

Filed November 10, 2021

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	13-O-16057; 14-O-03616
)	(15-O-15856; 16-O-10804)
JAMES DeAGUILERA,)	(Consolidated)
)	
State Bar, No. 166315.)	FINDINGS AND
)	RECOMMENDATION AFTER
)	REMAND BY SUPREME COURT
_____)	

In October 2018, we filed our opinion (hereafter RDO) upholding most of the findings and the disbarment recommendation of the State Bar Court hearing judge as to respondent James DeAguilera. The Supreme Court ordered DeAguilera’s disbarment in February 2019. On DeAguilera’s later motion to the Supreme Court on March 27, 2019, the Supreme Court stayed its disbarment order, granted rehearing, denied DeAguilera’s motion to produce additional evidence, and remanded this matter to our court (*DeAguilera on Discipline* (S252756).)

The Supreme Court requested that we undertake proceedings to determine whether the statements in a March 5, 2019 declaration of a complainant, Carlos Jaramillo, which DeAguilera had appended to his Supreme Court motion and purportedly recanted part of Jaramillo’s 2017 State Bar Court testimony, were authentic and credible. Based on those findings, we must determine whether to modify or augment our culpability determinations in the Jaramillo matter.¹

¹ As there is no issue of the findings in any matter but the Jaramillo matter, the Supreme Court remand order is limited in scope to the Jaramillo matter.

Next, we must consider whether to revise or reaffirm our recommendation for appropriate discipline. Finally, we must submit our findings and recommendation to the Supreme Court.

Because the hearing and evaluation of witness credibility were essential to this remand, we referred it to our court's Hearing Department. After the hearing judge's successful efforts to hear and weigh the live testimony of Jaramillo, which took an extended time, she issued her Determinations and Recommendations filed March 3, 2021, concluding that Jaramillo's 2019 recant declaration was authentic, but was not credible.² However, because of the repeatedly and significantly varying testimony of Jaramillo over several examinations since 2017, the judge found Jaramillo's testimony no longer provided clear and convincing evidence supporting DeAguilera's culpability of misappropriation of funds. Accordingly, she recommended that the misappropriation charge be dismissed. Yet, she recommended that no change be made to the other culpability findings in our RDO, nor to our disbarment recommendation, save for making isolated changes to certain findings in aggravation, and that DeAguilera's restitution requirement be deleted, given her recommended dismissal of the misappropriation charge.

We have independently reviewed this evidence and the findings of the currently assigned judge, and we adopt them, resting as they do primarily on the hearing judge's assessment of witness credibility. We also adopt the hearing judge's recommendation of relatively small adjustments in her findings in aggravation to reflect our reversal of our previous findings of culpability of misappropriation of funds. As well, we agree with the judge's recommendation that DeAguilera has shown no good cause to reverse other culpability findings in the Jaramillo matter.

² As the hearing judge who conducted the original 2017 trial had retired, this matter was referred to a hearing judge who had no previous involvement with this matter.

Finally, we modify our October 2018 recommendation of disbarment only as to the restitution requirement. We recommend that the Supreme Court remove the requirement of restitution contained in its February 27, 2019 order, in light of our dismissal of the misappropriation charge. Moreover, restitution of \$22,400 was made to Jaramillo on March 5, 2019, which he accepts as repayment in full, disclaiming any interest. Otherwise, we again recommend disbarment for the reasons set forth in our RDO, given DeAguilera's serious, remaining misconduct, and that this is his third disciplinary proceeding. (See *post*, at pp. 15-16.)

I. PROCEDURAL HISTORY AFTER THE SUPREME COURT'S REMAND

We set forth below the State Bar Court's steps in considering the Supreme Court's referral order of March 2019. Because evidentiary issues are central to this matter, we promptly referred the remand order to our Hearing Department. We directed the hearing judge to make and memorialize the Supreme Court's ordered determinations and provide us these determinations, so that we could evaluate them, if requested by a party, and submit the State Bar Court's recommendation to the Supreme Court.

In May 2019, the hearing judge granted the request of the Office of Chief Trial Counsel of the State Bar (OCTC) to take Jaramillo's deposition. DeAguilera objected to this, arguing that only written discovery should be allowed, and that Jaramillo should be protected from having to be deposed. The judge denied DeAguilera's opposition and on July 19, 2019, a 61-page deposition of Jaramillo was taken. An English-Spanish interpreter translated. The deposition was attended by Jaramillo's personal attorney, and by DeAguilera and his counsel at the time. Jaramillo's personal attorney, OCTC, and DeAguilera's counsel each examined Jaramillo.

As the hearing judge found, and we discuss *post*, Jaramillo's deposition testimony largely confirmed his 2017 trial testimony that he had not authorized DeAguilera to use trust funds for

legal fees for lawsuits. But just two weeks after Jaramillo's deposition was taken, he signed a seven page, single-spaced typed objection to most—but not all—of the significant statements he had made in the deposition. This document was prepared by Jaramillo's counsel.

After seeking the positions of the parties, the hearing judge decided that no good purpose would likely be served by receiving Jaramillo's live testimony before her, as Jaramillo had demonstrated twice that he would testify clearly, but would seek to correct or recant that testimony later. At trial, the parties made no objections to that decision to dispense with live testimony. After briefing by DeAguilera and OCTC, the judge submitted the matter, issuing her decision on November 22, 2019. In her decision, she determined Jaramillo's recant declaration was authentic but not credible, and no changes in the factual findings or in the degree of discipline should be made, other than deleting the restitution requirement which DeAguilera had satisfied in March 2019.

DeAguilera sought review of the hearing judge's November 2019 decision, and filed numerous motions with us while that review was pending. OCTC opposed DeAguilera's key points on review and his many motions, almost all of which we denied as lacking in good cause.

After hearing oral argument in September 2020, we ordered this matter re-referred to the hearing judge with directions, *inter alia*, to conduct, at minimum, a hearing at which Jaramillo testified, and allowing the parties an opportunity to examine him.

On December 2, 2020, the hearing judge heard the testimony of Jaramillo, and allowed DeAguilera to also testify. On March 3, 2021, the judge issued her second decision which is now under our review. This 2021 decision also found Jaramillo's recant declaration authentic but not credible. However, in view of the repeatedly varying nature of Jaramillo's testimony, the judge recommended dismissal of the charge that DeAguilera misappropriated \$22,600 of funds

he was holding for Jaramillo's business, made corresponding changes to certain findings in aggravation, but also continued to recommend disbarment as the appropriate discipline, particularly considering that this is DeAguilera's third disciplinary case.

DeAguilera seeks review of that decision before us, agreeing with the hearing judge's reversal of the misappropriation finding, contending that specific remaining findings of culpability should also be reversed, and arguing disbarment is unwarranted. Before us, OCTC accepts, as within the judge's discretion based on the record, her recommended dismissal of the charge that DeAguilera willfully misappropriated Jaramillo's funds, opposes DeAguilera's other contentions, and urges disbarment as the appropriate discipline.

II. WE ADOPT THE FINDINGS OF THE HEARING JUDGE ON REMAND THAT JARAMILLO'S MARCH 2019 RECANT DECLARATION WAS AUTHENTIC BUT NOT CREDIBLE

A. Jaramillo's March 2019 Declaration Was Authentic.

We agree with the hearing judge's finding that the declaration executed by witness Carlos Jaramillo, dated March 5, 2019, purportedly recanting his 2017 trial testimony, is authentic, as it was reviewed and signed by him. Neither OCTC nor DeAguilera oppose this finding. Clear and convincing evidence was adduced below to support this finding of the hearing judge, and we adopt it.

B. Jaramillo's 2019 Declaration Was Not Credible.

1. Background.

For the multiple reasons stated by the hearing judge, and discussed by us, *post*, we find Jaramillo's 2019 declaration was not a credible refutation of his 2017 trial testimony. In evaluating the credibility of this declaration, and of Jaramillo's testimony, the judge was aptly

guided by Evidence Code section 780, setting forth the factors which a court may consider in determining witness credibility.³

The essence of Jaramillo's 2017 trial evidence was that he authorized DeAguilera to use the \$50,000 to open and operate a medical marijuana dispensary (MMD), and this point was made repeatedly to DeAguilera. Jaramillo had believed that he satisfied DeAguilera's claims for fees by signing retainer agreements which DeAguilera prepared, and by advancing to DeAguilera \$6,000 for attorney fees. Those agreements provided DeAguilera would bill Jaramillo for services as performed.

In our RDO, we concluded DeAguilera and Jaramillo agreed that Jaramillo's \$50,000 was to be used solely to buy or lease the MMD property and furnish and operate an MMD on that site. Where their views diverged, is that Jaramillo maintained in his 2017 trial testimony that those purposes were the sole authorized use of the \$50,000. DeAguilera had that view only for a few weeks after he had received Jaramillo's \$50,000 of trust funds, and thereafter, the character or purpose of the \$50,000 changed to include legal fees incurred by DeAguilera for litigation by DeAguilera against the City of Los Angeles, so that Jaramillo could operate the MMD on his chosen site.

Before discussing the hearing judge's finding that Jaramillo's recant declaration of March 5, 2019, was not credible, we describe the declaration's origin, form, and key contents.

³ Evidence Code, section 780 authorizes the following factors to be used in determining witness credibility: (a) witness demeanor while testifying; (b) the character of the witness's testimony; (c) the extent of the witness's capacity of perception, recollection, or communication; (d) the extent of the witness's opportunity to perceive the matter; (e) the witness's character for honesty or veracity; (f) the existence or nonexistence of bias, interest, or other motive; (g)-(h) a statement previously made that is consistent or inconsistent with the witness's testimony; (i) the existence or nonexistence of any fact testified to by the witness; (j) the witness's attitude toward the action or toward giving testimony; and (k) the witness's admission of untruthfulness.

Jaramillo had followed this court’s action on this matter and had learned of our RDO. It is unclear whether DeAguilera or Jaramillo initiated re-contact efforts, but the two met four times between late 2018 and early 2019. In one of these meetings, DeAguilera explained to Jaramillo all of the steps DeAguilera had to take to allow Jaramillo to open and run his planned MMD, and he explained the import of filing a lawsuit against the City of Los Angeles seeking declaratory relief. Jaramillo testified at his 2019 deposition, and reiterated in his 2020 testimony below, that, prior to late 2018 or early 2019, he had not understood why DeAguilera was justly claiming entitlement for fees from the \$22,600 of remaining trust funds, after lease and tenant improvement expenses were paid. Jaramillo testified he felt bad that the 2014 events could result in harsh lawyer discipline for DeAguilera. Jaramillo offered to “correct” the situation and help out DeAguilera. DeAguilera offered to prepare a document to send to the State Bar. They also discussed DeAguilera’s restitution to Jaramillo, including the amount thereof.⁴

Once Jaramillo believed in 2018 that DeAguilera had not acted dishonestly to misappropriate his funds, he sought repeatedly to contact the OCTC trial attorney in this proceeding, and ultimately sent her an email stating his position on August 8, at a time when the matter was before us for review.

Jaramillo’s March 5, 2019, declaration was composed in English on the letterhead of DeAguilera’s former counsel, Anthony Radogna. The text of the declaration was composed jointly by DeAguilera and Radogna. Jaramillo had no role in composing it. The declaration consisted of 10 pages and included citations to Jaramillo’s 2017 State Bar Court trial testimony.

⁴ At the time of these conversations, the restitution recommendation was in our RDO and, as noted, *ante*, the Supreme Court had ordered restitution in its February 2019 order.

Regarding the declaration's most pertinent aspect, it stated as of September 24, 2014, Jaramillo knew and authorized that the \$22,600 of his trust funds remaining after the rent payments would be used for legal fees by DeAguilera in pursuing a lawsuit against the City of Los Angeles, so that Jaramillo could open his MMD.⁵ This declaration also stated Jaramillo was "wrong" when he testified in 2017 that he had not agreed DeAguilera could use the \$22,600 for legal fees. The declaration further stated Jaramillo's position that he had sought the \$22,600 from DeAguilera because Jaramillo had sold the business to another person in late 2014 for \$120,000, but was never paid by the buyer.

The declaration omitted to state that, just prior to Jaramillo signing the declaration, DeAguilera handed Jaramillo a check for \$22,400, nearly the same amount as the Supreme Court had ordered in February 2019 that DeAguilera pay Jaramillo in restitution.⁶

Although the entire length of Jaramillo's visit to DeAguilera on March 5, 2019 was three and a half hours, no more than 20 minutes was devoted to Jaramillo reviewing the declaration. Jaramillo did not understand most of the declaration, which was in English, and DeAguilera personally translated its provisions to Jaramillo from English into Spanish.

With this background, we now address the several reasons why the hearing judge found that Jaramillo's March 5, 2019 declaration was not credible and why we adopt that finding.

⁵ The evidence from the 2017 State Bar Court trial shows that the next day, September 25, 2014, DeAguilera wrote to Jaramillo stating that the \$22,600 which he was holding "will be, per our agreement, used for the purpose of this lawsuit and any related motions and appeals." As the record shows, Jaramillo had objected at trial to that use of these funds. Later testimony by Jaramillo after the 2019 Supreme Court remand order is also consistent with Jaramillo's 2017 position, while his later testimony was not.

⁶ Jaramillo considered that the \$22,400 paid by DeAguilera fully satisfied his claim and disclaims any interest.

2. Jaramillo signed the declaration just after DeAguilera gave him a check for full restitution.

Although Jaramillo disclaimed that DeAguilera's payment of restitution just before presenting Jaramillo with the declaration was a quid pro quo for his signing the declaration, the hearing judge correctly assigned this sequence as one which contributed to the lack of credibility of the declaration. We agree.

As Jaramillo testified in his 2019 deposition, he only wanted DeAguilera to return his funds. He did not wish to see him harshly disciplined. DeAguilera's tender to Jaramillo of his \$22,400 check, just before Jaramillo signed his March 2019 declaration, fulfilled Jaramillo's wishes. Yet, inescapably, it was a significant factor which created at least an appearance of bias or partiality of Jaramillo to DeAguilera and undermined the declaration's credibility. (Evid. Code, § 780, subd. (f).)

3. Statements in Jaramillo's 2019 declaration are inconsistent with parts of his later 2019 deposition testimony and 2020 trial testimony, and his 2020 testimony contained key internal inconsistencies.

The lack of consistency of the declaration, particularly with portions of Jaramillo's *later* July 19, 2019 deposition testimony and 2020 trial testimony, also erodes its credibility. As the Supreme Court observed, "It has long been recognized that 'the offer of a witness, after trial, to retract . . . sworn testimony is to be viewed with suspicion. [Citations.]" (*In re Roberts* (2003) 29 Cal.4th 726, 742.) This case demonstrates the import of the court's observation in *Roberts*.

In his July 2019 deposition, taken as part of OCTC's discovery during this remand proceeding, Jaramillo stated that when he testified in the 2017 trial, he was truthful, and it was important to Jaramillo that his testimony reflect the truth. He also testified that in 2014 and up to 2017, he had not authorized DeAguilera to use any part of the remaining trust funds for lawsuit fees, but only to use it for the expenses of operating the MMD. However, Jaramillo testified at

his 2019 deposition that DeAguilera had explained in 2018 or 2019 the circumstances of his need to file suit on Jaramillo's behalf in order to allow him to open his MMD. Thus, what Jaramillo then understood, was that it was not a matter of DeAguilera keeping the funds, but rather a "money" dispute, which meant a fee dispute. Jaramillo was asked in his 2019 deposition if he felt that DeAguilera had ever tried to steal his \$22,600, Jaramillo testified, "Not to steal the money; not to return it to me at the time, yes."

Several days after this deposition, Jaramillo signed a seven-page "errata" correcting it, particularly the portions confirming his 2017 trial testimony. Contemporaneously, the hearing judge gave no credence to Jaramillo's corrections of his deposition, but the process of Jaramillo testifying via deposition and then promptly seeking to correct it was reminiscent of his seeking to recant his clear 2017 trial testimony.

Jaramillo's 2020 testimony included his statement that, prior to late 2018 or 2019, he did not understand that DeAguilera had authority to use any part of the remaining \$22,600 for fees for litigation. Only after his 2018 or 2019 meetings with DeAguilera did Jaramillo understand that this was proper.

The hearing judge was quite concerned that Jaramillo's 2020 testimony, and his post-2017 testimony as a whole, were so internally inconsistent on two key issues—whether Jaramillo authorized DeAguilera to use some of the \$22,600 for fees for lawsuits and, if so, in what amounts—that this not only called into question the credibility of Jaramillo's 2019 declaration, but more seriously, the findings on which our 2018 RDO conclusion of DeAguilera's misappropriation of \$22,600 rests. This latter concern was within the ambit of the Supreme Court's remand order.

Specifically, Jaramillo testified earlier in his 2020 testimony that all of the \$50,000 he gave DeAguilera to hold in trust was either for lease payments, or for expenses to open his MMD. He had separately paid DeAguilera's fees for litigation and expected DeAguilera to bill him separately for any additional fees for litigation. However, later in his testimony, Jaramillo stated that he had authorized DeAguilera to use these trust funds for fees, and the only aspect of the dispute between them was the specific amount of the remaining \$26,600 he had authorized.

As the hearing judge found, Jaramillo's testimony varied greatly as to the specific amounts he believed that DeAguilera owed him. In our analysis, this arose because Jaramillo testified to different amounts of trust funds which he had authorized DeAguilera to use for litigation fees. These varying amounts ranged from \$5,000 to the entire \$22,600.

We uphold the hearing judge's findings, that since portions of Jaramillo's later testimony conflicted with his 2019 declaration, but were consistent with his 2017 trial testimony, the credibility of the 2019 declaration is undermined.⁷

4. The hearing judge found additional reasons to find that Jaramillo's declaration lacked credibility.

We adopt the following additional reasons given by the hearing judge in her decision filed November 22, 2019, that Jaramillo's March 2019 declaration was not credible.

No text of this lengthy declaration was originated by Jaramillo. Rather, it was prepared jointly by DeAguilera and Jarmillo's former counsel, Radogna.

Jaramillo took only 15 to 20 minutes to review the declaration before signing it. DeAguilera did not offer or invite Jaramillo to take either additional time to review the

⁷ When Jaramillo was asked why he accepted DeAguilera's restitution of \$22,600, given his authorization to DeAguilera, he replied that he accepted it because the "judge" had ordered it, and DeAguilera said to Jaramillo that he (DeAguilera) would pay it.

declaration or the opportunity to consult independent counsel, or any other trusted advisor, before signing the document.

Finally, Jaramillo asked for some provisions of the declaration to be translated from English to Spanish, particularly as to legal terms or concepts. DeAguilera provided the sole translation, and he was obviously interested in the outcome of Jaramillo's purported recantation of his 2017 testimony.

III. WE ADOPT THE HEARING JUDGE'S RECOMMENDATION THAT THE CHARGE OF MISAPPROPRIATION BE DISMISSED

In the hearing judge's March 3, 2021 Determinations and Recommendations, she found that, given the fluctuating nature of Jaramillo's testimony since the 2017 trial, she could not view the count of misappropriation as now supported by Jaramillo's testimony. In her view, too many inconsistencies existed within Jaramillo's testimony that she could not properly select some statements over others in order to support culpability. Moreover, consulting the documentary evidence did not provide the judge with adequate support for that misappropriation charge. Accordingly, she has recommended that the misappropriation charge be dismissed.

As noted, *ante*, we are required to review this record independently (Rules Proc. of State Bar, rule 5.155(A)), and we have done so. In this case, we properly give great weight to the hearing judge's evaluation of Jaramillo's post-2017 testimony. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve questions of credibility "because [she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"]; *In the Matter of Schooler* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 494, 499, fn.4; *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767, 774 [we are reluctant to deviate from hearing judge's credibility-based factual findings, absent a specific showing of error].)

Because we anticipated that witness credibility questions would arise, we referred this remand to the hearing judge initially. When the judge decided in 2019 that no good reason existed to take live testimony, we referred this matter to the judge again with our clear direction to take Jaramillo’s live testimony. We now have that added and important evidence.

On review, DeAguilera argues that the hearing judge was correct that the charge of misappropriation is not supported. In its brief, OCTC conceded that it was not able to prove DeAguilera’s culpability for the misappropriation charge in the remand proceedings—and did not seek to do so before us. At oral argument, OCTC explained that the judge properly exercised her discretion to recommend that we dismiss the misappropriation charge.

We accord great weight to the hearing judge’s significant concerns over Jaramillo’s credibility, due to the varying nature of his testimony on the most important aspects of the authorized use by DeAguilera of Jaramillo’s funds. On our independent record review, we reach the same conclusion as the hearing judge: that clear and convincing evidence of DeAguilera’s misappropriation of funds no longer exists. Therefore, concurrently with the filing of this determination, we modify our RDO that the charge of misappropriation in count four be dismissed with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 856 [dismissal of charges for want of proof is with prejudice].)

IV. WE ADOPT THE HEARING JUDGE’S RECOMMENDATION THAT NO CHANGES SHOULD BE MADE TO OUR REMAINING CULPABILITY FINDINGS IN THE JARAMILLO MATTER CONTAINED IN OUR RDO; AND THAT OUR RECOMMENDATION OF DISBARMENT SHOULD ALSO REMAIN, EXCEPT FOR THE RESTITUTION REQUIREMENT WHICH DeAGUILERA HAS SATISFIED

The hearing judge saw no reason to recommend modification of any other culpability findings and we agree.

DeAguilera contends that our 2018 findings of his two misrepresentations should be reversed based on the judge's recommendation of dismissal of the misappropriation count. OCTC opposes this claim, and we agree with OCTC. Unlike the misappropriation count, the misrepresentation findings stand independently on clear and convincing evidence and are outside of the scope of the Supreme Court's remand.

DeAguilera also reargues that there was no impropriety of his not placing any portion of the \$50,000 he received from Jaramillo in a trust account as required by The Rules of Professional Conduct, former rule 4-100(A). Again, DeAguilera's argument is beyond the scope of the Supreme Court's remand. Further, his argument is countered by his own testimony in 2017 and 2020, conceding that, at least initially, the purpose of the funds was to allow Jaramillo to pay the rental on the MMD property and to cover the expenses of opening his MMD. Unquestionably, these expenses required that Jaramillo's \$50,000 be treated as trust funds. As a result, DeAguilera was required to deposit them promptly upon receipt, into a proper bank trust account, as required by former rule 4-100(A). Concededly, he never did so.

However, the hearing judge did recommend some minor changes to several of our 2018 findings regarding aggravation of DeAguilera's misconduct. She made these determinations in light of her recommendation to dismiss the culpability finding of misappropriation in count four, which we had made in our RDO.

As we agree with the hearing judge and dismiss count four, we modify our 2018 RDO as to three findings in aggravation which the hearing judge recommended in her March 3, 2021 Determinations and Recommendations. On review DeAguilera's position on these modifications is unclear. DeAguilera's focus as to the degree of discipline is centered on rearguing that

disbarment is excessive. (See our discussion, *post.*) OCTC agrees with the hearing judge's three modifications.

First, we modify our finding of aggravation as to DeAguilera's engagement in multiple acts of misconduct (per std. 1.5(b)), to eliminate any reliance on misappropriation of trust funds to be deemed one of the multiple acts of DeAguilera's misconduct. Yet, we also agree with the hearing judge that, even with this modification, four acts of DeAguilera's found misconduct remain: two acts of misrepresentation: DeAguilera's failure to deposit Jaramillo's trust funds into a bank trust account; and, in the Ghazaryan matter, DeAguilera's failure to timely account for funds due the client. These remaining factors result in moderate weight in aggravation.

Next, as to our finding of aggravation for DeAguilera's indifference to rectifying consequences of misconduct (std. 1.5(k)), we remove the reference to DeAguilera's failure to refund the balance of \$22,600 to Jaramillo. This is an appropriate modification, given our dismissal of the misappropriation charge. However, as recommended by the hearing judge, we adhere to our overall conclusion as to standard 1.5(k) of assessing significant aggravation for DeAguilera's indifference based on his acts in the Ghazaryan matter already found in our 2018 RDO.

The final modification recommended by the hearing judge which we adopt, is that no weight in aggravation be given as to DeAguilera's significant harm to Jaramillo, since we have dismissed the count of misappropriation on which it rests.

We retain, unchanged, the remaining two factors in aggravation relating to DeAguilera's two prior acts of discipline, including actual suspension, and lack of candor to the State Bar Court.

In this remand proceeding, DeAguilera reargued some of the same points he argued before us in 2018, including that disbarment is excessive. He asserts the excessive severity of the disbarment recommendation based on the hearing judge's 2021 recommendation to reverse the findings of misappropriation. We disagree with DeAguilera's position and would conclude for the Supreme Court that, notwithstanding our dismissing DeAguilera's misappropriation charge in the Jaramillo matter, disbarment nevertheless remains the appropriate discipline, as also recommended by the judge's March 3, 2021 Determinations and Recommendations.

As we discussed in our RDO, DeAguilera had been disciplined twice before, in 2007 and 2012. His 2012 actual suspension involved 16 admitted acts of professional misconduct arising in six separate client matters. He was ordered to make restitution totaling \$22,288 to three separate clients. We calculated that DeAguilera's misconduct in the Jaramillo matter commenced a week before the end of his probationary period in this second disciplinary proceeding. Moreover, our RDO found two willful misrepresentations by DeAguilera, in the Jaramillo matter, themselves serious violations of honesty, and a conceded failure by DeAguilera to deposit any portion of Jaramillo's \$50,000 in trust funds in a trust account. In the Ghazaryan matter, DeAguilera willfully failed to properly account to the client for advanced legal fees. None of these matters are affected by our dismissal of the misappropriation charge. Rather, they demonstrate, together with the history of DeAguilera's prior misconduct, that he is not a suitable candidate for further suspension and probation. Accordingly, we must conclude that the need to protect the public, the courts and the legal profession, (std. 1.1(a)), calls for us to again recommend disbarment, but delete our previous restitution recommendation in light of our

dismissal of count four regarding misappropriation of funds, because DeAguilera paid this amount to Jaramillo in March 2019.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

McGILL, J.

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