

Filed November 4, 2021

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-20-O-30132
)	
PHILLIP BARRY GREER,)	OPINION
)	
State Bar No. 96438.)	
_____)	

Phillip Barry Greer was charged with five counts of misconduct for the improper handling of his client trust account (CTA). The hearing judge found Greer culpable of four counts: three counts of commingling, including the payment of \$17,072.75 from his CTA for personal expenses, and one count of failing to maintain records of client funds.¹ Ultimately, the judge recommended discipline that included an actual suspension of 30 days.

Greer appeals. Although he acknowledges discipline is warranted, he argues a period of actual suspension is “manifestly unjust.” The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests we uphold the hearing judge’s discipline recommendation.

Upon our independent review of the record pursuant to California Rules of Court, rule 9.12, we reject Greer’s arguments and affirm the hearing judge’s findings and disciplinary recommendation. Given the factual record that has been established, including the aggravation and mitigation findings, we recommend a 30-day actual suspension as an appropriate discipline that protects the public, the courts, and the legal profession.

¹ The judge did not find Greer culpable of a moral turpitude charge when Greer mistakenly issued a \$28 check for personal expenses from his CTA but had insufficient funds in the account to cover it.

I. PROCEDURAL BACKGROUND

On March 13, 2020, OCTC filed a five-count Notice of Disciplinary Charges (NDC) charging Greer with commingling personal funds in his CTA, in violation of former rule 4-100(A) of the California Rules of Professional Conduct² (count one) and rule 1.15(c)³ (count two); paying personal expenses from his CTA, in violation of former rule 4-100(A) (count three); moral turpitude by issuing a non-sufficient funds (NSF) check in violation of Business and Professions Code section 6106⁴ (count four); and failing to maintain records of client funds, in violation of former rule 4-100(B)(3) (count five). On October 2, the parties filed a Stipulation as to Facts and Admissions of Documents (Stipulation). On October 13, the hearing judge held a one-day remote trial during which he granted OCTC's motion to amend the NDC—dismissing one allegation of commingling in count one and amending the NDC to conform to proof as to certain dates of deposits and withdrawals in counts three and four. Posttrial closing briefs followed, and the judge issued his decision on December 29.

II. RELEVANT FACTUAL BACKGROUND⁵

Greer was admitted to practice law in California on January 7, 1981. Since 1998, Greer has maintained a CTA at Union Bank. OCTC and Greer stipulated that between May 7 and May 30, and on September 10, 2018, Greer made several withdrawals from his CTA totaling

² 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.

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

⁴ All further references to sections are to this source.

⁵ We base the factual background 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).)

\$17,072.75 for the payment of his personal expenses.⁶ The parties also stipulated that between May 31 and November 1, Greer made four deposits of personal funds into his CTA, totaling \$360.

The last time Greer issued a check for the payment of a personal expense from his CTA, he wrote a check to the Department of Motor Vehicles (DMV) for \$28 on September 10, 2018. It was paid by the bank despite his account only having a balance of \$5.95. Greer testified he did not know his CTA balance when he wrote the check, and, given the small amount of the check, he did not have much concern and assumed the check would be covered if he did not have the funds in his CTA because he had overdraft protection.

On November 7, 2018, and May 14, 2019, OCTC requested that Greer provide his CTA journal, client ledgers, and monthly CTA reconciliations as required under former rule 4-100(B)(3). Greer stipulated he did not maintain the requested documentation because he used bank statements to keep track of his CTA funds.

III. CULPABILITY

A. **Counts One and Two: Former Rule 4-100(A) (Commingling—Personal Funds in CTA) and Rule 1.15(c) (Safekeeping Funds)**

In count one of the NDC, OCTC alleged Greer violated former rule 4-100(A)⁷ by depositing or commingling personal funds into his CTA on May 31 (\$200), June 20 (\$100), and

⁶ OCTC did not prove client funds existed in the CTA during the period that the commingling occurred; however, that distinction is not outcome determinative because under former rule 4-100(A) and current rule 1.15(c) commingling can be established without client funds being on deposit in a CTA. (*In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753, 760.)

⁷ Under former rule 4-100(A), “All funds received or held for the benefit of clients. . . shall be deposited [into the CTA] No funds belonging to the [licensee] or the law firm shall be deposited [into the CTA] or otherwise commingled therewith”

September 14, 2018 (\$50).⁸ In count two, OCTC alleges Greer violated rule 1.15(c)⁹ by transferring \$10 from his operating account into his CTA on November 1, 2018. The hearing judge found Greer culpable of commingling as charged in both counts. We agree.

Former rule 4-100(A) is explicit in stating personal funds cannot be placed in a CTA. Similarly, rule 1.15(c) prohibits an attorney from depositing or otherwise commingling funds held in trust. Both rules prohibit the same misconduct of depositing an attorney's personal funds in a CTA because a CTA is to be used solely for client funds. (See *In the Matter of Martin*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 760.) The Supreme Court has held that an "attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured." (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [referring to then Rules Prof. Conduct, rule 8-101(A), later becoming former rule 4-100(A) and current rule 1.15(c)].) At trial, Greer admitted to depositing \$360 in personal funds into his CTA between May 31 and November 1, 2018, as detailed in the stipulated facts. While Greer did not dispute the hearing judge's culpability findings regarding these deposits in his opening brief, he did challenge them in his reply brief. In his reply brief, Greer states rule 1.15(c)(1) allows for an attorney to deposit funds into a CTA that are reasonable to pay bank charges and argues OCTC did not provide evidence that his four deposits of \$360 were not intended to cover such charges. He maintained this point at oral argument. We reject his argument because OCTC met its burden of proof when Greer stipulated the deposits were "personal funds." Stipulated facts are binding on the parties and evidence to disprove a stipulated fact is inadmissible. (Rules Proc. of

⁸ At trial, the hearing judge granted OCTC's motion to dismiss the allegation in count one that on June 28, 2018, Greer deposited \$5,000 of personal funds into his CTA.

⁹ Rule 1.15(c) provides "Funds belonging to the lawyer or the law firm shall not be deposited or otherwise commingled with funds held in a trust account except: (1) funds reasonably sufficient to pay bank charges; and (2) funds belong in part to a client or other person"

State Bar, rule 5.54(B).) Also, Greer did not present any evidence and we did not find any evidence in the record to suggest Greer's CTA was subject to bank charges or the deposits were intended for that purpose. His misuse of the CTA is clear and convincing evidence¹⁰ that establishes culpability under counts one and two as charged.

B. Count Three: Former Rule 4-100(A) (Commingling—Payment of Personal Expenses from CTA)

Count three of the NDC charged Greer with violating former rule 4-100(A) by issuing 20 payments in 2018 for personal expenses from his CTA account, totaling \$17,072.75.¹¹ The hearing judge found him culpable as charged. We agree because the evidence establishes Greer improperly used his CTA to pay personal expenses in violation of the rule.

Greer stipulated the 20 withdrawals made from his CTA between May 7 and September 10, 2018, were for the payment of various personal expenses. The Supreme Court has interpreted former rule 4-100(A) as a bright-line rule that “absolutely bars use of the trust account for personal purposes.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22–23; see also *In the Matter of Martin*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 760.) The State Bar's Handbook on Client Trust Accounting also describes the prohibition against using a CTA for personal use: “You *can't* make payments out of your client trust bank account to cover your own expenses, personal or business, or for any other purpose that isn't directly related to carrying out your duties to an individual client.” (The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2018)

¹⁰ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) All findings, unless otherwise stated, are made using this evidentiary standard.

¹¹ As established by the Stipulation, Greer's 20 CTA transactions included three payments to ATT; three payments to Mercury Insurance; two payments to AMEX; and one payment each to Cox Comm Org, Irvine Ranch Water, Chevron, Verizon Wireless, BillMatrix, Chase, So. Cal Edison, Bank of America, Oscar Navarrete, Keystone Pacific, Newport Executive, and the DMV.

(Handbook), § VI, p. 17.)¹² Greer does not raise any arguments on review to challenge culpability. Like the hearing judge, we find Greer culpable for commingling by paying his personal expenses from his CTA.

C. Count Four: Section 6106 (Moral Turpitude—Issuance of an NSF Check)

Section 6106 prohibits an attorney from committing any act that involves moral turpitude, dishonesty, or corruption. OCTC charged Greer with issuing a check in the amount of \$28 to the DMV on September 10, 2018, when he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to pay it.¹³ The hearing judge dismissed count four stating Greer’s careless mistake in issuing one NSF check is not clear and convincing evidence of gross negligence or deliberate dishonesty involving moral turpitude, and OCTC did not appeal the dismissal.¹⁴ We affirm the judge’s conclusion that no clear and convincing evidence exists that Greer violated section 6106. Accordingly, we dismiss count four with prejudice. (*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].)

¹² The Handbook is available online at the following Web site:
<http://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/CTA-Handbook.pdf>.

¹³ In count four, the hearing judge granted OCTC’s motion to dismiss the allegation that Greer issued a payment in the amount of \$250 to the Orange County Superior Court on June 19, 2018, and that Greer knew or was grossly negligent in not knowing there were insufficient funds in his CTA.

¹⁴ Based on our review of the record, we affirm the hearing judge’s credibility determination regarding Greer’s testimony that he was unaware he had insufficient funds in the CTA when issuing the \$28 check to the DMV. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions “because [the judge] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand”].) Under these circumstances we find, at most, that Greer made a negligent error.

D. Count Five: Former Rule 4-100(B)(3) (Failure to Maintain Records of Client Funds)

The hearing judge found Greer violated former rule 4-100(B)(3)¹⁵ by failing to maintain a client ledger, a written journal for his CTA, and monthly reconciliations. Former rule 4-100 includes Trust Account Record Keeping Standards adopted by the then-Board of Governors of the State Bar, effective January 1, 1993 (Trust Account Standards), which provide detailed guidance on required recordkeeping. The Trust Account Standards require attorneys to maintain the following records for their CTAs: (1) a written ledger for each client; (2) a written journal for each bank account; (3) all bank statements and canceled checks; and (4) monthly reconciliations of each account. (See Handbook, § II, p. 3.) Greer stipulated he did not maintain journals or monthly reconciliations for his CTA, stating he solely relied on bank statements to manage the account. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758 [scope of rule requires adequate records].) Based on the stipulated facts and our review of the record, we affirm the judge's culpability finding under count five.

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.¹⁶ Greer has the same burden to prove mitigation under standard 1.6.

¹⁵ Former Rule 4-100(B)(3) requires an attorney to “[m]aintain complete records of all funds, securities, and other properties of a client” coming into the attorney’s possession.

¹⁶ All further references to standards are to this source.

A. Aggravation

1. Prior Record of Discipline

Greer has two prior records of discipline that are aggravating circumstances under standard 1.5(a). On January 26, 1996, he received a public reproof for misconduct in a personal injury client matter that occurred between 1990 and 1991. Greer stipulated to violating former rules 4-100(A) and 3-100(A) by failing to maintain a client's settlement funds in his CTA and failing to properly supervise his staff in maintaining confidential client information. No factors were found in aggravation. In mitigation, Greer had no prior record of discipline and demonstrated good character. As a condition of the public reproof, Greer was required to attend Client Trust Accounting School.

Greer received a second public reproof on February 5, 2004, for misconduct that occurred in 2002 and 2003. He stipulated to violating former rule 3-310(C)(2) by failing to avoid representation of adverse interests. While representing a corporate client in a federal lawsuit involving patent protection, Greer filed a lawsuit against the same client in state court involving an unrelated breach of contract without obtaining informed written consent from both clients. Greer's prior record of discipline was considered in aggravation, and he received mitigation for cooperating with the State Bar.

The hearing judge assigned moderate weight to Greer's two prior records of discipline. Greer argues his prior discipline should only receive nominal aggravating weight because both prior disciplines occurred many years ago, which he asserts diminishes their impact. He attempts to distinguish his prior records of discipline from those of the attorneys in *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283 and *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96 to prove the judge's aggravation finding, citing both cases, warrants less aggravating weight. We reject his arguments.

In the Matter of Jensen involved an attorney who received limited weight in aggravation for his two prior records of discipline—a stayed suspension and 30-day actual suspension. The attorney in *In the Matter of Shinn* also had two priors: a reproof in the first matter and three-months’ actual suspension in the second. We do not find *Jensen* merits the distinction Greer posits—because in *Jensen*, the second misconduct occurred before his first case was prosecuted.

Considering the focus of the prior discipline analysis in *Shinn*, we find some guidance when evaluating the remoteness of time between Greer’s past and current misconduct. This court found *Shinn*’s *first matter* was too remote in time to merit *significant weight* on the issue of discipline; however, the court considered his second matter in aggravation. (*In the Matter of Shinn, supra*, 2 Cal. State Bar Ct. Rptr. at p. 105, emphasis added.) Notably, Greer’s first prior involved a CTA violation which resulted in him being ordered to attend CTA school, and in his current matter he continues to demonstrate deficiencies in managing his CTA responsibilities. A prior record of discipline involving related misconduct typically warrants substantial aggravation. (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].) However, upon considering *Shinn*, we view the remoteness of Greer’s prior discipline as a reason to assign less than substantial weight since his first occurred 25 years ago and his second 14 years ago. Under these circumstances, we conclude the hearing judge correctly found Greer’s prior records of discipline warrant moderate weight in aggravation.

2. Multiple Acts of Misconduct

The hearing judge found moderate aggravation under standard 1.5(b) for Greer's 24 acts of improper CTA transactions and his failure to maintain CTA records, which occurred over the span of five months. Neither party challenges the judge's finding, and we agree moderate aggravation is appropriate here. (See *In the Matter of Martin*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 761] [moderate aggravation for 168 improper CTA violations over 10 months]; Cf. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [significant aggravation for 65 improper CTA violations involving client harm over three-year period].)

B. Mitigation

1. No Prior Record of Discipline

On review, Greer attempts to argue he is entitled to significant mitigation for discipline-free practice given the amount of time since his second discipline, relying on *In the Matter of Martin*, *supra*, 5 Cal. State Bar Ct. Rptr. 753. Standard 1.6(a) explicitly states mitigation may be established for "absence of any prior record of discipline." The attorney in *Martin* did not have a prior record of discipline over his 15 years of practice before committing his first misconduct. Because this is Greer's third disciplinary case, his reliance on *Martin* is misplaced. As the hearing judge found, Greer is not entitled to mitigation under standard 1.6(a) for his 14 years of discipline-free practice between his second misconduct occurring in 2004 and his current misconduct which began in 2018. Since Greer's second discipline occurred over a decade ago, we found it appropriate to reduce aggravation under standard 1.5(a), as discussed *ante*.

2. No Harm to Clients, the Public, or the Administration of Justice

Standard 1.6(c) provides for mitigation where lack of harm to clients, the public, or the administration of justice can be established. The hearing judge found Greer's use of his CTA for personal purposes did not cause any client or public harm and afforded significant weight in

mitigation. Neither party challenges the judge’s finding of significant weight. We agree with the judge’s conclusion and assign substantial weight because the record demonstrates no harm was caused to clients, the public, or the administration of justice. (*In the Matter of Martin*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 762 [substantial weight for mitigation under std. 1.6(c) where no harm to client occurred].)

3. Cooperation

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 Greer nor OCTC challenge. Before trial, Greer stipulated to facts central to establishing the four charged 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 Greer is entitled to moderate weight for his cooperation.

4. Extraordinary Good Character

Greer 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 Greer limited mitigating weight under this circumstance. Neither party challenges this finding on review and we agree with the judge’s conclusion.

Greer presented letters from three character witnesses: two clients and one attorney.¹⁷ Each of the witnesses has known Greer for over 20 years and affirmed his honesty, helpfulness, and strong moral character. However, none of them illustrated they were “aware of the full

¹⁷ We note that one of the character letters submitted by a client was unsigned.

extent of the misconduct” and the witnesses did not constitute a wide range of references in the legal and general communities, as required by standard 1.6(f). (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [limited weight provided for character testimony of three attorneys and three clients because not from wide range of references from legal and general communities].) Therefore, we affirm the hearing judge’s finding and assign limited weight in mitigation.

5. Pro Bono Work 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 Greer’s community service warranted limited weight in mitigation since the evidence of his work was limited to his own testimony, which the judge found lacked specificity. Greer challenges this finding on review, arguing considerable mitigation should be afforded in light of *Jensen*.

OCTC requests we affirm the hearing judge’s finding and asserts Greer is not entitled to additional mitigation under this standard because Jensen, unlike Greer, provided detailed information about his extensive community service and those details were corroborated through Jensen’s wife’s testimony. Greer testified he has volunteered over the last 30 years at several community organizations: Long Beach Museum of Arts, the Long Beach Civic Light Orchestra, the Newport Beach Arts Commission, Stop Polluting our Newport, and the Orange County Public Finance Committee. The judge concluded Greer’s testimony was not sufficient for full weight since he failed to include specific dates and length of service and only limited information was corroborated by his good character evidence. We conclude Greer’s character witnesses only provided generalized facts to support his community involvement. For example, one former client stated Greer “volunteer[ed] for various boards and organizations” and another

stated that he “volunteer[ed] countless hours to organizations as diverse as youth sports and community arts.” Since Greer’s community service evidence is supported only through his testimony and generalized facts from witnesses that lack specific details, we agree with the judge that Greer is entitled to limited weight for establishing community service. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigating weight for community service established solely by attorney’s own testimony].)

6. Remorse and Recognition of Wrongdoing

Greer requests mitigation for remorse in acknowledging his misconduct. 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 did not find mitigation under standard 1.6(g). Based on our review of the record, we do not find clear and convincing evidence to prove Greer is entitled to mitigation for this circumstance.

Greer is not entitled to mitigation credit for remorse because he has not shown any “prompt objective steps” he undertook to correct his misconduct, and his sole expression of regret is insufficient. Greer claims he accepted responsibility for his actions and cooperated with OCTC by entering into the Stipulation; however, the record does not show he fully recognizes his wrongdoing. On review, he attempts to distinguish his misconduct and states he deposited “nominal funds” into his CTA and “simply wrote checks against earned fees appropriately deposited in his [CTA].” His arguments on review demonstrate a failure to fully appreciate the stringent rules that govern a CTA, his improper handling of his CTA, and his ethical responsibilities under the rules. (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].) Accordingly, Greer is not entitled to any mitigation for remorse.

V. A 30-DAY ACTUAL SUSPENSION IS NECESSARY DISCIPLINE

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 recommend sanctions falling within a standard’s range unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline. (Std. 1.7(b) & (c).) Finally, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, both standards 2.2(a) and 2.19 apply.¹⁸ We find standard 2.2(a) the most severe, because it provides that a 90-day actual suspension is the presumed sanction for commingling, which applies to counts one, two, and three. The hearing judge recommended a 30-day actual suspension by applying standard 1.7(c) and relied on *In the Matter of Martin, supra*, 5 Cal. State Bar Ct. Rptr. 753, to justify a downward departure from the presumed discipline under standard 2.2(a). OCTC asks we affirm this recommended discipline. Greer submits a period of actual suspension is too severe and punitive given the facts of this case. He argues his case is similar to *Martin* such that our recommendation should be a discipline less than actual suspension.

¹⁸ Standard 2.19 applies to count five as failure to maintain records of client funds is not specified misconduct under the standards. The presumed sanction under standard 2.19 is suspension not to exceed three years or revocation.

In *Martin* we determined the requirements of standard 1.7(c) had been met and found the record supported a downward departure from the 90-day actual suspension presumed under standard 2.2(a) to a public reproof instead. In *Martin*, the attorney was found culpable of two counts of commingling in violation of former rule 4-100(A) for using his CTA as a personal checking account over a 10-month period. Notably, at no point were client funds in Martin's CTA and he held an honest yet unreasonable belief that former rule 4-100(A) allowed personal funds to be held in the CTA if no client money was on deposit. Martin's misconduct was moderately aggravated for his multiple bad acts, which included making 168 transactions from his CTA during the 10-month period he used the account for personal funds. However, he established substantial mitigation for having practiced law for 15 years without any prior record of discipline and for lack of client harm. He was afforded moderate weight in mitigation for cooperating by entering into a stipulation and for his good character, which was established by witnesses who were fully aware of his misconduct and credibly testified to his reputation for honesty and candor. Under those circumstances, we found clear reasons for a departure from standard 2.2(a) and downward to a public reproof given the net result of Martin's mitigation and aggravation, coupled with the limited scope of his minor misconduct that resulted in no client harm.

We find Greer's and Martin's cases to be sufficiently analogous to support a departure from the range of sanctions recommended in standard 2.2(a) based on standard 1.7(c) because Greer's mitigation is greater than his aggravation, like Martin's (though not to the same degree), and both attorneys committed minor misconduct that did not involve moral turpitude or result in harm. However, in comparing Greer's facts and circumstances with those in *Martin*, we find Greer's misconduct warrants a more severe discipline than the public reproof we issued in *Martin*. Unlike in *Martin*, Greer maintained client funds in his CTA while also using it to hold

personal funds and pay personal expenses. In addition to the multiple commingling violations, Greer's misconduct also involved a failure to maintain proper CTA records of client funds. Further, we are mindful this is Greer's third disciplinary proceeding, and, although his misconduct from his second disciplinary matter occurred 14 years ago, his first record of discipline from 1996 also involved a CTA violation.

In our judgment, Greer's inattention to financial matters is concerning. Therefore, given the nature of the at-issue misconduct and his prior two public reprovings, we find a period of actual suspension at the low end of the discipline spectrum is necessary at this point to support the goals of professional discipline and is consistent with the standards and case law discussed. (See std. 1.1 [recommendation at high or low end of standard must be explained].) Therefore, a discipline that includes 30 days' actual suspension to protect the public, the courts, and the legal profession is recommended. Because his misconduct involves his CTA, we further recommend that Greer be ordered again to attend and complete Client Trust Accounting School.

VI. RECOMMENDATIONS

It is recommended that Phillip Barry Greer, State Bar Number 96438, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

- 1. Actual Suspension.** Greer must be suspended from the practice of law for the first 30 days 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, Greer 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 Greer's first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Greer 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, Greer 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. Greer 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, Greer 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, Greer may meet with the probation case specialist in person or by telephone. During the probation period, Greer 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 Greer's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Greer 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 State Bar record address, as provided above. Subject to the assertion of applicable privileges, Greer 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.** Greer 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, Greer 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.** Greer 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.** Greer 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. Greer 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, Greer 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 these sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Greer will not receive MCLE credit for attending these sessions. If he provides satisfactory evidence of completion of the Ethics School and/or Client Trust Account School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Greer 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 Greer has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

It is further recommended that Greer 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 Greer 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. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in 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 attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

IX. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions in this matter, as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure of the State Bar. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [the rules of statutory construction apply when interpreting the Rules of Procedure of the State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent an express retroactivity provision in the statute or clear extrinsic sources of intended retroactive application, a statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of a statute is ambiguous, the statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630-631 [the date of the offense controls the issue of retroactivity].)

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.