agree that these discrepancies show that Exhibit 1068 was fabricated and we conclude that DeAguilera's offering it and persisting in its authenticity in the face of the discrepancies is a serious aggravating circumstance. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791–792 [deception to State Bar may be more serious than substantive conduct being investigated].)

DeAguilera's opening brief on review contends that he did not intentionally misrepresent any facts to the hearing judge, and his rebuttal brief states that even if it is conceded, arguendo, that the signatures on the September 5 minutes were cut and pasted from later minutes, this fell short of intentional misrepresentation required to find aggravation. DeAguilera also contends that he was deprived of requisite due process because no expert or other evidence was adduced as to the differences of the minutes or who may have created Exhibit 1068, and that the hearing judge's findings in aggravation infected the judge's culpability findings.

We reject these contentions. The record does not establish who fabricated Exhibit 1068[15] but our focus of this aggravating evidence is not that DeAguilera created the forgery, but that he offered a fabricated document as authentic and did not withdraw the exhibit or correct his testimony of that document's authenticity, even when its patent discrepancies were called to his

[15] Attached to DeAguilera's rebuttal brief are declarations of two of his staff written after the hearing judge filed his decision, each stating, in effect, their involvement in preparing and locating Green Star minutes. We decline to consider these declarations as the witnesses were not presented at trial, and thus not subject to cross-examination. (Cf. *In re Ford* (1988) 44 Cal.3d 810, 818 [in absence of stipulation or agreement by OCTC, character reference letters are hearsay and cannot be considered].)

attention. At trial, the hearing judge evaluated the relevant exhibits and the witness examination of them. We are given no good cause to differ from the hearing judge's adverse finding that DeAguilera's lack of candor to the court is a "substantial aggravating factor."

B. MITIGATION

1. Extraordinary Good Character (Std. 1.6 (f))

Although favorable character evidence was received about DeAguilera from three former clients and one attorney, the hearing judge concluded that this evidence warranted moderate, but not significant, credit. Our evaluation of the evidence warrants giving it only the slightest weight.

First, it was not evidence from a wide range of references in the legal and general communities. (Std. 1.6(f); *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387.) Second, as noted by the hearing judge, several of the witnesses were not aware of the full extent of DeAguilera's misconduct. They appear to have read the charges against DeAguilera in the NDCs in this proceeding just the day before testifying. One or two witnesses seemed unaware of the meaning or scope of some of the charges. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131.) But a prime concern to us is that the witnesses had little knowledge of DeAguilera, having known him from about 10 months to three years or less.

2. Good Faith Belief Honestly Held and Objectively Reasonable (Std. 1.6(b))

DeAguilera contends that the hearing judge erred by not giving him mitigating credit for his professed good faith belief that he was unable to deposit Jaramillo's $50,000 into a CTA. For the reason we discussed at length in determining that DeAguilera was culpable of willful violation of rule 4-100 (A), *ante*, we disagree with his contention and agree with the hearing judge who concluded that DeAguilera did not establish by clear and convincing, credible evidence, the requisite honesty of his beliefs and reasonableness of his position. (E.g., *In the*

Matter of Thomson (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 976; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.)

DeAguilera's own testimony showed that when he received Jaramillo's $50,000, he planned to utilize part of it to satisfy his fee claims. Yet he assured Jaramillo and the South Central MMD lessor that he held it for rent and tenant improvements. Even if, arguendo, we were to understand that the only reason DeAguilera declined to deposit the cash into a CTA was his concern as to the source of the funds, he never followed his stated plan, that if Jaramillo failed to establish a proper source of funds, DeAguilera would return the cash to Jaramillo.

IV. DISBARMENT IS THE APPROPRIATE DISCIPLINE

We begin our discussion of the appropriate sanction to recommend with the standards. Although they are not binding, they are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91–92), and should be followed whenever possible (std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

Our first task when applying the standards is to determine which standard specifies the most severe sanction for the misconduct found. (Std. 1.7(a).) DeAguilera's willful misappropriation of $22,600 of trust funds triggers the presumed sanction of disbarment under standard 2.1(a), unless the amount misappropriated is insignificantly small—which it is not—or sufficiently compelling mitigating circumstances clearly predominate—which they clearly do not. Indeed, DeAguilera's willful misappropriation in the Jaramillo matter is the type of grave misconduct which has resulted in disbarment, even without prior discipline. (E.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Kelly v. State Bar*, (1988) 45 Cal.3d 649, 655.)

Since DeAguilera has been disciplined twice, we next look to standard 1.8(b), providing that disbarment is appropriate when an attorney has two or more prior records of discipline; and,

as pertinent here, both an actual suspension was imposed in any of the prior disciplinary matters and the prior and current disciplinary proceedings demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Both of these elements are established. DeAguilera's 2012 discipline resulted in a 90-day actual suspension. That prior matter and the current one show that DeAguilera has been unable or unwilling to conform his practice to fundamental ethical rules in accounting to clients for the handling of their funds.

Our function in recommending discipline is not to punish the attorney, but to protect the public, courts, and legal profession; to maintain high professional standards; and to preserve public trust in the legal profession. (Std. 1.1; *Stevens v. State Bar* (1990) 51 Cal.3d 283, 288.)

Our primary concern in rejecting suspension is that the rehabilitative measures imposed on DeAguilera in his 2012 suspension, including education in client trust accounts and ethics generally, did not serve to prevent his present misconduct. That misconduct commenced while DeAguilera was still serving his probationary period in *DeAguilera II*. We have concluded that the risk that DeAguilera may engage in continued, serious professional misconduct if allowed to continue practicing law is sufficiently high to warrant his disbarment. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1121.)

V. RECOMMENDATION

We recommend that James DeAguilera be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that DeAguilera make restitution to Carlos Jaramillo, or to the State Bar Client Security Fund to the extent of payment to Jaramillo in accordance with Business and Professions Code section 6140.5. We recommend that restitution be ordered in the amount of $22,600, plus 10 percent interest per year from October 1, 2014. De Aguilera shall furnish satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.

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

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

VI. ORDER OF INACTIVE ENROLLMENT

The order that James DeAguilera be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective October 15, 2017, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

McGILL, J

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*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.