

Filed January 5, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	SBC-21-O-30532
)	
GEORGE MARTIN DERIEG,)	OPINION
)	
State Bar No. 238193.)	
_____)	

This case illustrates two different issues important to the development of lawyer disciplinary law. First, it reemphasizes the improper use of Business and Professions Code section 6068, subdivision (a) (duty of attorney to support constitutions and laws of United States and California), when an applicable rule of professional conduct is charged. Second, and most salient, this matter reflects the important role of mitigation and aggravation evidence in assessing appropriate discipline. Indeed, the facts developed in this matter represent an effective presentation of mitigation in support of a downward departure from the discipline set forth in the Standards for Attorney Sanctions for Professional Misconduct. Where, as here, a respondent exhibits overwhelming and convincing mitigation, discipline for even very serious misconduct may be mitigated.

Respondent George Martin Derieg committed misconduct in a single client matter, including misappropriating client funds and making misrepresentations to a probate court regarding those funds. A hearing judge recommended a 15-month actual suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, arguing Derieg should be disbarred, or at least subject to a two-year actual suspension continuing until Derieg proves rehabilitation,

fitness to practice, and learning and ability in the general law. Derieg does not appeal and asserts the hearing judge's recommendation is "more than adequate."

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's recommendation of a 15-month actual suspension. Derieg's mitigation weighs heavily in reducing the discipline of his serious misconduct, which was aggravated by a finding of multiple acts of wrongdoing. A 15-month actual suspension is sufficient to fulfill the purposes of discipline in this case. Derieg does not challenge culpability on review, practiced for 11 years before committing the misconduct, promptly repaid the funds, completed a seminar on probate practice, hired an experienced paralegal, and has expressed remorse. He established sufficiently compelling mitigating circumstances, demonstrating that actual suspension, not disbarment, is appropriate here. In addition, as detailed *post*, disbarment is not necessary here to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on July 30, 2021. The parties filed a Stipulation as to Facts and Admission of Documents (Stipulation) on November 1. Trial was held November 16, and the parties subsequently submitted closing briefs. The hearing judge issued her decision on February 25, 2022. OCTC filed a request for review on March 29. After briefing was completed, we heard oral arguments on October 20.

II. FACTUAL BACKGROUND

The parties do not dispute the underlying factual findings in this matter: (1) Derieg took an early distribution of legal fees in a probate matter, without prior court approval, and (2) he then sought distribution in his accounting to the probate court but failed to disclose he had

already been paid.¹ Derieg was counsel in a probate matter, along with attorney Bridget Mackay, representing Jack Asvitt, who was administering his son's estate. Mackay worked on the matter until September 2016, and thereafter, Derieg continued to represent Asvitt.

Sometime before January 2017, Derieg complained to another attorney about payment issues he was having in his probate cases. The attorney advised Derieg he could secure his fees by directly billing escrow, "so long as you don't touch the payment until after the final petition is ordered."

In January 2017, the sole real property for the Asvitt estate sold. In order to avoid payment issues Derieg had while administering prior probate estates, he decided to ask his client if he could take his fee by directly billing escrow. Derieg contacted his client and discussed taking his and Mackay's fees directly from the escrow company. He told Asvitt his fees would be placed in a client trust account (CTA). Derieg then directed the escrow company to remit the fees "when escrow closes," which the escrow company did, sending a check to Mackay for \$4,000, and a check to Derieg for \$14,300. Derieg deposited the \$14,300 check into his business checking account, not a CTA. Between January 10 and February 23, 2017, Derieg spent the \$14,300 on expenses unrelated to the Asvitt estate.

Derieg then prepared the final account and petition for the estate, which the client signed on March 21, 2017. Derieg did not file the final account and petition in the superior court until May 2. In the final account and petition, Derieg asked that \$14,300 in legal fees be paid to him, even though he had already been paid. In making this request, Derieg did not intend to be paid twice. He considered his petition a ratification of the fees he had already been paid.

¹ The facts are based on the 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).)

Asvitt then consulted with attorney Linda Pasqual in May 2017, asking for her help in preparing a tax form. Thereafter, Asvitt asked Pasqual to review the final account and petition. Pasqual alerted Asvitt to the fact that Derieg was requesting fees when he had already received them. On July 20, Asvitt terminated Derieg's representation. Pasqual substituted into the probate matter on August 1, and filed a supplement to the final account and petition on that same day, alerting the court that Derieg and Mackay had already received their fees from escrow.² On its own motion, the court continued a hearing regarding the petition for final distribution from August 7 until November 14, due to procedural and substantive issues in both Derieg's and Pasqual's pleadings, which were discovered by the county probate examiner.

On November 13, 2017, Pasqual filed a third supplement to the final account and petition, asking the court to redistribute the attorneys' fees: \$4,290 for Pasqual, \$4,972 for Mackay, and \$5,038 for Derieg.³ She also asserted Derieg's compensation should be further reduced by \$1,430, due to the delay in administering the estate under Probate Code sections 12200 and 12205. On receipt of Pasqual's filing, and *without* court order, Derieg immediately paid the estate \$10,692, which accounted for the statutory compensation limit and the delay. On November 14, the superior court ordered Derieg to refund the estate \$10,692, the amount he had paid the day before.

The court then issued an order to show cause (OSC) for Derieg regarding whether he should be sanctioned for taking his fees prior to the court's final distribution. On December 1, 2017, Derieg filed an OSC statement, stating he took another attorney's advice to bill escrow in order to guarantee payment. Derieg added that the attorney told him not to "touch the payment until after the final petition is ordered." He apologized for his actions and acknowledged he had

² Pasqual filed additional supplements on November 7 and 13.

³ These amounts totaled \$14,300, which Pasqual asserted was the total compensation allowed under Probate Code section 10810.

“broken a rule of court.” On December 5, the court held a hearing on the OSC. The judge stated he had read Derieg’s statement and was inclined to discharge the OSC. Derieg was then given a chance to add anything, and he declined. The judge asked Pasqual if she had anything to say on the issue, and she stated the Asvitts were fine with discharging the OSC. The judge then discharged the OSC and declined to order sanctions. Derieg never told the court he had put the funds into his business checking account, not a CTA, and spent the funds before court approval.

III. CULPABILITY

Of the nine counts charged in the NDC, the hearing judge found Derieg culpable of moral turpitude misrepresentation to the superior court (Bus. & Prof. Code, § 6106)⁴ (count eight); seeking to mislead a judge (§ 6068, subd. (d)) (count nine); collecting an illegal fee (Rules Prof. Conduct, rule 4-200(A))⁵ (count seven); and two counts of moral turpitude misappropriation (§ 6106) (counts three and four). The judge also found culpability for two counts of failure to deposit funds in a CTA (rule 4-100(A)) (counts one and two) but did not assign additional disciplinary weight as the underlying facts were the same as those underlying the misappropriation counts. The judge dismissed two counts for failure to comply with the laws (§ 6068, subd. (a)) (counts five and six), which alleged that Derieg violated the Probate Code. Derieg does not challenge the judge’s culpability findings.

⁴ All further references to sections are to the Business and Professions Code unless otherwise noted.

⁵ All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

A. OCTC Challenges Dismissal of Count Six

On review, OCTC challenges the dismissal of count six, one of the section 6068, subdivision (a), charges.⁶ Section 6068, subdivision (a), provides that it is the duty of an attorney to support the constitutions and laws of the United States and California. Count six alleged that Derieg violated the Probate Code by (A) requesting and collecting \$14,300 from the escrow company without court order, and (B) directing the escrow company to pay \$4,000 to Mackay for attorney's fees. The NDC alleged these actions were in violation of Probate Code sections 10830 and 10831, which require a court order to set compensation for services rendered in an estate proceeding.⁷

The hearing judge found that count six failed as a matter of law because the misconduct alleged was disciplinable under the State Bar Act and the Rules of Professional Conduct, making a section 6068, subdivision (a), charge improper. The judge stated that the misconduct in count six was also alleged as misconduct in count seven for violating rule 4-200(A), which prohibits attorneys from collecting "an illegal or unconscionable fee." The judge found Derieg culpable under count seven for collecting his fees without court approval.⁸ As this was a rule violation, the judge determined it was improper to also find culpability in count six under section 6068, subdivision (a).

⁶ The hearing judge also dismissed the other section 6068, subdivision (a), charge (count five). Neither party challenges the dismissal of count five with prejudice, and we affirm. (*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].)

⁷ Probate Code section 10830 applies to a non-final petition in an estate proceeding, while Probate Code section 10831 applies to the final account and petition.

⁸ Count seven alleged Derieg violated rule 4-200(A) by (A) collecting legal fees in excess of the statutory limit of Probate Code section 10810, and (B) collecting legal fees without a court order under Probation Code sections 10830 and 10831. The hearing judge found culpability in count seven under (B) only, and dismissed the charge in (A) with prejudice. Neither party challenges these findings. We affirm the dismissal of part (A) in count seven with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

We have previously held that there cannot be culpability under section 6068, subdivision (a), for an offense that is disciplinable in and of itself. (*In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 484-488 [§ 6068, subd. (a), “clearly does not apply” to rule violations], citing *Baker v. State Bar* (1989) 49 Cal.3d 804, 814-816 [no § 6068, subd. (a), culpability for moral turpitude violation].) OCTC argues that the hearing judge dismissed count six as simply *duplicative* of counts two, four, and seven. However, the judge’s finding was clear: the misconduct charged in count six was disciplinable under the State Bar Act and the Rules of Professional Conduct, and therefore, “application of section 6068, subdivision (a) is improper.” The judge’s finding aligns with her citation of *Lilley* and our holding in that case. To clarify the issue, the misconduct alleged in count six is disciplinable under rule 4-200(A). Section 6068, subdivision (a), does not apply to such a rule violation because the misconduct is already disciplinable under the Rules of Professional Conduct. (*In the Matter of Lilley, supra*, 1 Cal. State Bar Ct. Rptr. at p. 487.) Accordingly, the hearing judge appropriately dismissed the section 6068, subdivision (a), charge. Therefore, we affirm the judge’s dismissal of count six with prejudice.⁹ (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

B. Remaining Culpability Not Disputed

The parties do not dispute the hearing judge’s culpability findings under counts one, two, three, four, seven, eight, and nine. After independent review, we affirm the judge’s culpability findings for these counts, summarized *post*.

Under counts three and four, the judge found misappropriation under section 6106 based on the early distribution of funds from escrow to Derieg and Mackay without prior court

⁹ The judge’s dismissal of count five as a matter of law was also proper under *Lilley*. This is an additional ground to affirm the dismissal of count five with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

approval.¹⁰ The judge found that the same facts underlying counts three and four were charged as rule 4-100(A) violations in counts one (\$14,300 deposit in business checking account, not CTA) and two (directing the escrow company pay \$4,000 to Mackay).¹¹ Accordingly, the judge did not assign additional disciplinary weight for counts one and two. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight for rule 4-100(A) violation duplicative of moral turpitude violation].) The judge also found culpability under count seven for collecting an illegal fee in violation of rule 4-200(A), based on Derieg's unauthorized distribution of the funds without court approval as required under the Probate Code. (See *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 323 [illegal fee under rule 4-200(A) where attorney did not obtain court approval as required under Prob. Code].) The judge did not assign additional disciplinary weight for count seven as the underlying facts are the same as the facts underlying one of the misappropriation charges (count three).

Finally, the judge found culpability under counts eight (§ 6106) and nine (§ 6068, subd. (d))¹² because Derieg sought to mislead the superior court judge regarding whether he had already been paid for his services to the estate. The judge found that Derieg's actions rose to an act of moral turpitude because he intentionally failed to disclose that he had already collected attorney's fees, deposited them in a business checking account, and spent the funds on expenses unrelated to the estate. Because the same misconduct underlies both counts eight and nine, we

¹⁰ Section 6106 provides that an act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Willful misappropriation of a client's funds involves moral turpitude. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278.)

¹¹ Rule 4-100(A) requires client funds to be deposited in a CTA.

¹² Section 6068, subdivision (d), provides, in pertinent part, that it is the duty of an attorney never to seek to mislead a judge by an artifice or false statement of law or fact.

treat them as a single offense involving moral turpitude.¹³ (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [violations of § 6106 and § 6068 treated as single moral turpitude violation with no additional weight for duplication].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence.¹⁴ Standard 1.6 requires Derieg to meet the same burden to prove mitigation.

A. Aggravation

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

We agree with the hearing judge that OCTC established aggravation for Derieg's multiple acts of wrongdoing, including failing to deposit client funds in a CTA, misappropriating his fee from the estate, directing the misappropriation of Mackay's fee, and seeking to mislead a judge. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) The hearing judge assigned moderate weight in aggravation, which the parties do not challenge. We agree with the hearing judge's finding of aggravation under this standard but modify it only slightly due to the unique facts surrounding the misappropriation in this probate case, including the fact that the fees were earned but simply taken early. We find that only limited weight is appropriate. (See *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 653 [modest aggravation for three acts of wrongdoing].)

¹³ The hearing judge did not explicitly indicate whether counts eight and nine were treated as a single offense.

¹⁴ See *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).

2. Significant Harm (Std. 1.5(j)) Not Established

The hearing judge declined to find aggravation for significant harm to the client under standard 1.5(j). On review, OCTC argues that Derieg's misconduct caused a delay in closing the probate matter until November 14, 2017, which resulted in significant harm to Asvitt and his family. OCTC asserts that the final account and petition was due on February 23, but Derieg did not have the client sign it until March 21 and did not file it until May 2. The court then continued the hearing on the final distribution from August 7 until November 14. OCTC also asserts that Derieg was unresponsive to his client's inquiry regarding a county tax form, which caused Asvitt to seek advice from Pasqual. Pasqual then discovered Derieg's misconduct, requiring further litigation. OCTC pointed to the court's reduction of Derieg's fee by \$1,430 for his delay. Finally, OCTC inferred that Derieg's delay extended a painful chapter in the Asvitts' lives.

Derieg argues on review that OCTC did not establish by clear and convincing evidence that his misconduct caused significant harm to the Asvitts. Derieg admits his fee was reduced due to a two-and-a-half-month delay in filing the final account and petition (February 23 to May 2). However, he notes that the delay from May until November was not the direct result of his conduct alone, citing the court's continuance on its own motion. Derieg asserts that a generalized harm due to delay, without more, does not support aggravation for significant harm to the client. We agree. While Derieg caused some delay, not all of the delay was solely his fault. Further, we decline to speculate about harm to the family. OCTC did not carry its burden of proving *significant* harm by clear and convincing evidence. Therefore, we do not assign aggravation under standard 1.5 (j).

B. Mitigation

1. Lack of Prior Discipline (Std. 1.6(a))

Mitigation includes “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur.” (Std. 1.6(a).) The hearing judge assigned substantial weight for Derieg’s 11 years of practice without discipline. Neither party challenges this finding. We agree that Derieg’s absence of prior discipline warrants substantial weight as he established the aberrational nature of his misconduct: he expressed remorse, refunded the estate without a court order, took a seminar on probate practice, and hired a paralegal experienced in probate matters. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].) Accordingly, we affirm the judge’s finding under standard 1.6(a).

2. Cooperation (Std. 1.6(e))

Mitigation includes “spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar.” (Std. 1.6(e).) The hearing judge determined that Derieg deserved substantial mitigation credit for cooperating with the State Bar “from the start,” providing bank records voluntarily and entering into the Stipulation before trial, which included material facts establishing some culpability and conserved judicial time and resources, reducing trial to one day. The Stipulation also provided for the admission of all of the trial exhibits.

In *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, we gave limited cooperation for entering into a stipulation covering background facts for *most* of the at-issue matters. However, we noted that “more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts. [Citations].” (*Id.* at p. 190.) OCTC asserts that less mitigation is warranted here as Derieg did not admit

culpability in the Stipulation. There was no discussion in *Johnson* of whether the respondent also stipulated to the admission of documents or if the stipulation conserved judicial time and resources. Therefore, we do not rely on *Johnson* to reduce the weight for Derieg’s cooperation.

We have assigned limited weight in mitigation for cooperation when a stipulation is not extensive and involves easily provable facts with no admission to culpability. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318; see also *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [limited mitigation for stipulating to easily provable facts].) *Guzman* does not offer authority for reduction of Derieg’s mitigation as the Stipulation here was expansive. Further, “[w]hether facts are easy to prove is just one aspect to consider in assigning mitigating weight” to a stipulation. (*In the Matter of Chavez* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 783, 792.) Chavez’s cooperation conserved judicial time and resources and the facts he stipulated to formed the basis of the culpability findings for one count. Therefore, in *Chavez*, we assigned substantial weight in mitigation under standard 1.6(e) even though the facts were easily provable and he disputed some culpability. (*Ibid.*; see also *In the Matter of Braun* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 738 [significant mitigation for cooperation where attorney admitted to facts beyond the charges and admitted culpability, even though stipulation contained easily provable facts and did not save significant court time].) The magnitude of the facts and whether there was admission to culpability are factors in assigning weight—one aspect is not determinative.

Moreover, in *Pineda v. State Bar* (1989) 49 Cal.3d 753, the Supreme Court found mitigation for a respondent’s cooperation with the State Bar “throughout the disciplinary proceedings” and he showed a willingness to accept discipline because he stipulated to the relevant facts and forfeited a potentially meritorious defense to some of the charges. (*Id.* at p. 760.) Here, Derieg has accepted the hearing judge’s culpability findings on review for all

counts and does not challenge the 15-month actual suspension. This supports substantial weight in mitigation for cooperation, even though there was no admission of culpability at trial. (Cf. *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820, 829 [moderate weight in mitigation where respondent did not admit culpability and then appealed culpability determination].)

Considering the relevant authority and factors present here, we agree with the hearing judge's finding of substantial weight for Derieg's cooperation. Derieg willingly provided bank records, entered into the Stipulation which established some culpability and conserved judicial time and resources, and agreed to the admission of documents.

Further, he has accepted the culpability findings for all counts and the hearing judge's recommended discipline. We afford him substantial mitigation even though he did not admit to culpability at trial. (See *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [substantial mitigation for stipulating to facts underlying charged misconduct; cannot punish respondent for seeking day in court on level of discipline].)

3. Extraordinary Good Character (Std. 1.6(f)) and Community Service

Derieg may obtain mitigation for "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).) Community service can also be mitigating. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned substantial weight to Derieg's good character evidence and community service, which neither party disputes.

Fifty-three witnesses submitted character letters, eight of whom also testified at trial. The witnesses, many of whom were attorneys,¹⁵ had known Derieg for a substantial amount of time.

¹⁵ We give serious consideration to attorneys' references because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

The witnesses included people who had worked with Derieg or had personal knowledge of his legal work and clients who were the beneficiaries of his pro bono services. They represented a broad range of the legal and general communities, consisting of educators and teachers, clergy members, lawyers, and board members and directors of nonprofit organizations.

The witnesses discussed Derieg's volunteer work as a substitute teacher, working when called and without taking compensation, and with the Lawyers in the Library program where he gives free legal advice to the community. They stated he does extensive mentoring in both the law and religious development, including providing counsel to members of his church and their friends and families. He has mentored youth in his church and high school students accused of crimes, and he advises students who are interested in applying to law school. He earned recognition for his volunteer work from 2014 through 2016 with Bay Area Legal Aid.

The witnesses attested to Derieg's trustworthiness, honesty, and dedication to his clients and the community. They understood the charged misconduct—that Derieg took an advanced fee and made a misrepresentation to the court. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1130-1131 [not entitled to significant weight in mitigation because most witnesses unaware of details of attorney's misconduct].) The witnesses stated that Derieg's misconduct was inconsistent with his overall character. One stated it was impossible to reconcile that Derieg would do anything against the best interests of his clients; another described Derieg as "morally driven."

The witnesses also stated that Derieg provided full disclosure of his misconduct, so that they could choose to stop referring clients to him if they liked. Derieg told a notary that he would understand if he chose to no longer work with him. The notary was impressed with the disclosure, continuing to believe Derieg to be trustworthy and to have confidence in him. Derieg also apologized to a pastor, even though the pastor did not feel an apology was owed. The pastor

stated this was evidence of Derieg's solid character and exhibited a willingness to right his wrongs, showing Derieg's integrity and honesty.

On review, we find Derieg's impressive evidence of good character and community service deserves compelling weight in mitigation. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185, 187 [presentation of extraordinary demonstration of good character compelling where 36 witnesses testified to attorney's professionalism, honesty, and integrity].)

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

Standard 1.6(g) provides mitigation for "prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement." The hearing judge found that Derieg exhibited genuine remorse with respect to his mishandling of client funds and credited him for his endeavors to atone, including promptly refunding the estate after receiving Pasqual's request, hiring a paralegal, and completing a probate seminar. In addition, more than three months before the final petition was approved by the superior court, Derieg offered to pay for Pasqual's legal fees of \$1,430, which she had requested be paid from the estate. The hearing judge commended Derieg for these efforts, but found they related only to his culpability for mishandling funds and not for seeking to mislead the court. Therefore, the judge assigned moderate weight in mitigation under standard 1.6(g).

On review, OCTC argues that Derieg should receive no more than limited or minimal weight in mitigation for remorse, arguing Derieg waited three months after Pasqual first raised the issue with the probate court to return the funds to the estate. OCTC also points to standard 1.6(j), which provides for mitigation for restitution only if it is made without the threat of force of a disciplinary or civil proceeding, arguing that Derieg should receive less credit because he did not return the funds until after the probate court was made aware of his

misconduct. We reject this argument as Derieg did not have the opportunity to do so—his representation was terminated on July 20, 2017, and Pasqual alerted the court about the discrepancy on August 1. This short amount of time did not provide him the opportunity to alert the court that he had actually already received the funds and does not diminish the other steps he took to demonstrate his remorse.

OCTC’s other arguments are also unpersuasive.¹⁶ The hearing judge factored into her assignment of weight that Derieg’s steps to timely atone went only to the misappropriation misconduct. The three-month delay was necessary as Pasqual did not request a specific amount until the November 13, 2017 supplement. After receiving the supplement, Derieg refunded the requested amount the same day. He also apologized to the superior court for billing escrow and receiving his fee prior to authorization. In the OSC statement, he wrote: “. . . I am not going to try to convince this court not to sanction me, as I have broken a rule of court and will accept any punishment this court feels is just. I wholeheartedly apologize for these actions, and they will never happen again.” In addition, Derieg testified that he alerts potential probate clients about this disciplinary matter and makes clear that he cannot be paid until ordered by the court. We agree with the judge that Derieg’s actions are commendable and warrant mitigating credit, but that mitigation only goes to his mishandling of client funds. He took prompt efforts to correct his misconduct and we assign moderate weight in mitigation for these actions.

¹⁶ OCTC also cited *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, a case where we assigned moderate weight in mitigation for remorse where the attorney disgorged \$18,500 in wrongfully obtained fees, pursuant to a court-imposed sanctions order. Romano’s misconduct related to 82 fraudulent bankruptcy petitions filed in numerous client matters. We found that her statements of remorse were somewhat belated, but displayed a recognition of her wrongdoing. Unlike Romano, Derieg paid the fees before the court issued an order, and the fees related to a single client matter. Therefore, an assignment of moderate weight for remorse in the instant matter is not disproportionate to the weight given in *Romano*.

V. DISCUSSION

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *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 most severe sanction applicable here is standard 2.1(a), which provides that disbarment is the presumed sanction for Derieg’s intentional misappropriation of entrusted funds.¹⁷ Misappropriation of trust funds “breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) “Even a single ‘first-time’ act of misappropriation has warranted such stern treatment.” (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 657.)

Standard 2.1(a) also provides that an attorney may avoid disbarment if the amount misappropriated is “insignificantly small” or “sufficiently compelling mitigating circumstances clearly predominate.” The first condition does not apply, as Derieg misappropriated \$18,300, a

¹⁷ Standard 2.11 provides for disbarment or actual suspension for Derieg’s misrepresentation to the probate court. Standard 2.3 provides for suspension or reproof for collecting an illegal fee.

significant amount of money. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [\$1,355.75 not insignificantly small].) The hearing judge found that the second condition applied because Derieg's five mitigating circumstances far outweighed the one aggravating circumstance found.

The hearing judge also looked to comparable disciplinary cases and determined that actual suspension, not disbarment, was warranted. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 [two-year actual suspension for misappropriation involving single client where attorney had no prior discipline record, strong good character evidence, extensive community service, and no additional misconduct for five years]; *Edwards v. State Bar, supra*, 52 Cal.3d 28 [one-year actual suspension for misappropriation involving single client where attorney had no prior discipline record, no "acts of deceit," made repayment before State Bar investigation, showed cooperation, and took steps to improve CTA management]; *Kelly v. State Bar, supra*, 45 Cal.3d 649 [disbarment for misappropriation where attorney spent client money and overreached by forcing clients to sign a statement saying funds were loaned].) Comparing the instant matter to *Edwards*, the judge found that Derieg had additional culpability for misrepresentation which Edwards did not have, warranting a sanction slightly greater than a one-year actual suspension.

On review, OCTC argues the judge did not adequately address the language in standard 2.1(a) calling for *sufficiently compelling* mitigating circumstances that clearly predominate. OCTC contends that under *Edwards*, to establish compelling mitigation, the misconduct must be aberrational. In *Edwards*, the court noted that misappropriation cases not resulting in disbarment involve "a variety of 'extenuating circumstances'" that warrant a lesser punishment, including "compelling mitigating circumstances relating to the attorney's background or character or to unusual difficulties the attorney was experiencing at the time of

the misconduct, which [tend] to prove that the misconduct was aberrational and hence unlikely to recur. [Citations.]” (*Edwards v. State Bar, supra*, 52 Cal.3d at pp. 37-38.) OCTC claims that the hearing judge’s reliance on *Edwards* was “misplaced” because Derieg’s misconduct is significantly different due to his misrepresentation to the probate court. OCTC argues that Derieg’s subsequent misrepresentation in his OSC statement suggests his misconduct was not aberrational and that, due to his more severe misconduct, the “threshold for finding compelling mitigation that clearly predominates is much higher.” As detailed throughout this opinion, we disagree. Derieg’s mitigation is “sufficiently compelling” to support actual suspension as opposed to disbarment. When an attorney displays candor, cooperation, and remorse throughout the disciplinary proceedings, and accepts culpability and the recommended discipline, while also taking efforts to prevent the misconduct from occurring again, discipline less than disbarment is sufficient. (*Doyle v. State Bar* (1976) 15 Cal.3d 973, 979.) Further, any misrepresentation in the OSC statement was not charged in the NDC and we do not consider it in analyzing culpability and appropriate discipline.

OCTC also compares the instant matter to *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, asserting that disbarment is appropriate when misappropriation is followed by additional dishonesty. This simplification of *Spaith* ignores that Spaith engaged in far more egregious misconduct than Derieg by taking funds that did not, and never would, belong to him. Spaith also repeatedly lied to his client about the status of the funds, saying they were in his CTA and that he was seeking a court order to invest them when he had already spent the funds for his own benefit. Further, Derieg established greater mitigation and less aggravation than Spaith. *Spaith* does not support a recommendation of disbarment for Derieg.

Additionally, OCTC argues that Derieg should receive at least a two-year actual suspension like the attorney in *In the Matter of Davis, supra*, 4 Cal. State Bar Ct. Rptr. 576. This

argument is premised on overruling the hearing judge's aggravation and mitigation findings, which we decline to do. As discussed *ante*, we affirm the mitigation findings, clarifying that his community service and character evidence was worthy of compelling mitigating weight, and giving slightly less weight to the single aggravating circumstance. We agree with the hearing judge that Derieg's mitigation for no prior record of discipline, cooperation, extraordinary good character, community service, and remorse and recognition of wrongdoing, outweighs the aggravation assigned for multiple acts of misconduct. The judge concluded that Derieg's mitigation was compelling, unlike Davis, whose mitigation was outweighed by serious aggravating circumstances. Therefore, she determined that a sanction far less than two years of actual suspension was appropriate for Derieg. We agree with the judge's analysis of *Davis*. Derieg's mitigation was compelling—he exhibited genuine remorse, took concrete steps to atone for the misappropriation, and he made prompt and full restitution. Further, Derieg misappropriated \$18,300, while Davis misappropriated almost \$80,000, and Davis committed various acts of concealment and duplicity, which we do not find here.

Finally, OCTC argues that the hearing judge erroneously interpreted standard 2.1(a) by failing to weigh Derieg's mitigation against his aggravation *and* his misconduct. (See *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. ___ [attorney did not have compelling mitigation to predominate over his misconduct and aggravation].) OCTC proved culpability under seven counts. However, when accounting for the same facts underlying multiple counts, the misconduct is boiled down to two counts for misappropriation—collecting and spending his fee before court approval and directing Mackay's fee be paid before court approval—and one count of moral turpitude misrepresentation for not disclosing these facts to the superior court. Derieg never intended to be paid twice when he asked the court to approve his fee. Considering his remorse, the steps he took after the misconduct, and his long record of

discipline-free practice before this incident, we are persuaded that this is an aberrational episode in his career. He earned a fee for working on the matter, but he unfortunately took it early. However, he took out only the amount he believed was proper under the Probate Code. This behavior differentiates Derieg from misappropriations in other cases we have heard and decided. Under these circumstances, we find that Derieg established sufficiently compelling mitigation outweighing the aggravation and the misconduct.

As to the appropriate length of Derieg's actual suspension, the hearing judge found that Derieg's misrepresentation, which was not present in *Edwards*, warranted a sanction "slightly greater" than the one-year actual suspension imposed in that case. And under *Davis*, the judge found a sanction "far less" than two years was appropriate. The mid-way point between one and two years is 18 months, but the judge recommended a 15-month actual suspension. While 15 months is not an amount of time specified in the standards,¹⁸ under the unique facts of this case we find that the judge's overall analysis justifies such a length of time. Derieg is not a danger to the public as this appears to be an aberrational event and he has shown remorse, taken corrective steps, and has been forthright with potential clients and others in the community. Accordingly, we affirm the recommendation of an actual suspension spanning 15 months.

VI. RECOMMENDATIONS

We recommended that George Martin Derieg, State Bar Number 238193, 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.** Derieg must be suspended from the practice of law for the first 15 months of the period of his probation.

¹⁸ "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 specific conditions are met." (Std. 1.2(c)(1).)

- 2. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Derieg must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 3. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Derieg 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 Derieg's first quarterly report.
- 4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Derieg must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Derieg must provide a declaration, under penalty of perjury, attesting to Derieg's compliance with this requirement, to the Office of Probation no later than the deadline for Derieg's first quarterly report.
- 5. 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, Derieg 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. Derieg 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.
- 6. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Derieg 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, Derieg may meet with the probation case specialist in person or by telephone. During the probation period, Derieg 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.
- 7. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Derieg's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Derieg must appear before the State Bar Court as required by the court or by the Office of Probation after written notice is mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Derieg must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

8. Quarterly and Final Reports.

- a. **Deadlines for Reports.** Derieg 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, Derieg 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.** Derieg 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.** Derieg is directed to maintain proof of 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 actual suspension has ended, whichever is longer. Derieg is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Derieg must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Derieg will nonetheless receive credit for such evidence toward his duty to comply with this condition.

10. **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 Derieg has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

11. Proof of Compliance with Rule 9.20 Obligation. Derieg 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 Derieg 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.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Derieg be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension 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 Derieg 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.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Derieg 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.¹⁹ Failure to do so may result in disbarment or suspension.

IX. MONETARY SANCTIONS

We further recommend that Derieg 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 State Bar. We adopt the hearing judge's reasons for the monetary sanctions recommendation. 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.

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an

¹⁹ 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, Derieg is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed 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).)

attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

HONN, P.J.

WE CONCUR:

McGILL, J.

CHAWLA, J.*

* Judge of the Hearing Department of the State Bar Court, designated to serve in this matter as a Review Department Judge Pro Tem, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.

No. SBC-21-O-30532

In the Matter of
GEORGE MARTIN DERIEG

Hearing Judge
Hon. Phong Wang

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