

Filed August 27, 2019

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

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| In the Matter of |) | No. 16-O-17302 |
| |) | |
| RITA MAE LINGWOOD, |) | OPINION AND ORDER |
| |) | |
| State Bar No. 214145. |) | |
| _____ |) | |

Rita Mae Lingwood borrowed funds from a trust while serving as its trustee pursuant to a clause in the trust that permitted such transactions. The Office of Chief Trial Counsel of the State Bar (OCTC) alleged that the \$60,000 loan was an improper business transaction with a client and also a misappropriation of trust funds. OCTC also charged Lingwood with failing to comply with the Probate Code and making misrepresentations regarding the transaction.

The hearing judge found that Lingwood both misappropriated the \$60,000 and improperly entered into a loan transaction for the same \$60,000. The judge also found that Lingwood made misrepresentations about the loan, but dismissed the charge that she failed to comply with the Probate Code as duplicative of the improper loan charge. The judge recommended that Lingwood be disbarred.

Lingwood appeals, asserting that the evidence does not support misappropriation and misrepresentation. In her pretrial statement, Lingwood acknowledged that the manner in which she borrowed the funds violated rule 3-300 of the Rules of Professional Conduct¹ (count three: business transaction with a client) and that she failed to comply with Probate Code section 16002

¹ All further references to rules are to the Rules of Professional Conduct that were in effect from September 14, 1992, to October 31, 2018, unless otherwise noted.

(count two: failure to comply with laws)—two of the four counts of charged misconduct. She also challenges the aggravation and mitigation findings. Lingwood argues that disbarment is not appropriate discipline here. OCTC does not appeal and supports the disbarment recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find that Lingwood had the authority to borrow the funds under the terms of the trust agreement, but she is culpable of two charged counts of misconduct: violating rule 3-300 (count three) in the manner in which she borrowed the funds and violating her fiduciary duties under the Probate Code (count two).² We do not find that she misappropriated funds from the trust, in violation of Business and Professions Code section 6106,³ nor do we find that she is culpable of making any misrepresentations. We recommend an actual suspension of 60 days to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On December 28, 2017, OCTC filed a Notice of Disciplinary Charges (NDC), charging Lingwood with five counts of misconduct. Count five was dismissed on OCTC's motion at the beginning of trial. The remaining counts included: (1) misappropriation of \$60,000, in violation of section 6106; (2) improper withdrawal of money from a trust, in violation of section 6068, subdivision (a); (3) improper business transaction with a client, in violation of rule 3-300; and (4) misrepresentation, in violation of section 6106.

On April 11, 2018, Lingwood filed her pretrial statement in which she stated that she did not provide a written communication as required by rule 3-300 (count three) and that she failed to comply with Probate Code section 16002 (count two). While the parties entered into a

² As discussed further below, we find that Lingwood admitted to a rule 3-300 violation (count three) in her pretrial statement. However, that admission does not accurately describe the scope of the violation under the Probate Code (count two).

³ All further references to sections are to the Business and Professions Code unless otherwise noted.

Stipulation as to Facts and Admission of Documents (Stipulation) on June 12, the Stipulation did not include the specific admissions of culpability Lingwood had included in her pretrial statement. Trial was held on June 12, 13, 14, and 15, and posttrial briefing followed. On August 17, 2018, the hearing judge issued her decision.

II. FACTUAL BACKGROUND⁴

Lingwood prepared a trust agreement for her neighbors, Joan and Bob Doyle, which they executed on February 26, 2012 (the Trust). Joan and Bob⁵ were designated co-trustees and Lingwood was designated the successor trustee. Subsequently, Lingwood prepared an amendment to the Trust, which was executed on June 27, 2015. At this time, Joan had been diagnosed with cancer and Bob began displaying signs of dementia; later, he would be diagnosed with Alzheimer's disease. Also on June 27, Bob executed the Durable Power of Attorney (DPOA) that Lingwood drafted. The DPOA appointed Lingwood and Joan's daughter, Belinda Draugelis, as Bob's attorneys-in-fact.⁶ On July 8, Lingwood and Joan, as co-trustees, opened a checking account for the Trust (Trust bank account).

Belinda, who lived in Virginia at the time, traveled to California to be with her mother in late 2015. Lingwood met Belinda during her stay in California. Bob was placed in a memory care facility in December 2015 after Lingwood and Belinda first visited the facility. After Joan's death on February 4, 2016, Lingwood was the sole trustee of the Trust, which was intended to fund Bob's care, and the beneficiaries were Belinda and Gerald Drozdowski, Joan's son. On

⁴ The factual background is based on the Stipulation, trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

⁵ We refer to the family members by their first names for purposes of clarity and not out of disrespect. Nancy Joan Doyle went by her middle name, which we also adopt in this opinion.

⁶ The DPOA referred to the attorneys-in-fact as "agents."

February 11, 2016, Belinda resigned as Bob's attorney-in-fact under the DPOA for the purpose of handling the Trust bank account, making Lingwood the sole attorney-in-fact.

Lingwood believed that some of the investments in the Trust were losing money, so she sought the advice of a financial advisor. In an initial meeting, the financial advisor suggested to Lingwood that he could manage the Trust portfolio in a way that would make it more diversified. Lingwood did not use the financial advisor's services. Instead, she determined that she would make a loan from the Trust to herself, secured by her real property, which would guarantee a certain rate of return for the Trust.

On March 5, 2016, Lingwood emailed Belinda about her idea for a loan and borrowing from "Bob's investment account." She stated: "I checked on the legality of this type of loan to a Trustee and per the Trust . . . a loan can be made and there is no breach of fiduciary duty as long as you would agree this to be a prudent investment." Lingwood testified at trial that at the time she wrote the email, she believed she had the authority to make the loan to herself. Lingwood was not asking Belinda for authority to make the loan, but for her agreement that the loan would be a prudent investment. Lingwood noted in her email that she believed the investment account had been experiencing a "loss" over the past few years. She stated that the proposed loan would guarantee a return on investment of 4.25 percent. Lingwood specified that she would execute a promissory note for \$60,000, secured by a deed of trust on her condominium.

On April 1, 2016, Lingwood executed a \$60,000 promissory note (the note) payable to the Trust with interest at five percent per annum, which was higher than the initially proposed rate. The same day, Lingwood wrote a check from the Trust bank account to herself for \$30,000, which she deposited into her own account.⁷ On April 26, she wrote a second check to herself for \$30,000 from the Trust bank account to complete the \$60,000 loan. On April 27, Lingwood secured the

⁷ Lingwood deposited the money into the bank account of the "Rita M. Lingwood Trust," of which she was the trustee.

note by executing a deed of trust, which she sent to the Sacramento County Recorder's Office. Lingwood did not inform Bob, Belinda, or Gerald that she had borrowed the \$60,000.

On May 2, 2016, Lingwood made a \$600 payment to the Trust as required under the note. On that same day, two months after Lingwood's March 5 email, Belinda emailed Lingwood, expressly refusing to agree to Lingwood's loan proposal. Belinda stated, "I do not agree to authorize a personal loan, or any loan, to you from the trust." Lingwood replied to Belinda's email, but did not discuss the loan or the fact that she had already borrowed the \$60,000. Lingwood explained at trial that she did not discuss the loan with Belinda at that time because she wanted to provide all of the documentation, including the recorded deed of trust, when she told Belinda that she had withdrawn the funds. She testified that when she received Belinda's email, she had already sent the deed of trust to the recorder's office, but had not yet received the conformed copy. The deed of trust was recorded on May 4, 2016.

Belinda's attorney, Susan Hill, wrote Lingwood a letter on May 26, 2016, inquiring whether Lingwood had "personally" borrowed the \$60,000 as proposed in the March 5 email to Belinda. Hill also requested that Lingwood resign as Trustee. Lingwood replied to Hill by letter on June 1, declaring that she never proposed a "personal loan." She stated that she made a "real estate investment loan" from the Trust to herself, executed a note, and recorded a deed of trust securing the loan with her condominium. Lingwood enclosed a copy of the note and the deed of trust with the June 1 letter.

On June 10, 2016, Hill wrote to Lingwood, demanding immediate repayment of the \$60,000. Lingwood replied that she was unable to do so at that time, but would refinance her condominium to repay it. Lingwood resigned as Trustee and as Bob's attorney-in-fact on June 15.

Between April 2 and June 30, 2016, Lingwood spent \$58,584.99 of the \$60,000 on personal expenditures. Besides the \$600 payment on the note on May 2, Lingwood made \$600

payments to the Trust on May 31, July 7, August 3, September 3, and October 6, 2016. On October 24, Belinda filed a complaint against Lingwood with the State Bar. Lingwood made additional \$600 payments on November 3 and December 4, 2016, and January 5 and February 8, 2017, while she attempted to refinance her condominium.

On December 4, 2016, Lingwood emailed Hill stating that she had preliminary approval on the refinancing and expected to close the deal within three weeks. She stated that the mortgage company would contact Belinda for a payoff demand and that Belinda should respond as soon as possible so the loan could close within the time the loan rate was locked. Hill wrote to Lingwood on December 19 that Belinda would sign and mail the requested documents as long as Lingwood agreed to pay approximately \$8,000 for Hill's attorney fees. Lingwood responded that she could not pay the \$8,000 and could not add it to the loan because the loan was already close to the maximum amount permitted by the lender. The loan lock rate expired on December 23, when Belinda did not provide the requested documentation on the advice of Hill. Lingwood then continued with her efforts to refinance and repay the loan. Belinda finally signed the payoff demand on February 9, 2017, and the refinance transaction closed. On March 10, 2017, less than a year after Lingwood had made the loan, she repaid the balance in full from the proceeds of refinancing her condominium with five percent interest as required by the note.

III. CULPABILITY

A. Count Three: Business Transaction with Client (Rule 3-300)⁸

Rule 3-300 prohibits attorneys from entering into a business transaction with a client unless (1) the terms of the transaction are fair and reasonable, fully disclosed, and transmitted in writing to the client so that he or she can understand the terms; (2) the client is advised in writing

⁸ We begin our culpability analysis with this count for the sake of clarity; our findings here affect our analysis under count two and explain the analysis for count one. We note that Lingwood admitted that she failed to comply with rule 3-300. However, as we are not dealing with a typical "client" under rule 3-300, it is important to describe the nature of her noncompliance.

that he or she may seek the advice of an independent attorney and given a reasonable opportunity to do so; and (3) the client consents in writing to the terms of the transaction.

In count three, OCTC alleged that Lingwood entered into a business transaction with persons to whom she owed a fiduciary duty, specifically Bob, Belinda, and Gerald,⁹ when she “took a \$60,000 loan” from the Trust. The NDC alleged that the terms of the transaction were not fair and reasonable to Bob, Belinda, and Gerald because (1) when executed, the loan was not secured; (2) Lingwood did not advise them in writing that they could seek the advice of an independent attorney of their choice, and did not give them a reasonable opportunity to do so; and (3) Bob, Belinda, and Gerald did not consent in writing to the terms of the transaction.¹⁰ The hearing judge found Lingwood culpable as charged.

1. Attorneys acting as trustees must follow rule 3-300

While a trustee must follow the directives contained in the trust instrument (*Copley v. Copley* (1981) 126 Cal.App.3d 248, 279), the Rules of Professional Conduct impose independent requirements on trustees when they are attorneys. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 796.) Even though a non-attorney can serve as a trustee, an attorney trustee who is also performing legal services in a dual capacity must conform all of the services performed to the Rules of Professional Conduct. (*Layton v. State Bar* (1990) 50 Cal.3d 889, 904.) An attorney entering into a business transaction arising from his or her duties as trustee is not exempted from rule 3-300. (*Schneider v. State Bar, supra*, 43 Cal.3d at p. 796 [applying former rule 5-101].)

⁹ The NDC refers to Bob, Belinda, and Gerald as the “trust beneficiaries.” However, Bob was the Trust settlor and Belinda and Gerald were beneficiaries.

¹⁰ We note that OCTC appeared to confuse the specific elements when charging the rule 3-300 violation in the NDC by framing the violation as not “fair and reasonable” when “fair and reasonable” terms are only an aspect of one element of a rule 3-300 violation. We analyze Lingwood’s conduct under the elements as specifically stated in rule 3-300.

2. Belinda and Gerald were Lingwood’s “clients” for rule 3-300 purposes

Beneficiaries of a trust are not “clients” of an attorney trustee, but the attorney trustee may nevertheless be disciplined as if they were her clients because of the attorney’s fiduciary relationship with the beneficiaries. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [non-client treated as client for purposes of discipline where attorney was constructive trustee to non-client constructive beneficiary with respect to funds held in client trust account]; *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 307 [attorney trustee had fiduciary duties to non-client beneficiaries of trust for disciplinary purposes under rule 3-300].)

Under Probate Code section 15800, subdivision (b), the trustee of a revocable trust owes a fiduciary duty to the person holding the power to revoke—the settlor. Further, a competent settlor holds the power to consent when required, not the beneficiaries. (Prob. Code, § 15801, subd. (a).) Here, Bob was the named settlor of the Trust. However, he was diagnosed with Alzheimer’s disease, resided in a memory care facility, and was unable to consent. When a settlor lacks capacity, the trustee owes a duty to provide information to the beneficiaries. (Rest. 3d Trusts, § 74, com. (e); *Lonely Maiden Productions, LLC v. Golden Tree Asset Management, LP* (2011) 201 Cal.App.4th 368, 379 [we may look to Restatement Third of Trusts for guidance].)

Additionally, when a settlor becomes incompetent, the trust becomes irrevocable and beneficiaries are entitled to exercise rights under the trust that they normally would not be able to exercise when their interest was only contingent. (Rest. 3d Trusts, § 74, com. (a)(2).) Because Bob was incompetent, Belinda and Gerald had exercisable rights under the Trust as beneficiaries, and Lingwood owed a fiduciary duty to them, consistent with the Trust’s terms. Accordingly, for disciplinary purposes, she was required to treat them as her “clients” under rule 3-300.

3. Lingwood violated rule 3-300

Lingwood agreed at trial that she did not provide a writing to the beneficiaries describing the terms, as required under rule 3-300. Further, she did not tell the beneficiaries that they could seek the advice of an independent attorney, nor did they consent in writing to the terms of the loan. Accordingly, we find Lingwood culpable under count three.¹¹

B. Count Two: Failure to Comply with Laws (§ 6068, subd. (a))¹²

In count two, OCTC alleged that Lingwood violated the laws of California, including but not limited to Probate Code sections 16002 and 16004, when she withdrew \$60,000 from the Trust bank account without permission from Bob, Belinda, or Gerald and deposited it into her own account without informing them and contrary to their interests.¹³ The hearing judge found that Lingwood violated section 6068, subdivision (a), because she was self-dealing as the trustee. The judge dismissed count two with prejudice as duplicative of count three. We find culpability under count two, disagree with the judge's reasoning, and decline to dismiss this count.

Probate Code sections 16002 and 16004 pertain to trust administration and the duties of trustees. As a fiduciary, a trustee has a duty "to act with the utmost good faith." (*Hearst v. Ganzi* (2006) 145 Cal.App.4th 1195, 1208.) Trustees are required to administer the trust according to the terms of the trust, and with reasonable care, skill, and caution as would a

¹¹ On review, Lingwood acknowledged her violation of rule 3-300, but she contends that the hearing judge misrepresented the evidence because the terms of the loan were fair and reasonable. No clear and convincing evidence was produced at trial to establish whether the loan's terms were fair and reasonable. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) But regardless of our ruling as to its fairness or reasonableness, Lingwood would still be culpable of a rule 3-300 violation for failing to comply with the other elements of the rule, as stated above.

¹² Section 6068, subdivision (a), provides that it is the duty of an attorney to "support the Constitution and laws of the United States and of this state."

¹³ The NDC also alleged in count two that Lingwood violated Probate Code section 16060. However, at trial, OCTC disregarded any reference to Probate Code section 16060 in the NDC.

prudent person acting in similar circumstances. (Prob. Code, §§ 16000, 16040, subd. (a).)

Under Probate Code section 16002, subdivision (a), trustees must “administer the trust solely in the interest of the beneficiaries.” Probate Code section 16004, subdivision (a), provides that a trustee will not “use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust” Notably, Probate Code sections 16002 and 16004 do not override the provisions of the trust instrument itself. These sections must be read in conjunction with Probate Code section 16000, which provides that, “the trustee has a duty to administer the trust according to the trust instrument and, *except to the extent the trust instrument provides otherwise*, according to this division.” (Italics added.)

1. The Trust permitted “self-dealing” by the trustee

The Trust contained a “self-dealing” clause giving the trustee the power “[i]n buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.” The Trust also provided that the trustee could invest any part of the Trust estate in any property, whether secured or unsecured, or any real estate, whether or not productive at the time of investment, “without being limited by any statute or rule of law concerning investments by fiduciaries.” Further, the Trust conferred upon the trustee the broadest management powers, providing in part that the trustee could “exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best” As such, under the terms of the Trust, the trustee had the ability to do business with the Trust as long as she did not act in bad faith or in disregard of the purposes of the Trust. Lingwood loaned money to herself from the Trust, but she secured the loan with her property and provided for a five percent interest rate. Lingwood made the payments with interest and paid the loan off in its entirety after she was

asked to do so by Belinda. As such, we reject the hearing judge's culpability analysis because there is no clear and convincing evidence showing improper self-dealing by Lingwood in light of the Trust's explicit self-dealing clause and Lingwood's handling of the loan.

2. Lingwood's fiduciary duties included complying with rule 3-300

Probate Code section 16004 applies to the fiduciary relationship between attorney and client and is a "statutory complement to rule 3-300."¹⁴ (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1152.) Probate Code section 16004, subdivision (c), provides a rebuttable presumption that a trustee has violated her fiduciary duties when a transaction occurs between the trustee and a beneficiary and the trustee obtains an advantage from the beneficiary. When an attorney trustee enters into a transaction with a trust, the transaction will be scrutinized by the courts due to the fiduciary relationship between the attorney trustee and the beneficiaries. (*Fair v. Bakhtiari, supra*, 195 Cal.App.4th at p. 1152.) Such a transaction will be set aside unless the attorney can show that the beneficiaries had full knowledge of the facts connected with the transaction and fully understood its effect. (*Id.* at p. 1155 [attorney must show that client was fully advised and transaction was fair to rebut presumption of undue influence under Probate Code § 16004].)

3. Lingwood violated her fiduciary duties under Probate Code

Lingwood gained an advantage from the transaction in that she obtained a loan of \$60,000, improving her financial position and allowing her to make personal expenditures. Further, she did not fully inform the beneficiaries of the terms or the risks of the transaction, as demonstrated by her failure to satisfy the requirements of rule 3-300. Accordingly, the loan was made in violation of Lingwood's duties under Probate Code section 16004. (See *BGJ Associates v. Wilson* (2003) 113 Cal.App.4th 1217, 1229 [attorney violated Prob. Code § 16004 when he did not advise clients

¹⁴ We note that Lingwood stated in her pretrial statement that she "failed to comply with Probate Code section 16002." However, Lingwood did not describe the facts that led her to believe she violated this section. Our analysis of her culpability under count two stems from her violation of her fiduciary duties as an attorney to the beneficiaries.

of all terms and perils associated with transaction with attorney].) Lingwood's breach of her fiduciary duties by failing to provide notice and full information to the beneficiaries regarding the loan establishes her culpability under count two.

We find that the misconduct underlying Lingwood's violation under count two is the same as under count three for the rule 3-300 violation. However, we do not dismiss count two with prejudice, as the hearing judge did when she determined the counts were duplicative. We agree with OCTC that the better approach is to find both violations, but assign no additional weight for discipline purposes. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 [no dismissal of § 6068, subd. (d), charge where same misconduct proved culpability for violation of § 6106].) Lingwood is not prejudiced since we do not consider the duplicative section 6068, subdivision (a), violation as additional weight in determining discipline.

C. Count One: Moral Turpitude—Misappropriation (§ 6106)

In count one, OCTC alleged that Lingwood violated section 6106 when she withdrew \$60,000 from the Trust bank account without the permission of Bob, Belinda, and Gerald. The NDC alleged that Lingwood deposited the \$60,000 into her own account for her own use and benefit. Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension." The hearing judge found Lingwood culpable of the misconduct alleged in count one. The judge reasoned that Lingwood misappropriated the \$60,000 because she knew she was required to seek permission to withdraw it, knew she did not have authorization to do so, and used the money for personal expenses. We disagree.

Lingwood correctly thought that the Trust gave her the authority to make the loan. She testified that she thought she had authority to take the \$60,000 as a loan even though she did not

have consent from anyone to do so.¹⁵ And in her March 2016 email to Belinda, she stated that she “checked on the legality of this type of loan to a Trustee and per the Trust . . . a loan can be made and there is no breach of fiduciary duty as long as you would agree this to be a prudent investment.” After receiving no response from Belinda, on April 1, Lingwood executed a \$60,000 note payable to the Trust. She secured the note through a deed of trust on her condominium in late April—all before receiving the May 2 email from Belinda disagreeing with her loan proposal. The Sacramento County Clerk recorded the deed on May 4. Lingwood withdrew the \$60,000 from the Trust bank account in two installments on April 1 and April 26.

Lingwood’s actions are consistent with her belief that she had the authority to take the loan and inconsistent with the notion that she intended to act with moral turpitude, dishonesty, or a corrupt motive. Further, a finding that she planned to misappropriate the funds is incompatible with our finding that she intended to enter into a loan transaction.

No facts show that Lingwood misappropriated the money in such a way as to violate section 6106. Therefore, we dismiss count one 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].)

¹⁵ The hearing judge found that Lingwood was not credible when she testified that she believed she had authority as the trustee to make the loan to herself. The judge did not explain the reason for this credibility finding. We do not adopt her credibility finding as the evidence corroborates Lingwood’s understanding that she could self-deal as the trustee. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [while factual and credibility findings by finder of fact are to be accorded great weight, on independent review of record, Review Department may decline to adopt hearing judge’s findings if insufficient evidence exists in record to support them].)

D. Count Four: Moral Turpitude—Misrepresentation (§ 6106)

Count four of the NDC alleged that Lingwood made four representations in a letter to Belinda’s attorney that were false and misleading, constituting violations of section 6106. The statements alleged in the NDC as misrepresentations are as follows:¹⁶

- (1) “The loan request was never for a personal loan.”
- (2) “. . . I did not make a loan from any of [Bob’s] personal assets.”
- (3) “. . . I did make a real estate investment loan from [the Trust] to my trust, executed a note and recorded a deed of trust securing the loan with my personal residence.”

The hearing judge found that these statements were intentionally false and misleading and that Lingwood was therefore culpable of violating section 6106. We disagree.

Section 6106 applies to misrepresentations and concealment of material facts. (*In the Matter of Crane and Depew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154–155.) “No distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315, quoted in *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.) Mere negligence in making a representation does not constitute a violation of section 6106. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 353.)

As to the first statement, Lingwood testified at trial that she considered a “personal” loan to be any loan that was unsecured, and a loan secured by a deed of trust on real property to be a “real estate investment” loan. Therefore, she asserts that her statement to Hill that it was not a personal loan, but a real estate investment loan, was not a misrepresentation. We agree. Her

¹⁶ The NDC also alleged in count four that Lingwood made the following misrepresentation: “The Golden 1 Credit Union requirement of only one signature for [DPOA] is why I am the only signer on [Bob’s] personal account. [Belinda] was at the Golden 1 Credit Union and her signature was notarized by a Golden 1 Credit Union employee . . . [who] explained their requirement and [Belinda] agreed and signed the Resignation of Agent Under [DPOA].” The hearing judge found that OCTC did not establish by clear and convincing evidence that this statement was a misrepresentation. OCTC did not appeal this finding. We agree with the judge.

statement that it was not a personal loan only indicated that it was a secured loan, and, in her mind, a “business loan.” This was not a misrepresentation in violation of section 6106.

As to the second statement that Lingwood did not make a loan from Bob’s personal assets, it was not false because the loan was drawn from the Trust bank account and she stated so in her letter to Hill. OCTC argues that Lingwood’s statement was a misrepresentation because she had written a \$25,147.85 check from Bob’s personal account and deposited it into the Trust bank account on March 30, before she wrote a check on April 1 from the Trust bank account for \$30,000. Lingwood had the authority to manage Bob’s assets under the DPOA. OCTC has not provided clear and convincing evidence that her statement was either meant to mislead Hill or made with gross negligence. In fact, Lingwood provided accountings to Hill for Bob’s estate and the Trust. She never hid that she had moved Bob’s money from one account to another and was attempting to make investments that would generate more money for the Trust.¹⁷ We find that this statement was not a misrepresentation in violation of section 6106.

As to the third statement that Lingwood made a real estate loan, we find it represents her honestly held beliefs about the loan at the time. She never attempted to conceal the fact that she had taken the loan. In fact, she provided Hill with a copy of the note and the deed of trust. There was no misrepresentation or concealment of material facts since Lingwood correctly told Hill that she had made a secured “real estate investment loan.” Accordingly, OCTC failed to present clear and convincing evidence that Lingwood’s statements charged in the NDC were misrepresentations, and we therefore dismiss count four with prejudice.

¹⁷ According to the Trust accounting, the Trust was valued at over \$400,000 in June 2016 and Bob’s estate had assets over \$100,000.

IV. AGGRAVATION AND MITIGATION

Standard 1.5¹⁸ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Lingwood to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found that Lingwood “committed two separate acts of moral turpitude and engaged in self-dealing.” The judge assigned moderate weight in aggravation. We find no acts of moral turpitude and no self-dealing. The only culpability we find is for Lingwood’s failure to comply with rule 3-300 before entering into the loan and for duplicative allegations under section 6068, subdivision (a). As such, we assign no aggravation for multiple acts.

2. Concealment (Std. 1.5(f))

The hearing judge found that Lingwood’s misconduct was “surrounded by concealment” and that she “tried to conceal her misappropriation of \$60,000 by characterizing it as a real estate investment loan.” Since we find that Lingwood disclosed the loan to Hill and provided her with a copy of the note and the deed of trust, we assign no aggravation for concealment.

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

The hearing judge found that Lingwood caused significant harm to the Trust because Trust money had to be used to hire an attorney to restore the funds Lingwood misappropriated. We disagree. No clear and convincing evidence was produced showing that Belinda’s hiring of an attorney constituted significant harm. Lingwood did not misappropriate any money and the loan did not harm the Trust as it was secured and repaid with interest. Even though Lingwood

¹⁸ Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

failed to follow her fiduciary duties to the beneficiaries, we find no evidence that they were significantly harmed. Accordingly, we assign no aggravation under standard 1.5(j).

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.” An attorney who fails to accept responsibility for her actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) The hearing judge assigned significant aggravation for Lingwood’s failure to appreciate the wrongfulness of her misconduct. Lingwood admitted before trial that she failed to comply with the Probate Code and rule 3-300, and therefore was culpable under counts two and three—the only counts for which we find culpability. She also apologized at trial for these violations. Additionally, before trial, she repaid the loan with interest. There is no clear and convincing evidence that Lingwood displayed indifference.

5. High Level of Victim Vulnerability (Std. 1.5(n))

The hearing judge found that Bob was a vulnerable victim because he was elderly and had Alzheimer’s disease. The judge determined that Lingwood breached her fiduciary duty to Bob by misappropriating funds that were for his benefit and by engaging in self-dealing. We do not find that Lingwood misappropriated funds or engaged in improper self-dealing. Lingwood’s culpability here is based on her failure to properly notify and obtain permission from Belinda and Gerald to enter into the loan. Bob suffered no damage as a vulnerable victim here and we assign no aggravation under standard 1.5(n).

B. Mitigation

1. No Prior Record (Std. 1.6(a))

The hearing judge gave only minimal mitigation credit to Lingwood for her 15 years of discipline-free practice because her conduct was serious and she displayed a lack of insight. The judge cited *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029, and relied on a former version of standard 1.6(a) that included an analysis of the seriousness of an attorney's misconduct. Current standard 1.6(a) offers mitigation where there is an "absence of any prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur."

We do not find that Lingwood lacked insight. Her misconduct was limited to a single incident in which she failed to take all of the proper steps before entering into a loan. She apologized for her actions and no other facts suggest that she is likely to repeat her present misconduct. Therefore, we conclude that Lingwood is entitled to substantial weight in mitigation for her 15 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [substantial mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].)

2. Cooperation with the State Bar (Std. 1.6(e))

Spontaneous cooperation with the State Bar is a mitigating circumstance. (Std. 1.6(e).) The hearing judge assigned limited mitigation for Lingwood's cooperation by entering into the Stipulation because she stipulated to facts that were easily proven. Lingwood stated in her pretrial statement that she failed to comply with the Probate Code and rule 3-300 under counts two and three. Again, counts two and three are the only counts for which we find culpability. Lingwood admitted culpability and facts; therefore, we assign considerable weight in mitigation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

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

Lingwood 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).) The hearing judge did not assign any mitigation for good character because “at least three of the witnesses received entrusted funds” that Lingwood misappropriated from the Trust. As previously stated, we do not find that she committed misappropriation. The judge also found that the witnesses “parroted” Lingwood’s belief that the funds were a loan. We find that the transaction was a loan, albeit in violation of rule 3-300, and do not discredit her witnesses for calling it as such, especially when the NDC referred to it as a loan. Further, the hearing judge found that the witnesses did not represent a wide range of references in the legal and general communities. We disagree as discussed below.

We give greater weight to Lingwood’s good character evidence. Each of the witnesses had a basic understanding of the charges against her. (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney’s good character when witnesses aware of misconduct].) Nine character witnesses testified on Lingwood’s behalf at trial, including professional colleagues, personal friends, and a client. Four additional declarants submitted good character statements. One witness, an attorney who has known Lingwood for over 25 years, stated that Lingwood was always honest and had high integrity. (*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”].) The other witnesses expressed the same sentiments, believed Lingwood had strong moral character, and would continue to recommend her as an attorney. Lingwood’s character witnesses included a wide range of references from people who had known her for a long time. Accordingly, substantial mitigating weight is deserved. (See *In the Matter of Davis* (Review Dept. 2003)

4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for testimony on issue of good character where witness observed attorney’s “daily conduct and mode of living”].)

4. Community Service

Community service is a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge afforded Lingwood moderate mitigation for her community service endeavors. We agree. Since 2013, Lingwood has served on the advisory board for the Sunrise Recreation and Park District and on the board for her homeowners’ association. In 2004 and 2005, Lingwood provided estate planning classes for the Coalition of Concerned Legal Professionals.

5. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is “made without the threat or force of administrative, disciplinary, civil or criminal proceedings.” (Std. 1.6(j).) The hearing judge did not assign mitigation for restitution and we agree. While Lingwood did make several payments before the threat of disciplinary proceedings, she was doing so under the loan terms, not as restitution. Lingwood did not pay off the balance of the loan until after a State Bar complaint was filed. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution paid under threat or force of disciplinary proceedings does not have any mitigating effect].)

6. Good Faith (Std. 1.6(b))

An attorney may be entitled to mitigation credit if she can establish a “good faith belief that is honestly held and objectively reasonable.” (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [good faith established as mitigating circumstance when attorney proves belief was honestly held and reasonable].) Lingwood contends that she should be given mitigation credit for her belief that she had authority to make a loan to herself under the Trust due to the self-dealing clause. Even though she had authority to self-deal under the Trust,

she was required to follow her duties under the Rules of Professional Conduct and the Probate Code. Lingwood did not do so. Accordingly, we do not give mitigating credit for good faith.

7. Extreme Emotional Difficulties or Physical and Mental Disabilities (Std. 1.6(d))

Lingwood requests that we consider her mental state at the time of the misconduct. She claimed that she was experiencing depression, stress, and other hardships when she took the loan from the Trust. Mitigation is available for extreme emotional difficulties if: (1) Lingwood suffered from them at the time of her misconduct; (2) expert testimony establishes they were directly responsible for the misconduct; and (3) the difficulties no longer pose a risk that she will commit future misconduct. No clear and convincing evidence was presented at trial establishing that Lingwood suffered from a condition that was directly responsible for her misconduct. Therefore, we assign no mitigation credit for emotional difficulties.

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* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, disbarment or actual suspension are the appropriate sanctions under standards 2.4 and 2.12(a).

On review, Lingwood asserts that disbarment is not warranted by her misconduct. We agree. Similar cases involving failure to comply with rule 3-300 have resulted in actual suspensions of 30 to 60 days.

For instance, *Schneider v. State Bar, supra*, 43 Cal.3d 784 involved an attorney acting as a trustee, who made loans to entities in which he had an interest pursuant to clauses in the trusts that allowed such transactions. However, the court found that the loans were adequately secured or were not at risk. Schneider also made an intentional misrepresentation to the trustor regarding the status of the loan proceeds. The loans were repaid with interest before the notice to show cause in the disciplinary case was filed. Mitigation included 13 years of discipline-free practice, community service, and admission of wrongdoing. He was actually suspended for 30 days.

We find *In the Matter of Hultman, supra*, 3 Cal. State Bar Ct. Rptr. 297 most instructive. *Hultman* involved an attorney acting as a trustee who made two loans to himself without complying with rule 3-300. One of the loans was unsecured and both loans provided for payment of interest only, with no due date for payment of the principal. Hultman did not provide full disclosure, advise the beneficiaries that they could seek independent counsel, or obtain consent from them or the court to take the loans. His misconduct was deemed serious as it involved repeated self-dealing by a trustee where he was grossly negligent in filing an inaccurate trust accounting, which amounted to a moral turpitude violation. Hultman was actually suspended for 60 days.

We find that Lingwood believed she had the authority to make a loan from the Trust. She asked Belinda in an email to “agree,” but only to her characterization of the loan as a prudent investment. That is, Lingwood asked Belinda if the loan was in the best interest of the Trust estate, not whether Lingwood had the authority to self-deal under the Trust agreement.

Lingwood told Belinda about the loan and took action when she did not receive a response. She borrowed \$60,000 from the Trust, but before Belinda had responded.

Lingwood always considered what she did to be a loan and she acted accordingly. She executed a note secured by a deed of trust on her condominium. She was forthcoming with Belinda's attorney about what she had done and provided her with a copy of the note and the deed of trust. Lingwood's misconduct was serious, but it was aberrational, involving only one client matter. She never intended to permanently take the Trust's money. She intended to pay the loan back, which she did. She has no prior record of discipline and we are impressed with her good character evidence and her community service.

In sum, Lingwood's breach of her fiduciary duties warrants a term of actual suspension as guided by the case law and consistent with the standards. We do not find any moral turpitude violations as the hearing judge did and we reject the judge's disbarment recommendation. Finally, as the mitigation is considerable and no aggravation has been found, discipline at the lower end of the spectrum is appropriate. (Std. 1.7(c).) We believe that an actual suspension of 60 days is appropriate to protect the public, the courts, and the legal profession. Accordingly, we: (1) order that Lingwood's involuntary inactive enrollment under section 6007, subdivision (c)(4), ordered by the hearing judge, effective on August 20, 2018, be terminated and (2) recommend that Lingwood be given credit for the period of her inactive enrollment under section 6007, subdivision (c)(4), toward the 60-day period of actual suspension that we recommend be imposed on her. (See *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 143.)

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Rita Mae Lingwood, State Bar No. 214145, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for two years with the following conditions:

1. Lingwood must be suspended from the practice of law for the first 60 days of her probation. However, we recommend that she be given credit for the period of her inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), toward the recommended 60-day period of actual suspension. Since Lingwood will have already served more than 60 days on inactive enrollment as of the date of this opinion, there would be no prospective period of actual suspension in this matter.
2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Lingwood 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 the State Bar's Office of Probation in Los Angeles (Office of Probation) with her first quarterly report.
3. Lingwood must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of her probation.
4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Lingwood 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. Lingwood 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. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Lingwood 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, Lingwood 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. During Lingwood's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, she 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 membership address, as provided above. Subject to the assertion of applicable privileges, she 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. Lingwood 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, Lingwood 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. Lingwood 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. Lingwood 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. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Lingwood must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Lingwood will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Lingwood will nonetheless receive credit for such evidence toward her duty to comply with this condition.

9. 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 Lingwood

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Rita Mae Lingwood be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If Lingwood provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this condition.

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10,¹⁹ 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. ORDER

Finally, because we reject the hearing judge's disbarment recommendation, we order that Rita Mae Lingwood's inactive enrollment under Business and Professions Code section 6007,

¹⁹ We note that subdivision (c) of section 6086.10 further provides that an attorney may be granted relief, in whole or in part, from an order assessing costs under this section, in the discretion of the State Bar Court, for good cause shown. (See also Rules Proc. of State Bar, rule 5.130; *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273; *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161, 168.)

subdivision (c)(4), be vacated immediately. This order does not affect Lingwood's ineligibility to practice law that has resulted or that may hereafter result from any other cause.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.

No. 16-O-17302

In the Matter of
RITA MAE LINGWOOD

Hearing Judge
Hon. Lucy Armendariz

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