

Filed September 22, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	SBC-19-O-30076
)	
JAMIE NICHOLE HARRIS,)	OPINION
)	
State Bar No. 255826.)	
_____)	

In her first disciplinary case, Jamie Nichole Harris is charged with misconduct for improperly handling her client trust account (CTA) in one client matter. The hearing judge found Harris culpable of seven of the 10 charged counts of misconduct: three counts of moral turpitude (one for misappropriation and two for misrepresentation), failure to maintain client funds in Harris’s CTA, failure to pay client funds promptly, failure to refund unearned fees, and failure to render accounts of client funds. The hearing judge recommended an actual suspension of two years, continuing until Harris provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, arguing that Harris should be disbarred. Harris does not appeal the hearing judge’s discipline recommendation. Both Harris and OCTC agree with the judge’s culpability findings.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings. We agree with the judge that the facts and circumstances of this matter do not support a disbarment recommendation. The mitigating circumstances clearly predominate, including Harris’s emotional difficulties related to the dissolution of her marriage to her abusive former husband and the end of an acrimonious business partnership as well as her

subsequent good conduct in the practice of law since 2014. Further, OCTC's excessive delay in filing this case prejudiced Harris. In light of comparable case law, we recommend an actual suspension of two years, continuing until Harris makes full restitution and proves her rehabilitation and fitness to practice law.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on February 25, 2019, charging Harris with (1) failing to maintain client funds in her CTA, in violation of rule 4-100(A) of the Rules of Professional Conduct;¹ (2) failing to pay client funds promptly, in violation of rule 4-100(B)(4); (3) failing to refund unearned fees, in violation of rule 3-700(D)(2); (4) failing to render accounts of client funds, in violation of rule 4-100(B)(3); (5) misappropriation, in violation of Business and Professions Code section 6106;² and (6) five counts of misrepresentation, in violation of section 6106. On May 28, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). Trial was held on June 21, 25, and 27, and posttrial closing briefs followed. The hearing judge issued her decision on September 30, 2019.

OCTC filed its request for review on October 25, 2019, and its opening brief on February 12, 2020. Harris filed her responsive brief on April 17. OCTC filed its rebuttal brief on May 4. We then augmented the record on May 8, 2020, with Harris's declaration indicating that she has not practiced law since completing her last case on March 6, 2020, and that she has begun making payments toward restitution.

¹ 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.

² All further references to sections are to this source.

II. FACTUAL BACKGROUND³

Harris was admitted to practice law in California on May 27, 2008, and has no prior discipline. She opened a solo practice in 2009, primarily focusing on criminal defense cases. In the fall of 2010, Harris entered into a business relationship with attorney, Nick Cvietkovich. From the beginning, Harris had a difficult relationship with Cvietkovich, causing her stress and emotional difficulties. Her relationship with him came to an end in August 2011. The split was acrimonious, resulting in a lawsuit between the two. When the relationship ended, documents and files were lost.

In September 2010, during Harris's partnership problems, Monnica Williams found her through an advertisement on Craigslist. She hired Harris to help her distribute funds related to a real estate property she had invested in with two other individuals. Williams had sold the property at a loss and wanted help with recouping funds for the other investors. Harris and Williams discussed the representation and using Harris's CTA to hold and distribute the funds.

On October 22, 2010, Harris and Williams entered into an attorney-client fee agreement. As agreed, Williams paid a \$5,000 deposit to Harris to be held in the CTA to be used for charges at a rate of \$250 per hour. This was Harris's first representation of a client in a civil case.

Also on October 22, 2010, Harris filed for divorce due to her husband's violent outbursts. In January 2010, he assaulted Harris's mother. In February 2010, he was arrested for attacking Harris and overturning a stroller with one of her children inside. After filing for divorce, Harris lived with her husband briefly until she left out of fear for her children's and her own safety. The divorce was not finalized until 2012. Harris's relationship with her former husband caused stress and emotional turmoil as she was dealing with supporting her family and raising her children.

³ The facts included in this opinion 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).)

On November 1, 2010, Williams sent Harris \$41,000 and an additional \$24,000 on November 23, both of which Harris deposited into her CTA. Adding these two amounts to Williams's initial \$5,000 deposit, Williams paid Harris \$70,000. In November 2011, after using the funds to pay her approved attorney fees and agreed-upon payments to third parties, Harris should have held \$33,276.63 in her CTA. However, at that time, the CTA balance was zero. Although Harris did some work for Williams in 2012, totaling \$2,700 in fees, she did not provide contemporaneous invoices for this work. Upon termination of their employment relationship in August 2012, Harris failed to refund the \$30,576.63 to Williams.

Williams did not contact Harris again until May 2014, two years later, when she requested the balance of the funds she was owed. Harris did not return any of Williams's money nor did she render an appropriate accounting to her. She emailed Williams in June, stating that she would need to retrieve Williams's case files from storage and that she would provide all of the relevant documents. Harris did not do so. On July 5, Williams again inquired about her funds. Harris responded on July 8, stating that she needed another week to retrieve the files and she had to send Williams additional invoices.

On July 10, Harris sent Williams a letter falsely stating that her funds had been "used up years ago." In fact, Harris had not earned the amounts she was required to hold, but instead spent the money for her personal expenses. Harris also sent newly created invoices that were unlike those provided to Williams during her representation. Harris had to generate new invoices to provide an accounting to Williams because the originals were lost during her split from Cvietkovich.⁴ The 2014 invoices varied greatly from the originals. Included were new invoices for work performed in August and September 2010, as well as January through March

⁴ After the 2014 invoices were created, Harris inadvertently lost more of Williams's files.

2012. These invoices were not accurate and contradicted the original invoices provided to Williams.⁵ The 2014 invoices incorrectly stated that Williams owed Harris additional fees.

On July 27, 2014, Williams again asked Harris to refund her money. On August 4, Williams sent another email requesting an accounting. Harris never paid Williams the amount she was owed and never provided her with the required accounting. In January 2015, when Williams's new bankruptcy attorney contacted the State Bar about the missing funds, the State Bar began to investigate the matter. Disciplinary charges were not filed until more than four years later, in February 2019.

III. UNCONTESTED CULPABILITY

OCTC does not seek review of the hearing judge's culpability findings and does not challenge the dismissed charges. In her responsive brief on review, Harris also accepts the hearing judge's culpability findings. After independently reviewing the record, we affirm the judge's culpability findings and summarize them below.

**A. Count One: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))⁶
Count Five: Misappropriation (§ 6106)⁷**

The NDC alleges that Harris deposited \$65,000 from Williams—proceeds from a real estate sale—into Harris's CTA.⁸ After legal fees and third parties were paid, Williams was

⁵ When shown the 2011 invoices at trial, Harris testified that she did not recognize them nor did she prepare them. She asserted that she did not know what happened to the original invoices. The hearing judge found Harris's testimony not credible as the 2011 invoices were corroborated by other evidence, including emails between Harris and Williams and Harris's own notes. The judge found that the 2014 invoices were self-serving and were created years after the purported services, undermining their credibility.

⁶ Rule 4-100(A) requires attorneys to maintain all funds received or held for the benefits of clients "in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . ."

⁷ Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

⁸ Including the initial \$5,000 deposit, the total amount Williams paid Harris was \$70,000.

entitled to over \$30,000. Count one charges that Harris failed to maintain Williams's funds in her CTA. The hearing judge found that Harris violated rule 4-100(A) because she should have held over \$30,000 in her CTA for Williams, but the CTA balance in November 2011 was zero.

Count five alleges that Harris willfully and intentionally misappropriated over \$30,000 that Williams was entitled to receive. The hearing judge found clear and convincing evidence that Harris intentionally misappropriated \$33,276.63 in entrusted funds in November 2011, in willful violation of section 6106. The judge found that the facts underlying counts one and five are the same and did not assign additional weight in determining discipline.

We also find culpability for both counts but do not assign any additional weight in determining discipline for the rule 4-100(A) violation because the misconduct underlying this charge supports the section 6106 misappropriation charge. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge, but no additional weight in determining discipline].)

B. Count Two: Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))⁹

The NDC alleges that in May 2014, Williams requested the funds that should have remained in Harris's CTA for her. Count two alleges that Harris failed to promptly pay Williams as requested. The hearing judge found that more than \$30,000 of Williams's money remained in Harris's possession after the completion of the work. Because she did not return the funds to Williams, Harris violated rule 4-100(B)(4).

⁹ Rule 4-100(B)(4) requires attorneys to "[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the member which the client is entitled to receive."

C. Count Three: Failure to Refund Unearned Fees (Rule 3-700(D)(2))¹⁰

Count three alleges that Harris failed to promptly refund over \$30,000 in unearned fees when the employment relationship was terminated in August 2012. The hearing judge determined that Harris violated count three, as charged. However, she did not assign additional weight in determining discipline because the same intentional misconduct underlies the violation alleged in count two. (See *In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

D. Count Four: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))¹¹

Count four alleges that Harris failed to render an appropriate accounting in May 2014 when Williams asked for the remaining funds held by Harris. Harris admitted at trial that she failed to render accurate accounts of Williams's funds. The hearing judge found Harris culpable as charged.

E. Count Six: Misrepresentation (§ 6106)

Count six alleges that Harris made a false and misleading statement to Williams in July 2014 when she stated, "You have emailed me asking me for a check however, your funds were used up years ago." In fact, Harris had kept over \$30,000 of Williams's funds for herself. The hearing judge found that Harris's statement to Williams was a misrepresentation, in willful violation of section 6106.

F. Count Seven: Misrepresentation (§ 6106)

Count seven alleges that Harris sent Williams false and misleading invoices in 2014, contradicting the original invoices prepared in 2011. The hearing judge agreed and found that Harris violated section 6106 by seeking to mislead Williams in sending her the 2014 invoices.

¹⁰ Rule 3-700(D)(2) requires an attorney, when his or her employment has been terminated, to "[p]romptly refund any part of a fee paid in advance that has not been earned."

¹¹ Rule 4-100(B)(3) requires an attorney to maintain complete records of all client funds in the attorney's possession and to "render appropriate accounts to the client regarding them."

G. Count Eight: Misrepresentation (§ 6106)

Count eight alleged that Harris made various misrepresentations to Williams that contradict the 2014 recreated invoices. The judge determined that the 2014 invoices were not credible, but the allegations in the NDC assumed that the 2014 invoices were accurate and that Harris made misrepresentations that controverted those invoices. Therefore, the hearing judge dismissed count eight with prejudice. We affirm the dismissal with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 839 [dismissal of charges for want of proof after trial on merits is with prejudice].)

H. Count Nine: Misrepresentation (§ 6106)

Count nine alleged that Harris sent an email on October 19, 2010, stating it was “time to get started,” when she had already completed legal work before that date. The hearing judge dismissed count nine with prejudice as it too was based on the assumption that the 2014 invoices were correct. The hearing judge properly determined that this email was not a clear misrepresentation and that Harris was entitled to reasonable doubts being resolved in her favor. (See *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.) We affirm the dismissal with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 839.)

I. Count Ten: Misrepresentation (§ 6106)

Count ten alleged that Harris made a misrepresentation to the State Bar when she said that she provided invoices when Williams asked for them in the summer of 2014. The hearing judge dismissed this count, finding that Harris’s statement was not a misrepresentation as Williams had requested an accounting in the summer of 2014. We affirm the dismissal with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 839.)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct¹² requires OCTC to establish aggravating circumstances by clear and convincing evidence.¹³ Standard 1.6 requires Harris to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found aggravation for Harris's multiple acts of wrongdoing, including intentional misappropriation of client funds, misrepresentations to her client, failure to promptly pay client funds, failure to returned unearned fees, and failure to account. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].) We agree and assign moderate weight. (*In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 526 [moderate weight in aggravation for six acts].)

2. Significant Harm to the Client (Std. 1.5(j))

The hearing judge found that Harris caused Williams significant harm by failing to refund her money and assigned moderate weight. OCTC does not challenge the hearing judge's finding. Williams relied on Harris to assist her with mitigating the financial loss from her failing property investments. She testified that she was stressed due to Harris's failure to return the funds to her, but Williams did not request the funds until almost two years after the conclusion of the representation. We agree with the judge that Harris's significant harm to Williams deserves moderate aggravation weight under standard 1.5(j). (Cf. *In the Matter of Van Sickle* (Review

¹² All further references to standards are to this source.

¹³ 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.)

Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [aggravation for significant harm when client deprived of funds at time of desperate need].)

3. Failure to Make Restitution (Std. 1.5(m))

At the time of trial, Harris had not repaid any of the funds owed to Williams. Therefore, the hearing judge assigned substantial aggravation under standard 1.5(m). (See *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [aggravation for failure to pay \$10,000 in restitution].) Since the judge's decision, Harris has accepted the findings of culpability and order of restitution, and has begun making payments to Williams. As such, we find aggravation for failure to make restitution, but assign only moderate weight.

4. Indifference (Std. 1.5(k))

Standard 1.5(k) provides that an aggravating circumstance may include "indifference toward rectification or atonement for the consequences of the misconduct." The hearing judge did not assign aggravation under standard 1.5(k). On review, OCTC asks that we find aggravation for indifference toward rectification because Harris has been unwilling to take responsibility for her actions. However, at trial, Harris admitted to culpability for failing to account. And in her posttrial brief, she indicated that she was prepared to comply with any order of restitution. Since the hearing judge's decision, she has accepted the judge's findings of culpability and has begun to reimburse Williams. Harris has a right to defend herself, which is what she did at trial. (See *In re Morse* (1995) 11 Cal.4th 184, 209 [attorney accused of misconduct has right to defend herself vigorously].) Accordingly, we decline to assign aggravation for indifference.

B. Mitigation

1. Extreme Emotional Difficulties (Std. 1.6(d))

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties where (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. The hearing judge assigned substantial mitigating weight for the emotional difficulties Harris suffered as a result of her relationship with her former husband and former business partner. The hearing judge found that Harris credibly testified about these relationships and the hardships they caused during her representation of Williams.

Extremely stressful family circumstances may be a mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [marital problems considered mitigating]; *In re Naney* (1990) 51 Cal.3d 186, 197, citing *In re Demergian* (1989) 48 Cal.3d 284, 294 [domestic difficulties properly considered to mitigate seriousness of attorney's professional misconduct].) While standard 1.6(d) requires expert testimony to establish a nexus between the emotional difficulty and the misconduct, the standard is a guideline, not an inflexible mandate. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) Lay testimony may be used to evaluate mitigation under standard 1.6(d). (*In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation weight for illness even though no expert testimony established illness directly responsible for misconduct]; *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [some mitigation assigned to personal stress factors established by lay testimony].) In cases specifically dealing with emotional difficulties from family problems, the use of lay testimony has been sufficient to establish mitigating credit. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [lay testimony of

marital difficulties considered in mitigation]; *In the Matter of Mitchell* (Review Dept. 1991)
1 Cal. State Bar Ct. Rptr. 332, 341 [lay testimony regarding family concerns mitigating].)

Harris's relationship with her former husband caused her to suffer extreme emotional difficulties. He suffered from a serious illness requiring surgery. After the surgery, he became prone to physical violence, and even attacked Harris's mother and significantly injured her. Harris testified that he also assaulted her on several occasions, including threatening her with a knife. In addition, Harris's husband was arrested for flipping over her child's stroller with the child in it. Harris's testimony was corroborated by the testimony of her mother and a close friend, along with documents including a police report, Harris's email regarding the arrest from the stroller incident, and an email in October 2010 detailing the stress he was causing her. Harris described the anxiety that their relationship caused. She took on all family responsibilities, including taking care of her young children and paying bills, all while fearing her husband's unpredictable reactions. Harris filed for divorce on October 22, 2010, but it was not finalized until 2012.¹⁴ After filing for divorce, Harris still lived in the same home with her former husband until Christmas 2010. Fearing for her children's and her own safety, she then took the children to a friend's home and did not return. Harris testified that her husband continued to cause her emotional problems during the dissolution of her marriage and she suffered "a lot of scary moments."

Harris's partnership with Cvietkovich also caused her stress and extreme emotional difficulties. She entered into the relationship with Cvietkovich in the fall of 2010, just before she started representing Williams. The partnership was always unstable and lasted less than a year, ending in August 2011. Harris's assistant testified that Cvietkovich's presence caused Harris to be

¹⁴ This overlaps in time with Harris's representation of Williams and her misappropriation of Williams's funds. OCTC argues that the relationship ended earlier and could not form the basis of her extreme emotional difficulties. We reject this argument as Harris's marital problems were ongoing and caused her stress during the time of the misappropriation.

tense and negatively impacted the business.¹⁵ Three attorney-colleagues also testified that Harris's relationship with Cvietkovich and the breakup of the partnership caused her emotional difficulties and anxiety. Harris testified that after she ended the partnership, she found the office in complete disarray and files were missing. Harris's mother also testified as to the condition of the office as she assisted her daughter in cleaning up. She stated that it was a "mess" and it looked like it had been ransacked. A lawsuit between Harris and Cvietkovich resulted over the ending of their partnership. Harris testified that the aftermath of the dissolution was disruptive to her practice.

We find the evidence supports the hearing judge's finding that Harris suffered extreme emotional difficulties that contributed to her misconduct. Harris suffered emotional trauma as a result of her husband's violent abuse, which led to a lengthy divorce proceeding during which she continued to be afraid of her husband. Her marital stress could not be characterized as "routine," as she suffered anxiety and fear of violence. (Cf. *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1073 [less mitigation for emotional difficulties without assurance that routine marital stress or medical emergencies would not trigger future misconduct].) She also experienced extreme emotional difficulties from the turmoil caused by her partnership with Cvietkovich. Harris credibly testified that the totality of these emotional difficulties contributed to her misconduct. (See *In the Matter of Ward, supra*, 2 Cal. State Bar Ct. Rptr. at p. 60 [mitigation assigned to personal stress factors established by lay testimony].) Her testimony was corroborated by character witnesses and documentary evidence. OCTC did not rebut this evidence.¹⁶ Accordingly, we find clear and convincing evidence that Harris's personal problems

¹⁵ The assistant testified that she quit working for the firm due to Cvietkovich's bad behavior. She returned to work for Harris after Harris's relationship with Cvietkovich ended.

¹⁶ In reviewing the record, we find no merit to OCTC's arguments that no evidence connected Harris's problems to her misconduct.

affected her judgment and were directly responsible for the misappropriation.¹⁷ (Cf. *In the Matter of Mitchell*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 341 [lay testimony used to establish mitigation where readily conceivable that attorney’s personal problems could cloud judgment and be directly responsible for some misconduct].) Further, Harris’s emotional difficulties stemmed from two extreme events that were fully resolved years ago. The dissolution of these problematic relationships and Harris’s lengthy period of good conduct since 2014, including evidence of her stellar performance as established by extraordinary good character evidence, demonstrate the lack of a risk of future misconduct.¹⁸ We therefore assign substantial mitigation for extreme emotional difficulties for Harris’s misappropriation.¹⁹ (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1309–310 [mitigation for emotional problems appropriate to consider in misappropriation case].)

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

Harris 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).) Fifteen witnesses, including eight attorneys, testified at trial regarding Harris’s good character. All of the witnesses were aware of the full extent of the misconduct and attested that the charges in the NDC did not change their high opinion of Harris.

¹⁷ We agree with OCTC’s argument that Harris’s personal problems do not mitigate her misconduct in 2014 as they ended at least two years earlier.

¹⁸ OCTC argued that there is no evidence that Harris’s difficulties no longer exist and that she has not shown rehabilitation. OCTC’s argument is misplaced here as it relies on cases dealing with mental or psychological disorders, not on cases dealing with extreme emotional difficulties from personal problems. To receive mitigation, Harris is not required to show rehabilitation, but she must show that the extreme emotional difficulties no longer pose a risk that she will commit future misconduct. Harris has done so here.

¹⁹ Harris’s extreme emotional difficulties do not mitigate her misconduct in 2014. However, the misappropriation charge is the crux of this matter and constitutes the most serious of Harris’s violations. Therefore, we find that she is entitled to substantial mitigation under standard 1.6(d). The other mitigation factors detailed below mitigate all of the misconduct.

They commented favorably on Harris’s integrity, honesty, and desire to help people. The clients who testified stated that Harris was trustworthy, caring, and diligent in her work. They noted that Harris was timely in addressing their concerns and was understanding when they were unable to make payments. Most of the attorneys who testified knew Harris from working in criminal court and had regularly observed her. They praised her skills as an attorney and described her as a fierce advocate. They noted that she is well respected among her peers for achieving positive outcomes for her clients and that she is known to be conscientious in her work. We give considerable weight to this testimony. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys’ testimony due to their “strong interest in maintaining the honest administration of justice”].) We affirm the hearing judge’s determination that Harris is entitled to substantial mitigation for her extraordinary good character.²⁰

3. Excessive Delay (Std. 1.6(i))

Excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the attorney is a mitigating circumstance. (Std. 1.6(i).) The hearing judge found that OCTC’s delay in bringing charges against Harris necessarily prejudiced her. She assigned moderate weight in mitigation. OCTC did not challenge this finding.

The primary event in this matter, Harris’s misappropriation, occurred in November 2011. Williams attempted to obtain her money from Harris years later in May 2014. Williams then complained to the State Bar in January 2015. OCTC did not file the NDC until February 25, 2019, more than four years after the complaint was received. The passage of time between the misconduct and the disciplinary trial affected Williams’s ability to recall factual details. Harris also had difficulty recalling specific facts due to the passage of time. As such, she was

²⁰ OCTC did not challenge the hearing judge’s finding of substantial mitigation for Harris’s good character evidence.

prejudiced by an excessive four-year delay before OCTC brought charges in this matter. (See *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 157 [delay mitigating when State Bar did not file charges until three and one-half years after receiving initial complaint]; *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 13 [nearly five years to file disciplinary charges entitled to considerable mitigation].) We affirm the hearing judge's finding of mitigation for excessive delay, but find no reason to reduce the weight to moderate as Harris has established that the delay prejudiced her. Therefore, we assign substantial mitigation.

4. Subsequent Good Conduct

Harris cannot receive mitigation for her lack of a record of discipline because she had been admitted for only two years when the misconduct in this matter began. However, we assign mitigation for the period of good conduct that Harris displayed after the misconduct. In the years since Williams filed her complaint with the State Bar, Harris has not had any other disciplinary matters and has shown her ability to adhere to acceptable standards of professional behavior. (See *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 [mitigating that attorney had period of practice after complaint filed with no additional charges of unethical conduct]; *In the Matter of Crane and DePew, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 158–159 [subsequent good conduct considered in mitigation].) We assign substantial mitigation for Harris's subsequent good conduct.

5. Cooperation with State Bar (Std. 1.6(e))

The hearing judge did not address this factor. We find that Harris is entitled to mitigation for her cooperation with the State Bar. She entered into a pretrial stipulation as to facts and admission of documents. (Std. 1.6(e) [spontaneous candor and cooperation displayed to State Bar is mitigating].) Though she did not admit to full culpability at trial, she accepts the hearing judge's culpability findings on review. Therefore, we assign moderate weight in mitigation.

(See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation weight for admission of culpability and facts].)

V. 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 also look to comparable case law for guidance. (See *Snyder v. State Bar, supra*, 49 Cal.3d 1302 at pp. 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].) Standard 2.1(a) applies as it specifically deals with intentional misappropriation. It provides that disbarment is the presumed sanction for such misconduct “unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.” That standard further provides that if disbarment is not imposed, the discipline shall include a period of actual suspension.

Misappropriation cases do not necessarily call for disbarment and “no fixed formula applies in determining the appropriate level of discipline.” (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 384.) “Instead, we determine the appropriate discipline in light of all relevant circumstances.” (*Ibid*; see *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656 [no fixed disciplinary formula, but misappropriation generally warrants disbarment unless clear

extenuating circumstances are present[.] Disbarment often occurs where there are several instances of misappropriation of large sums and multiple clients are involved. However, disbarment can be imposed on an attorney with no prior record in a case of a single misappropriation. (*In re Abbott* (1977) 19 Cal.3d 249, 288.) Disbarment has also been imposed where the attorney displays a lack of candor along with lack of remorse and failure to pay restitution. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128–129.) But discipline less than disbarment may be warranted “where extenuating circumstances show that the misappropriation of entrusted funds is an isolated event and other mitigating circumstances are present.” (*In the Matter of McCarthy, supra*, 4 Cal. State Bar Ct. Rptr. at p. 384.)

The hearing judge was guided by *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, where the attorney misappropriated \$25,000 in client funds by making 19 unauthorized withdrawals in an eight-month period. Tindall also failed to perform, failed to communicate with his client, and failed to comply with his ethical duties when his client discharged him. He received some mitigation for no prior record in seven years of practice and significant mitigation for his practice on behalf of poor and disadvantaged clients. Because there was no evidence of misconduct toward any other client nor was there any evidence of intentional deceit of the client, we recommended discipline less than disbarment, including an actual suspension of three years. The hearing judge found that Harris had greater mitigation than Tindall and demonstrated additional compelling mitigating circumstances related to emotional and family difficulties during her representation of Williams. Further, she found that Harris was prejudiced by OCTC’s excessive delay in initiating the proceedings. As such, the judge recommended a discipline similar to *Tindall*, but reduced the actual suspension from three years to two years. We agree with the hearing judge’s reliance on *Tindall* for guidance in this matter.

We also find guidance in *Snyder v. State Bar*, *supra*, 49 Cal.3d 1302. The Supreme Court upheld our recommendation that Snyder be actually suspended for two years for his misappropriation of client funds. *Snyder* is important because the court emphasized that “misappropriation is a serious offense warranting severe discipline in the absence of ‘clearly extenuating circumstances.’ [Citations omitted.]” (*Id.* at p. 1308.) The court found that two factors in mitigation made disbarment inappropriate: (1) Snyder’s emotional breakdown and (2) the voluntary termination of his practice for three years.²¹ The court found that emotional difficulties may lessen the moral culpability of an attorney’s misconduct. However, to protect the public, an actual suspension was warranted. Such is the case here. Harris’s strong mitigation, including emotional difficulties, make disbarment unnecessary, but a lengthy actual suspension is needed to protect the public.

Harris’s misappropriation constitutes serious misconduct, which harmed her client by depriving Williams of over \$30,000, not an insignificant sum. She also committed several other acts of misconduct involving her CTA and Williams’s funds, including making misrepresentations to Williams. Further, Harris has not made full restitution to Williams. As such, we might ordinarily recommend disbarment. However, we do not believe disbarment is necessary in this case to serve the goals of discipline. Harris’s misconduct is related to her failure to properly manage funds in one client matter. The circumstances surrounding the misappropriation show that Harris was under an immense amount of stress relating to the ending of her marriage, abuse from her former husband, and the dissolution of her business partnership. The 2014 misrepresentations were, in part, due to the fact that Harris had to reconstruct her missing files. These extenuating circumstances, along with the mitigation credit Harris has received, warrants a discipline less than

²¹ Snyder represented one client during this period—the client from whom he misappropriated funds.

disbarment. (*Snyder v. State Bar*, *supra*, 49 Cal.3d at p. 1308; *In the Matter of McCarthy*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 384.)

The hearing judge found that Harris's compelling mitigation precluded disbarment from being warranted. We afford even more weight in mitigation than the hearing judge, finding additional weight for OCTC's excessive delay and two additional mitigation factors for Harris's subsequent good conduct and her cooperation. OCTC took an excessive amount of time to bring charges in this matter and Harris deserves mitigation credit for OCTC's unexplained delay. During this delay, Harris has demonstrated subsequent good conduct and has not been involved in other disciplinary proceedings. In addition, after the hearing judge's decision, Harris submitted a declaration to this court stating that she accepted the judge's findings of culpability; has not practiced law since March 6, 2020; and has begun making restitution payments. This declaration is evidence that Harris is proactively taking steps toward rehabilitation and that she recognizes her wrongdoing. We also note Harris's exceptional good character evidence and her cooperation. Accordingly, we find that the mitigating circumstances clearly predominate and agree that disbarment is not necessary here. (Std. 2.1(a).)²²

The facts and circumstances of this case and the five compelling mitigation factors persuade us to affirm the hearing judge's discipline recommendation, including that Harris remain suspended from the practice of law until she makes restitution to Williams and she proves her

²² OCTC argues that disbarment is required, comparing this matter to *Chang v. State Bar* (1989) 49 Cal.3d 114, *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, and *Kaplan v. State Bar* (1991) 52 Cal.3d 1067. Those cases involved disbarment for misappropriation, but we find that they are distinguishable. Chang received no mitigation credit, while Harris has compelling mitigation; Chang made no effort to repay his client, while Harris has begun making restitution; and Harris has not shown disrespect for the State Bar's authority as did Chang. In *Song*, we found that the mitigation did not predominate. Here, however, we find that Harris's mitigation does. *Kaplan* is different as it involved an ongoing scheme to defraud Kaplan's law partners, not misconduct related to misappropriation in one client matter. Further, unlike Harris, Kaplan did not receive mitigation for emotional difficulties as he could not prove that routine stresses would not cause further misconduct.

rehabilitation, fitness, and learning in the law. The restitution condition is consistent with the goals of furthering Harris's rehabilitation and the public's confidence in the legal profession. (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044 [restitution effectuates attorney's rehabilitation and protects public from similar future misconduct].) Requiring restitution will emphasize to Harris that attorneys must account for their misconduct and will ensure that she does so before she returns to the practice of law. An actual suspension of two years will encourage her to promptly make restitution to Williams and promotes public protection.

VI. RECOMMENDATION

We recommend that Jamie Nichole Harris, State Bar Number 255826, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that she be placed on probation for five years with the following conditions:

1. **Actual Suspension.** Harris must be suspended from the practice of law for the first two years of her probation, and remain suspended until the following conditions are satisfied:
 - a. She makes restitution to Monnica Williams, or to such other recipient as may be designated by the State Bar Office of Probation or the State Bar Court, in the amount of \$30,576.63 plus 10 percent interest per annum from April 1, 2012 (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,
 - b. She provides proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Harris 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 her compliance with this requirement, to her first quarterly report.
3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Harris must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of her 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, Harris must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Harris must report, in writing, any change in the above information to ARCR, within ten (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, Harris must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of her 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, she may meet with the probation case specialist in person or by telephone. During the probation period, Harris 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 Harris's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, Harris must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Harris 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.** Harris 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, Harris must submit a final report no earlier than ten (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.** Harris must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she 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.** Harris is directed to maintain proof of her 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 her actual suspension has ended, whichever is longer. She 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 and Client Trust Accounting Schools.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Harris must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and the State Bar Client Trust Accounting Schools 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 she will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School and Client Trust Account School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Harris will nonetheless receive credit for such evidence toward her 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 Harris has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.
- 10. Proof of Compliance with Rule 9.20 Obligation.** Harris is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that she comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom she 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 Harris with the State Bar Court. She 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 Harris 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 she 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, Harris will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Harris 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.²³ Failure to do so may result in disbarment or suspension.

IX. 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. 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.

²³ 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, Harris is required to file a rule 9.20(c) affidavit even if she 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).)

X. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions 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 of California, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules of Procedure of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.