

Filed July 8, 2022

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of	)	Case No. SBC-21-O-30051
	)	
FRANK R. SARIOL,	)	OPINION
	)	
State Bar No. 140406.	)	
	)	
_____	)	

This matter reemphasizes the care necessary when dealing with trust funds. Not only should attorneys be vigilant while holding trust funds in a client trust account (CTA), but also in recognizing which funds need to be segregated in the CTA.

This is Frank Sariol’s second discipline case which stems from his mishandling of settlement funds subject to an attorney’s lien in a worker’s compensation matter. He was charged with five counts of misconduct: failure to obey a court order, misappropriation, failure to promptly distribute funds, and two counts of failure to maintain funds in his CTA. The hearing judge found Sariol culpable as charged and recommended that he be actually suspended for six months.

Sariol appeals. He argues that he is not culpable of four of the five counts and seeks no more than a stayed suspension or a 30-day actual suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests we uphold the hearing judge’s findings and discipline recommendation. Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we dismiss count one for failure to obey a court order and count two for moral

turpitude misappropriation. We find Sariol culpable for the remaining counts based on his CTA violations for failing to maintain funds in his CTA and failing to promptly distribute funds. Although we find less culpability than the hearing judge, we affirm the discipline recommendation. Given Sariol's prior record of discipline which also involved CTA violations, the applicable disciplinary standards and case law support an actual suspension of six months to protect the public, the courts, and the legal profession.

### **I. PROCEDURAL BACKGROUND**

On January 27, 2021, OCTC filed a five-count Notice of Disciplinary Charges (NDC) charging Sariol with failing to obey a court order, in violation of section 6103 of the Business and Professions Code<sup>1</sup> (count one); moral turpitude for misappropriation of entrusted funds in violation of section 6106 (count two); failing to hold funds in trust, in violation of former rule 4-100(A) of the California Rules of Professional Conduct<sup>2</sup> (count three) and rule 1.15(a)<sup>3</sup> (count four); and (5) failure to promptly pay lienholder funds in violation of former rule 4-100(B)(4). Sariol filed a response on March 8, 2021.

On May 21, 2021, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). On May 25, 2021, the hearing judge held a one-day trial. On June 1, 2021, the parties submitted a Supplemental Stipulation as to Facts and Admission of Revised Document (Supplemental Stipulation).<sup>4</sup> Posttrial closing briefs followed, and the judge issued her decision on August 10, 2021.

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<sup>1</sup> All further references to sections are to the Business and Professions Code unless otherwise noted.

<sup>2</sup> All further references to former rules are to the California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

<sup>3</sup> All further references to rules are to the current California Rules of Professional Conduct unless otherwise noted.

<sup>4</sup> At trial the parties agreed to modify the Stipulation and the hearing judge ordered the parties to submit a revised version of one exhibit.

## II. FACTUAL BACKGROUND<sup>5</sup>

### A. The Salguero Matter & Attorney's Lien

Sariol was admitted to practice law in California on June 6, 1989. For 30 years, Sariol has handled workers' compensation matters. In May 2016, Sariol agreed to represent an applicant, Roland Salguero, who was seeking benefits in two cases pending before the Anaheim Workers' Compensation Appeals Board (WCAB). Prior to Sariol handling the case, Salguero was represented by attorney Suresh Gulaya. Attorney Gulaya filed a lien for his attorney's fees in the Salguero case in April 2015.

Between January 2017 and February 2019, Sariol managed his law practice remotely as he planned to retire and permanently relocate to Florida. While handling the Salguero matter, Sariol returned to California once every one to two months. During this time, Sariol hired Jennifer Carlton to manage the firm's workers' compensation matters.<sup>6</sup> After Carlton left the law firm in February 2019, Sariol abandoned his plans to retire and returned back to California.

On January 27, 2017, Sariol resolved the WCAB matters on behalf of his client by entering into a Compromise and Release (C&R), which Sariol signed. On page seven of the C&R, the following language was included in a section entitled "Comments":

"This is an unwitnessed alleged injury that was not timely reported, complicated by August 2010 MVA involving same of [sic] similar body parts. The exact date of injury is known and after two PQME reports (Dr. Perlo and Dr. Rotenberg) parties reached compromised settlement. Applicant was previously represented by Tustin Law Irvine (Suresh Gulaya). The parties request the fee for AA services be paid to Sariol Law Santa Ana, held in trust pending agreement with Tustin Law Irvine, with CIGA [California Insurance Guarantee Association] held harmless."

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<sup>5</sup> The facts are based on the Stipulation, Supplemental Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

<sup>6</sup> The hearing judge's decision referred to Jennifer by her previous name, Jennifer Baca.

On February 6, 2017, the WCAB issued an order approving the C&R for both of Salguero's cases. The order stated the liens were to be paid as set forth in the C&R and referenced the above language regarding the attorney's lien. Sariol testified that he was familiar with the document upon signing it based on his decades of experience and that he did not read every line of the document but only the portions he deemed "pertinent and important." The hearing judge found credible that he read the section referencing the attorney's lien "very cursorily" and he did not remember reading it in its entirety. Sariol also credibly testified that based on prior experience, he and his clients were usually paid by the insurance company and so were generally not responsible for handling attorney's liens. Therefore, since Sariol did not carefully review the document, he missed the language set forth in the C&R requiring him to hold the attorney's fees in trust, pending an agreement with Gulaya.

On February 22, 2017, Sariol and Gulaya were served via mail with the order approving the C&R. At trial Sariol testified that the order was received by his office personnel. Sariol maintained a CTA for his personal injury practice but did not maintain a CTA for his workers' compensation cases. Sariol's office received a \$3,000 check for the attorney's fees, dated March 1. The check memo line stated "Per OACR," in reference to the WCAB order approving the C&R. Sariol's clerk deposited the check into the firm's general operating account. Between April 7 and April 13, the operating account dropped below \$3,000; the account was overdrawn by \$88.69 on June 23.

During the disciplinary trial, attorneys Carlton, Sariol, and Gulaya provided testimony on the issue of lien provisions. Sariol and Carlton testified that the C&R lien provision was unusual in the field of workers' compensation. Sariol stated that in his 29 years of experience on workers' compensation matters, he had never seen a lien provision requiring him to place attorney's fees in a CTA. He claimed that workers' compensation attorneys do not need trust

accounts because they do not hold client funds. He testified that in his experience, the insurance companies pay liens directly and the judge usually instructs the insurance company to hold the funds until a lien is resolved. Carlton testified similarly and stated that it was unusual for funds to be held in trust. But she noted that when liens are at issue, the C&R may require money to be held in trust, but not by applicant's counsel, only by defense counsel.

In contrast, Gulaya testified that an attorney's lien is frequently involved in workers' compensation cases. Gulaya has spent around 17 years of his legal career handling workers' compensation matters and estimated that approximately 15 to 20 percent of the cases involve liens. He testified that ordering an attorney to hold funds in trust due to a lien is routine, and he does not recall any cases involving liens where trust accounting was not ordered. Gulaya also stated that in his experience the final attorney for an applicant typically receives the attorney's fees directly and then holds the clients' funds in trust while negotiating with former counsel.

Although the attorneys had differing opinions based on their experiences with liens, the hearing judge found that each of the attorneys testified honestly and credibly based on their individual experiences.

**B. Gulaya's Numerous Attempts to Negotiate the Attorney's Lien**

On March 24, 2017, Gulaya called Sariol's office and attempted to settle the attorney's lien. He continued to call periodically, first monthly, and then every two months, in an attempt to resolve the lien. Each time he called, Gulaya was told that Sariol was not in the office. On July 31, 2018, Gulaya sent a letter to Sariol's office demanding payment. In his letter, Gulaya included language from the C&R relating to the attorney's fees lien. The letter also mentioned Gulaya's several attempts to contact Sariol and requested that Sariol contact him to resolve the lien.

On October 12, 2018, Gulaya called Sariol's office and spoke with Carlton regarding the attorney's lien. She stated that she would look into the matter and follow up with him. After speaking with Carlton, Gulaya sent her an email, copying Sariol, to memorialize their conversation. Gulaya also attached to the email a copy of his July 31 letter and relevant portions of the C&R. After speaking with Gulaya, Carlton contacted the hearing representative and office manager about the lien, but neither provided Carlton with any relevant information regarding the issue. Carlton did not speak with Sariol about the lien.

On October 19, 2018, Gulaya sent a follow-up email to Carlton, copying Sariol, asking for a response that afternoon regarding the status of resolving the lien. He sent a second follow-up email on October 26, 2018; this email was sent to Sariol with Carlton copied. Gulaya requested a reply concerning the lien and emphasized that Sariol's office had not responded to his previous inquiries. Gulaya did not receive a response.

On November 1, 2018, Gulaya sent another letter to Sariol's office referencing his numerous attempts to resolve his lien. In the letter he offered to settle the matter for \$2,000. Sariol did not respond to the letter. Sariol testified that he believed that he missed Gulaya's multiple emails due to the volume of emails that he receives daily.

### **C. Gulaya Files a State Bar Complaint**

On December 21, 2018, Gulaya filed a complaint with OCTC against Sariol after unsuccessfully attempting to resolve the attorney's lien issue with Sariol for nearly two years. On March 11, 2019, OCTC uploaded a letter to Sariol's State Bar profile and requested information concerning Gulaya's complaint. On April 12, after receiving no response to its letter, OCTC sent a follow-up letter to Sariol.

On April 22, 2019, Sariol's office called Gulaya and offered to settle the lien for \$2,000, which was the amount Gulaya requested. On April 29, Sariol issued a check to Gulaya for

\$2,000 from the firm's operating account. On April 30, Sariol called OCTC and acknowledged receipt of the April 12 letter. He stated that he received \$3,000 for attorney's fees and that the funds were deposited into his firm's operating account. When questioned regarding whether the funds needed to be placed in a CTA, Sariol stated that the order approving the C&R could be read as requiring him to maintain the \$3,000 in any bank account, not necessarily a CTA. During the call, Sariol acknowledged that he had not attempted to negotiate the lien with Gulaya and that his staff failed to advise him of the messages. He also stated that he had recently mailed a check to Gulaya.

On May 10, 2019, Sariol provided a written response to OCTC's letters, confirming that he paid Gulaya and the check was cashed. Sariol explained that he does not open a CTA in workers' compensation cases as he only received money for fully earned attorney's fees. He stated he deposited the funds in his operating account and paid Gulaya when he learned the lien remained outstanding. His letter explained, "This was an unfortunate case where the clerk that was handling the case did not notify me or the attorney handling the case [Carlton], that Mr. Gulaya had made a demand for his fees. As a matter of formality and professional etiquette, we pay any lien forthwith; this one simply fell through the cracks."

### **III. CREDIBILITY FINDINGS**

Sariol is an experienced civil practitioner with nearly 30 years practicing workers' compensation law. At the crux of the disciplinary charges is whether Sariol willfully disregarded the language of the C&R requiring him to hold Gulaya's funds in trust. The hearing judge accepted Sariol's testimony that he cursorily read the C&R and did not read each and every line of the document. The judge found Sariol credibly testified as to the unusual nature of the requirement to maintain the funds in trust because based on his prior experience, he and his clients were generally not responsible for handling attorney's liens. The judge concluded that he

did not consciously track or recall the lien after signing the C&R. She also accepted his testimony that he held an honest belief, albeit unreasonable, that he was entitled to the funds. Based on our independent review of the record, we adopt the judge's credibility determinations as supported by the record and conclude that Sariol testified truthfully during his disciplinary trial.

#### IV. CULPABILITY<sup>7</sup>

##### A. Count One—Failure to Obey a Court Order (§ 6103)

Section 6103 prohibits an attorney from willful disobedience or violation of a court order requiring him to do or forbear an act. In count one, OCTC alleged Sariol was culpable under section 6103 for failing to maintain \$3,000 in a CTA to satisfy Gulaya's attorney's fees lien as specified in the WCAB order. The hearing judge found Sariol culpable as charged by concluding that although he did not personally receive the order when it was served, both the proof of service and his office receiving and processing the order establishes that he received proper notice.

To prove failure to obey a court order under section 6103, it must be established, at a minimum, that an attorney *knew* what he or she was doing or not doing and that he or she intended either to commit the act or to abstain from committing it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787, citing *King v. State Bar* (1990) 52 Cal.3d 307, 313-314.) Sariol challenges culpability under count one by arguing that he did not have actual knowledge of the court's order. He acknowledged in his Stipulation that the order was properly served on his law office and the record establishes that the order was

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<sup>7</sup> All culpability findings in this opinion are established by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)



received and processed by one of Sariol's staff members. During the disciplinary trial, Sariol testified that he only cursorily read the C&R. The order referenced the C&R provision requiring attorney's fees to be held in trust only by an asterisk followed by a handwritten addition stating, "\* per [or see] paragraph 9 of C&R." Sariol testified that he did not specifically recall reading the language requiring the funds to be held in trust and subject to an attorney's lien. The hearing judge concluded Sariol's testimony was credible.<sup>8</sup> (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility having observed and assessed witnesses' demeanor and veracity firsthand].)

OCTC asserts the record establishes that Sariol was presumed to be on notice of the order because he reviewed and signed the C&R and argues he "had or should have had actual knowledge of his obligation." However, we find OCTC did not prove by clear and convincing evidence that Sariol violated section 6103. Sariol did not have actual knowledge of the specific language of the order since it was received and processed by his staff. And he credibly testified that he did not recall the trust requirement or lien provision in the C&R and that, based on his nearly 30 years of practicing workers' compensation law, he was accustomed to liens being handled by the insurance company prior to the issuance of attorney's fees. We examined the C&R and noted that the requirement that the funds be held in trust pending agreement with Gulaya was inconspicuously located in the "Comment" section at the very end of the unrelated added text. This is consistent with Sariol's testimony that he did not notice the unusual provision. We agree the record clearly supports that Sariol violated his CTA duties, as discussed *post* in our culpability findings under counts three, four, and five. However, OCTC did not

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<sup>8</sup> The hearing judge noted that Sariol testified at one point that he did not recall if he was aware that Gulaya had a lien but also testified that when he signed the C&R, he was aware of the lien and intended to pay it. The judge determined that Sariol knew about the lien when signing the C&R but did not consciously track or recall the lien afterwards.

prove that he *willfully* intended to disobey or violate the court's requirement that the attorney's fees subject to the lien be held in trust. Resolving all reasonable doubts in Sariol's favor (*Lee v. State Bar* (1970) 2 Cal.3d 927, 939), we do not find sufficient evidence to support a section 6103 violation. Accordingly, we dismiss count one with prejudice for lack of evidence. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

**B. Count Two—Moral Turpitude – Misappropriation (§ 6106)**

In count two, OCTC charged Sariol with misappropriating \$3,000 by depositing the attorney's fees subject to Gulaya's lien into his firm's operating account and then spending the funds. The hearing judge found that Sariol's cursory reading of the C&R and order, coupled with his lack of oversight of his staff, resulted in misappropriation of the entrusted funds through gross negligence. Sariol asserts that the misappropriation occurred due to mere negligence from simple mistakes and clerical errors.

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. When funds to be held in trust drop below the amount the attorney is required to hold for a client, a presumption of misappropriation arises. The burden then shifts to the attorney to show that misappropriation did not occur and that he was entitled to withdraw the funds. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.)

Sariol stipulated that in April 2017, the amount held in his firm's operating account, where the check was mistakenly deposited, dropped below \$3,000. He explained that the drop was due to him missing the C&R provision in question and his staff receiving a check payable to only Sariol while not being aware of the provision requiring the funds to be held in trust. OCTC

contends that by signing the C&R, Sariol owed a fiduciary duty to maintain the funds in trust and that his failure to carefully read the pertinent sections of the C&R and properly advise his staff amounts to moral turpitude.<sup>9</sup>

Although the hearing judge found culpability for misappropriation by gross negligence, she determined that Sariol did not act with bad faith or dishonesty. She also found Sariol credibly testified that had he been consciously aware of the outstanding lien, he would have negotiated and paid Gulaya promptly. The judge's factual findings on Sariol's "intent, state of mind, good faith, and reasonable beliefs and actions," which we find bear on whether moral turpitude was involved in this matter, are entitled to great weight. (*In the Matter of Respondent H* (Review Dept.1992) 2 Cal. State Bar Ct. Rptr. 234, 241.)

Where an attorney's fiduciary obligations are involved, particularly CTA responsibilities, a finding of gross negligence supports misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.) Such gross negligence in handling client funds has been found where an attorney improperly delegated all responsibility for his CTA with virtually no oversight and carelessly supervised office staff, regardless of the attorney's intent. (*Id.* at pp. 474-475.) By not carefully reading the C&R and order, the record establishes that Sariol acted negligently. While Sariol's actions were negligent, his inattention to the C&R provision requiring attorney's fees to be held in trust, by itself, does not show that he acted willfully, dishonestly, or with gross negligence. As noted above, the requirement that the funds be held in trust was inconspicuously placed at the end of a "Comments" provision of the C&R, and Sariol credibly testified that he did not remember noticing this requirement nor was it common in his practice. Also, when the State

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<sup>9</sup> OCTC advances arguments under this count which seem to allege that Sariol failed to properly supervise his staff; however, we note OCTC did not charge in the NDC that Sariol failed to act completely in violation of former rule 3-110(A). We do not find OCTC's arguments relevant to our discussion of misappropriation.

Bar contacted him regarding Gulaya's complaint, Sariol took responsibility, issued payment to Gulaya, and showed remorse for his mistakes. Based on these findings, we conclude that Sariol had an honest, but unreasonable, belief that he was entitled to the entire \$3,000 check as attorney's fees under the C&R. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 589 [attorney's honest and unreasonable belief that he has right to entrusted funds may be defense to misappropriation involving moral turpitude].) We find that Sariol did not act with moral turpitude to misappropriate the lien funds and dismiss count two with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

**C. Count Three—Failure to Maintain Funds in Trust (Former Rule 4-100(A))  
Count Four—Failure to Maintain Funds in Trust (Rule 1.15(a))**

In count three of the NDC, OCTC alleged Sariol violated former rule 4-100(A)<sup>10</sup> by depositing the \$3,000 subject to Gulaya's attorney lien into his firm's operating account and not into his CTA on March 1, 2017. In count four, OCTC alleged Sariol violated rule 1.15(a)<sup>11</sup> based on the same conduct as count three by not properly maintaining the entrusted funds in a CTA through April 2019. The hearing judge found Sariol culpable as charged in both counts. We agree.

An attorney can create a fiduciary relationship with a non-client when he receives money on behalf of the non-client. (See *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.)<sup>12</sup> The

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<sup>10</sup> Under former rule 4-100(A), "All funds received or held for the benefit of clients . . . shall be deposited [into a CTA] . . . . No funds belonging to the [licensee] or the law firm shall be deposited [into the CTA] or otherwise commingled therewith . . . ."

<sup>11</sup> Rule 1.15(c) provides: "All funds received or held by a lawyer . . . for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled 'Trust Account' or words of similar import . . . ."

<sup>12</sup> In workers' compensation cases, the attorneys' fees payable to the legal counsel for the injured worker constitute a lien (*Baca v. State Bar* (1990) 52 Cal.3d 294, 299, fn. 3) and represent entrusted funds for the purposes of attorney discipline.

attorney “must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed.” (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632.) The C&R required Sariol to hold the \$3,000 attorney’s fees in trust until the fees were negotiated with Gulaya and he did not do so. Instead, the funds were deposited into his firm’s operating account and spent. On review, Sariol argues that the mistake was caused due to his staff’s negligence. He asserts that he had proper office procedures in place and the error in not depositing the check into the CTA does not constitute an ethical violation. This argument is unavailing. An attorney has a “personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds.” (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.) And reasonable reliance on a partner, associate, or responsible employee to handle CTA duties does not relieve an attorney from the professional responsibility to properly maintain funds in a CTA. (*In re Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411 [finding culpability under former rule 4-100(A) by concluding that attorney’s reliance on another attorney did not alleviate her obligation to ensure funds were properly retained in CTA].)

Sariol violated former rule 4-100(A) and rule 1.15(a) by failing to maintain \$3,000 in trust on behalf of Gulaya as required by the WCAB order. Good faith is no defense to culpability because the rule is violated when an attorney fails to deposit funds in a manner designated by the rule, irrespective of intent. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976; see also *Doyle v. State Bar* (1982) 32 Cal.3d 12, 23 [the rule leaves no room for inquiry into the attorney’s intent].) Thus, we find Sariol culpable as charged in counts three and four. Since the misconduct underlying count three supports the same discipline as count four, we assign no additional weight in discipline to count four. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

**D. Count Five—Failure to Promptly Distribute Entrusted Funds (Former Rule 4-100(B)(4))**

Former rule 4-100(B)(4) requires attorneys to “[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the member which the client is entitled to receive.” Sariol concedes, and the hearing judge found, that he willfully violated the rule by failing to respond to Gulaya’s multiple requests to satisfy the lien and disburse his attorney’s fees promptly. We agree and neither party contests this finding on review. Accordingly, we find Sariol culpable of violating rule 4-100(B)(4).

**V. AGGRAVATION AND MITIGATION**

Standard 1.5<sup>13</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Sariol to meet the same burden to prove mitigation.

**A. Aggravation**

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

Sariol has one prior record of discipline. On June 22, 1999, the Supreme Court ordered that he be placed on three years’ probation and actually suspended from the practice of law for five months. Sariol stipulated to misconduct arising from multiple client matters, including (1) failing to promptly respond to client inquiries, (2) multiple counts of willful misappropriation involving moral turpitude, (3) failing to properly maintain and promptly distribute entrusted funds, and (4) failing to competently perform legal services. Nearly all the violations in his prior misconduct involved failures to maintain and promptly issue payments to satisfy medical liens. In aggravation, Sariol committed trust account violations, caused significant harm, and his misconduct evidenced a pattern. In mitigation, he experienced significant medical and financial problems.

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<sup>13</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

The hearing judge found Sariol's prior record of misconduct aggravating and assigned moderate weight. (Std. 1.5(a) [prior discipline record is aggravating].) We agree. OCTC does not contest this finding on review. Sariol argues that his prior discipline should be given minimal weight, at most. Sariol committed multiple trust account violations in his prior and current discipline cases. This commonality renders his prior record more serious. However, we are mindful that his past misconduct occurred approximately 20 years ago, and he remained discipline-free thereafter before his present misconduct began in 2017. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].) Moderate weight in aggravation is appropriate under this standard because the similarities indicate that his prior disciplines did not rehabilitate him, causing us concern about future misconduct. (*Ibid.*)

## **B. Mitigation**

### **1. Cooperation (Std. 1.6(e))**

Mitigation may be assigned under standard 1.6(e) for cooperation with the State Bar. The hearing judge afforded moderate mitigation for this circumstance, which neither Sariol nor OCTC challenge. Before trial, Sariol stipulated to facts central to establishing the counts on which he has been found culpable, as well as the admission of documents. However, he did not admit culpability and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) Accordingly, we agree with the judge that Sariol is entitled to moderate weight for his cooperation.

## **2. Extraordinary Good Character (Std. 1.6(f))**

Sariol is entitled to mitigation if he establishes “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” (Std. 1.6(f).) The hearing judge afforded substantial mitigating weight under this circumstance. Neither party challenges this finding on review and we agree with the judge’s conclusion.

Seven witnesses, including two attorneys, testified at trial regarding Sariol’s good character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys’ testimony due to their “strong interest in maintaining the honest administration of justice”].) All the witnesses have known Sariol for at least 20 years and their backgrounds include medical professionals, a tax strategist, attorneys, a paralegal, and Sariol’s personal acquaintances. (See *In the Matter of Davis, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 591-592 [significant mitigation for testimony on issue of good character where witness observed attorney’s “daily conduct and mode of living”].) All of the witnesses were aware of the full extent of the misconduct and attested that the NDC charges did not change their high opinion of him. All stated that Sariol is known for his honesty, integrity, and high moral character. Accordingly, we assign substantial mitigating credit under standard 1.6(f).

## **3. Pro Bono and Community Service**

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge determined Sariol’s community service warranted only moderate weight in mitigation since it ended prior to the current misconduct. Sariol challenges this finding on review, arguing substantial mitigation should be afforded.

OCTC requests we affirm the hearing judge’s finding and asserts Sariol is not entitled to additional mitigation under this standard because his break in performing charitable work



reduces the weight of this circumstance. Sariol testified about co-chairing the planning and construction of an orphanage in Mexico for several years between 2004 to 2017. Since Sariol's community service evidence is supported only through his testimony and generalized facts from one witness that lacks specific details, we conclude that he is entitled to moderate weight for establishing community service based on this charitable act. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [diminished mitigating weight for community service established solely by attorney's own testimony].)

#### **4. Remorse and Recognition of Wrongdoing (Std. 1.6(g))**

Standard 1.6(g) provides mitigation credit where an attorney takes "prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement." The hearing judge found Sariol was entitled to mitigation under standard 1.6(g) and assigned moderate weight. Sariol requests substantial mitigation arguing that he immediately and spontaneously took remedial action upon learning about Gulaya's lien. OCTC asks that we affirm the hearing judge's finding.

Sariol is not entitled to substantial mitigation credit for remorse because his remedial actions were not "spontaneous" nor "timely" given that Gulaya had been requesting payment for nearly two years. Since Sariol made amends and accepted responsibility for his actions, as well as cooperated with OCTC, he is entitled to mitigation credit. He readily admitted his errors and made improvements to office procedures. Accordingly, we affirm the hearing judge's finding and afford Sariol moderate mitigating weight under this circumstance. (See *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626-627, fn. 2 [expressing remorse deserves mitigation when it is combined with cooperation, accepting responsibility, and taking steps to prevent recurrence].)

## **VI. SIX-MONTH ACTUAL SUSPENSION IS PROPER PROGRESSIVE DISCIPLINE**

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to maintain the highest professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1.) Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow them whenever possible (see *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) The hearing judge applied standard 2.1(b) and discussed case law involving grossly negligent misappropriation under her culpability findings. We do not find grossly negligent misappropriation here. Since we dismissed two counts of misconduct and find Sariol culpable for the CTA violations, standards 2.2(a) and 1.8(a) are applicable. Standard 2.2(a) provides that a 90-day actual suspension is the presumed sanction for failing to deposit entrusted funds or to promptly pay out entrusted funds. We also consider standard 1.8(a), which states when a member has a single prior record of discipline, the “sanction must be greater than the previously imposed sanction,” subject to certain exceptions not applicable here. As noted, Sariol received a five-month actual suspension in his prior discipline case. Thus, considering progressive discipline, a six-month suspension is the next appropriate sanction pursuant to standard 1.2(c)(1) (“Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until certain conditions are met”).

Sariol argues against a period of actual suspension. He asserts that if discipline is imposed it should not exceed 30 days. The cases cited by Sariol, including *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, *Vaughn v. State Bar* (1972) 6 Cal.3d 847, *Palomo v. State Bar, supra*, 36 Cal.3d 785, *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, and *Waysman v. State Bar* (1986) 41 Cal.3d 452, are distinguishable because they involved attorneys without a prior record of discipline.

We find guidance from *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. Koehler was actually suspended for six months and was found to have repeatedly used his CTA as a personal account, failed to promptly refund fees in two instances, and failed to perform services completely in one matter. In aggravation, he had uncharged misconduct and a prior record of discipline due to his inattention in four client matters, which occurred 14 years prior to the current misconduct. He established mitigation for good faith, good character, candor and cooperation, and his pro bono and community service. Koehler, like Sariol, engaged in multiple trust fund violations. In addition, both attorneys have prior records of discipline that although remote in time and more serious than their current misconduct, involved similar transgressions.

Sariol was put on notice in his first discipline of the importance of handling a CTA with care and was required to attend Trust Accounting School, but then failed to follow CTA rules. In his first disciplinary case, Sariol committed multiple counts of willful misappropriation, failed to maintain and promptly distribute entrusted funds, failed to promptly respond to client inquiries, and failed to competently perform legal services. His current and past misconduct involve Sariol's inability to properly handle entrusted funds and manage his CTA responsibilities. While Sariol's current trust accounting violations were not the result of dishonesty or corruption, his negligence and inattention to properly handling and accounting for entrusted funds is serious.

We reject his contention that his misconduct should be viewed less egregiously because it was a “simple mistake.” The proper handling, accounting, and disbursement of trust funds are fundamental duties of a fiduciary. While we acknowledge Sariol’s remorse and the remedial efforts he took to render payment to Gulaya, Sariol continued to commit misconduct in the present case that is similar to his past wrongdoing, which is of critical concern. Therefore, we find no reason to depart from the presumptive discipline and conclude that a six-month actual suspension is warranted. This recommendation is appropriately progressive to protect the public, the courts, and the legal profession.

## VII. RECOMMENDATIONS

We recommend that Frank R. Sariol, State Bar Number 140406, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

- 1. Actual Suspension.** Sariol must be suspended from the practice of law for the first six months of the period of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Sariol must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar’s Office of Probation in Los Angeles (Office of Probation) with Sariol’s first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Sariol must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 4. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Sariol must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Sariol must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

- 5. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Sariol must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Sariol must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- 6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Sariol's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- 7. Quarterly and Final Reports**

  - a. Deadlines for Reports.** Sariol must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Sariol must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
  - b. Contents of Reports.** Sariol must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
  - c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
  - d. Proof of Compliance.** Sariol is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is

required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- 8. State Bar Ethics School and Client Trust Accounting School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Sariol must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and of the State Bar Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Sariol will not receive MCLE credit for attending these sessions. If he provides satisfactory evidence of completion of the Ethics School and/or the Client Trust Accounting School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Sariol will nonetheless receive credit for such evidence toward his duty to comply with this condition.
- 9. Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Sariol has complied with all conditions of probation, the period of stayed suspension will be satisfied, and that suspension will be terminated.
- 10. Proof of Compliance with Rule 9.20 Obligation.** Sariol is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Sariol sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

## **VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Frank R. Sariol be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension.

(Cal. Rules of Court, rule 9.10(b).) If Sariol provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of

the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

### **IX. CALIFORNIA RULES OF COURT, RULE 9.20**

We further recommend that Sariol be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>14</sup> Failure to do so may result in disbarment or suspension.

### **X. COSTS**

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

### **XI. MONETARY SANCTIONS**

We further recommend that Frank R. Sariol be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the

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<sup>14</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Sariol is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

HONN, J.

WE CONCUR:

McGILL, Acting P. J.

STOVITZ, 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.