

FILED OCTOBER 3, 2012

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 08-O-13001 (08-O-14002;
	)	09-O-13018; 09-O-13807; 09-O-14713;
	)	09-O-15331; 09-O-15333; 09-O-15337;
MOHAMMAD REZA NADIM,	)	09-O-16250; 09-O-16261); 10-O-01087
	)	(10-O-09240; 10-O-10825) (Cons.)
A Member of the State Bar, No. 129366.	)	
	)	OPINION AND ORDER
	)	

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Mohammad Reza Nadim was admitted to the practice of law in 1987. This is his second disciplinary proceeding. In April and May 2010, the State Bar Office of the Chief Trial Counsel (State Bar) filed two separate Notices of Disciplinary Charges (NDC) in 13 client matters.

Nadim was charged with numerous ethics violations including misappropriating over \$23,000 from two different clients, engaging in the unauthorized practice of law (UPL), aiding another in UPL, entering into a partnership with a non-lawyer, and appearing on a party's behalf without authority. The hearing judge found him culpable of 21 counts of misconduct in 11 client matters and recommended his disbarment.

Nadim seeks review, challenging many of the hearing judge's factual and credibility findings. He claims that his testimony was believable and, therefore, no clear and convincing evidence supports his culpability. Nadim attempts to excuse much of his misconduct based on his extensive cocaine abuse over four years, which he claims ended in 2010. He requests a "substantially lower" level of discipline. The State Bar asks that we affirm the disbarment recommendation.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12) and considered the specific factual findings raised in Nadim's brief. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) During trial, much of Nadim's testimony was contradicted by documentary evidence, which supports the hearing judge's finding that Nadim lacked credibility. We agree that he is culpable of 21 counts of misconduct. And although we find less aggravation than the hearing judge did, we also find that Nadim is entitled to no mitigation credit. In order to protect the public, the courts, and the profession, Nadim should be disbarred.

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>1</sup>**

### **A. THE GHARIBIAN MATTER (Case No. 08-O-13001)**

#### **1. Nadim Fails to Appear**

In December 2005, Jacqueline Gharibian hired Nadim to represent her in a civil matter. In February 2006, Nadim filed an action on Gharibian's behalf. After the court set a March 2008 trial date, the parties stipulated to continue it to April 28, 2008. In addition to continuing the trial, the court ordered the parties to complete mediation, set a post-mediation status conference for March 6, 2008, and scheduled the final status conference for 11 days before trial. Opposing counsel served Nadim by facsimile with notice of the future proceedings in the case.

Nadim failed to appear on three occasions. He did not attend the March 2008 post-mediation status conference. Then, after the court granted his April 10, 2008 ex parte motion to continue the trial a second time, Nadim failed to attend a May 13, 2008 status conference. Since Nadim missed that status conference and failed to file any trial documents as required by local

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<sup>1</sup> Because the complaining witnesses failed to testify and the State Bar did not otherwise present clear and convincing evidence of the charged misconduct, the hearing judge dismissed two cases representing five counts: the Shili Matter, case No. 09-O-15333 (Counts Seven, Eight and Nine); and the Pastore matter, case no. 09-O-15331 (Counts Fifteen and Sixteen). The State Bar does not challenge these dismissals, and upon independent review, we find no basis to disturb them.

rule, the court issued an order to show cause (OSC) regarding potential sanctions. The OSC hearing was set for May 20, 2008, and opposing counsel served Nadim with notice on May 13, 2008. Nadim did not attend the OSC hearing. The court vacated the May 27 trial date and dismissed Gharibian's complaint because of Nadim's failure to appear, failure to respond to the court's OSC and failure to prosecute.

## **2. Nadim Fails to Promptly Return Gharibian's File**

By mid-June, Gharibian tried to obtain her file from Nadim. She called him "numerous times" and attempted unsuccessfully to retrieve it personally from his office.

Dissatisfied with Nadim's handling of her civil action, Gharibian retained new counsel, Dennis Russell, in June 2008. Russell sent letters to Nadim dated June 30 and July 7, 2008, in his effort to acquire Gharibian's file. Included with his July 7 letter was a termination letter from Gharibian dated July 3, 2008, which informed Nadim that she had hired Russell, instructed him to take no further action, and directed him to release her original file to her new counsel.

In telephone conversations with Russell and letters dated July 14 and July 25, 2008, Nadim insisted that he needed a substitution of attorney and \$470 to copy Gharibian's file before transferring it. On October 14, 2008, Russell wrote to Nadim about his refusal to release Gharibian's file. On October 15, 2008, Nadim made the file available and Russell obtained it on November 4, 2008.

## **3. Nadim Files a Motion on Gharibian's Behalf**

Despite being terminated, Nadim attempted to revive Gharibian's lawsuit without her consent. On July 11, 2008, he filed a motion to vacate and set aside the order dismissing Gharibian's civil action. The court denied the motion and held "the firm opinion that counsel never intended to appear for trial in the matter, but to further delay these proceedings by not

appearing at the [final status conference] and at the subsequent OSC.” Nadim then appealed the court’s denial of the motion to vacate; the appeal was dismissed after he failed to prosecute it.

#### **4. The State Bar Suspends Nadim**

On April 30, 2008, State Bar Member Services notified Nadim that he failed to comply with the Minimum Continuing Legal Education (MCLE) reporting requirement deadline. Member Services advised him to pay a \$75 compliance fee by June 30, 2008, or the State Bar would place him on involuntary inactive status, making him ineligible to practice law. On May 3, 2008, Nadim sent a response to the State Bar. Although he disputed the issue of noncompliance, he included a \$75 check. On June 12, 2008, Member Services wrote to Nadim again because the bank returned his check for insufficient funds, and reminded him of the June 30 deadline. Since Nadim failed to timely correct the delinquency, he was placed on involuntary inactive status on July 1, 2008. He was reinstated to active status on July 21, 2008 after he paid a \$200 reinstatement fee and submitted his compliance materials.

#### **Count One: Failure to Perform Competently (Rules Prof. Conduct, rule 3-110(A))<sup>2</sup>**

Clear and convincing evidence<sup>3</sup> supports the hearing judge’s finding that Nadim willfully violated rule 3-110(A) by failing to appear at the March 6 and May 13, 2008 status conferences, failing to appear at the May 20, 2008 OSC hearing, and failing to file documents before the May 27, 2008 trial date.

Nadim relies on several purported factual inaccuracies to bolster his claim that there is insufficient evidence to support the hearing judge’s finding. We reject all of them. First, Nadim asserts that there is no proof that he received notice of the March 6 and May 13, 2008 status

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<sup>2</sup> Rule 3-110(A) provides: “A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” Unless otherwise noted, all further references to “rule(s)” are to the State Bar Rules of Professional Conduct.

<sup>3</sup> Clear and convincing evidence requires a finding of high probability that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

conferences or the May 20, 2008 OSC hearing. The record contradicts him.<sup>4</sup> The March 6, 2008 conference was set following a stipulation by the parties to continue the previously set conference and trial dates. The civil court's minute order indicates it was "mailed to counsel." The May 13, 2008 conference was set following Nadim's ex parte request for a trial continuance that he made at the hearing he attended where he was ordered to give notice to the other parties. Finally, as to the May 20, 2008 OSC hearing, opposing counsel's proof of service reveals that Nadim was served with notice on May 13, 2008. Nadim admitted in his motion to vacate and set aside the order of dismissal that he received the notice, but claimed he did not see it until he was preparing for trial on May 26, 2008. The evidence shows that Nadim received timely notice of all dates.

Nadim also contends that he failed to attend the March 6 and May 13, 2008 conferences because he was ill. However, Nadim's physician indicated that he was ill from March 3 to March 31, 2008. During that time, the doctor placed Nadim on "home rest," but Nadim fails to explain why he did not notify the court or opposing counsel of his inability to attend the March 6 conference. Further, his doctor cleared him to return to work beginning March 31, 2008 – six weeks before the May 13, 2008 hearing. We find clear and convincing evidence supports the hearing judge's culpability finding on Count One.

**Count Two: Appearing for Party without Authority (Bus. & Prof. Code, § 6104)<sup>5</sup>**

Section 6104 prohibits a member from "[c]orruptly or willfully and without authority appearing as attorney for a party to an action or proceeding." The hearing judge found that Nadim willfully violated this section by filing a motion to vacate and set aside the order of

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<sup>4</sup> The hearing judge found Nadim's testimony was not credible. We give great deference to this finding (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 951), which is fully supported by the record.

<sup>5</sup> Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

dismissal without Gharibian's consent or authority. Nadim knew he no longer represented Gharibian when he filed the July 11, 2008 motion. We reject Nadim's claims that he remained Gharibian's attorney because he retained her file and "he had not received an authorization from Russell." Nadim asserts that Russell's July 7 representation letter was not faxed to him until October 13, 2008. But his own July 14, 2008 letter to Russell acknowledged his receipt of "letters" and apologized for his late response because he was "ill" and in trial. At that time, Russell had only written the two representation letters – dated June 30 and July 7, 2008. These facts support a finding that Nadim knew he no longer represented Gharibian and willfully violated section 6104 by filing the July 11, 2008 motion without her authority.

**Count Three: Failure to Promptly Return Client File (Rule 3-700(D)(1))<sup>6</sup>**

The hearing judge found that Nadim willfully violated rule 3-700(D)(1) by failing to promptly return Gharibian's file after she terminated him. We agree.

Gharibian testified that she began requesting her file in June and instructed Nadim to leave it for her at his reception desk. When she went to pick it up, the file was not available. The hearing judge found Gharibian's testimony credible. We give great deference to this credibility finding and see no basis to disturb it. (*In the Matter of Brockway, supra*, 4 Cal. State Bar Ct. Rptr. at p. 951.) Moreover, Nadim received Gharibian's July 3, 2008 termination letter requesting her file. Nadim violated rule 3-700(D)(1) by failing to promptly release Gharibian's file without any restrictions until October 2008.

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<sup>6</sup> Rule 3-700(D)(1) requires that an attorney promptly release all client papers and property upon termination of employment and request from the client.

**Count Four: Failure to Support the Laws of California - UPL (§ 6068, subd. (a))<sup>7</sup>**

The hearing judge found Nadim culpable of failing to support the laws of California by engaging in UPL in violation of sections 6125 and 6126. Nadim's claims that he is not culpable because he was unaware that he was suspended from the practice of law on July 11, 2008, when he filed a motion to vacate and set aside the dismissal of Gharibian's complaint. We reject his claim because the record shows that he had notice of his noncompliance with his MCLE requirements and his potential suspension no later than May 3, 2008. He failed to timely or properly rectify his issues of noncompliance and, as warned, he was suspended between July 1, 2008 and July 21, 2008. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319 [attorney culpable of engaging in UPL even if unaware of inactive status].)

**B. THE PEJMAN-ZADEH MATTER (Case No. 08-O-14002)**

In late August 2007, Mohsen Pejman-Zadeh paid Nadim \$1,000 to represent him regarding an adverse civil judgment. The extent of Nadim's representation and whether he performed any legal services on Pejman-Zadeh's behalf are in dispute. Their agreement was never reduced to writing.

After trying unsuccessfully to reach Nadim on several occasions, Pejman-Zadeh delivered a letter to Nadim's office on June 6, 2008, requesting documentation of work done on his behalf and an accounting for the fees he paid. On June 10, 2008, Nadim wrote a letter disputing the purpose of his representation and advising Pejman-Zadeh that he could pick up a copy of his file. In an August 12, 2008 letter, Nadim summarized steps he took to settle Pejman-Zadeh's case (i.e., contacting plaintiff's attorney and plaintiff), but he never provided Pejman-Zadeh with an accounting.

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<sup>7</sup> Section 6068, subdivision (a), requires attorneys to support the Constitution and laws of the United States and California. Sections 6125 and 6126 provide that only active members of the State Bar may practice law or hold themselves out as entitled to practice.

**Count Six:<sup>8</sup> Failure to Render an Accounting (Rule 4-100(B)(3))**

Rule 4-100(B)(3) requires an attorney to maintain complete records of all client funds received and to render appropriate accounts of those funds to the client. The hearing judge determined that Nadim violated rule 4-100(B)(3) by failing to provide Pejman-Zadeh with an accounting for the \$1,000 he had paid. We agree.

We reject Nadim's claim that his June 10 and August 12, 2008 letters to Pejman-Zadeh were "accountings." The letters fail to identify the tasks Nadim performed, the date he performed them, and the time spent on each. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756-757 [rule 4-100(B)(3) violated due to incomplete accounting that aggregated multiple events into single billing charges and omitted dates that services were performed].) We also reject Nadim's contention that the agreement with Pejman-Zadeh was a "flat fee agreement." However, even if we accepted this characterization, Nadim was still required to account for the work performed. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 188-189 [attorney violated rule 4-100(B)(3) by failing to provide client with accounting for \$1,000 flat fee paid to modify child visitation order].)

**C. THE DEBT BARTER MATTER (Case No. 09-O-13018)**

In 2009, Nadim's law office was located in Santa Monica, California. Needing assistance with his loan modification clients, Nadim spoke to a friend who told him about a company called Debt Barter, Inc., with offices in Irvine. On March 25, 2009, Sean Roberts, CEO of Debt Barter, and Nadim entered into a "Marketing & Administrative Support Services Agreement" (the

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<sup>8</sup> In Count Five, the State Bar charged Nadim with failing to perform competently in violation of rule 3-110(A) because he did not pursue an appeal on behalf of Pejman-Zadeh, resulting in its dismissal. Nadim claimed he was hired to negotiate a settlement of the adverse civil judgment, not to pursue an appeal. The hearing judge found insufficient evidence to support this charge and dismissed it. The State Bar does not challenge this finding on review and the record supports it.



Agreement). Roberts was not an attorney. According to the Agreement, Debt Barter would provide Nadim with marketing and administrative support services, including:

- Assisting with acquiring and organizing client documents for legal services related to client loan modifications or lawsuits;
- Assisting with preparing correspondence; and
- Providing marketing information.

The Agreement restricted Debt Barter from:

- Quoting, negotiating or fixing client fees without Nadim's written consent;
- Billing or collecting client fees without Nadim's written consent, but if requested, collecting client funds and delivering them to Nadim; and
- Providing any advice to potential clients that required a licensed attorney.

The Agreement further provided that Debt Barter and Nadim were independent contractors, but Nadim testified at trial that Debt Barter was his agent. Subject to his pre-approval, Nadim authorized Debt Barter to use his law firm's trademarks and service marks to market Nadim's legal services. He agreed to pay \$2,775 for each client that Debt Barter acquired on his behalf through its marketing efforts and for administrative support services. When Nadim signed the Agreement, he approved Debt Barter's use of his standard legal services agreement with prospective clients in loan modification cases. This agreement was printed on "Nadim Law Firm" letterhead. Attached was a separate form authorizing the Nadim Law Firm to act as the client's agent regarding the client's mortgage, also on "Nadim Law Firm" letterhead.

After executing the Agreement, the name "Nadim Law Firm" and two of Nadim's "plaques" were placed on the reception area wall in Debt Barter's Irvine office. Nadim visited that office only three times. During each visit, he asked to review the client files for the matters

retained on behalf of the Nadim Law Firm, but he was given excuses for their unavailability. Nadim's third and final visit was May 28, 2009. When he was told that the files were again unavailable, Nadim claims he terminated the Agreement with Debt Barter by giving Roberts a handwritten note and "removed [his] plaques and the 'Nadim Law Firm' sign from the reception area." Nadim did not receive any client files or funds from his arrangement with Debt Barter.

In mid-June 2009, Nadim obtained a client list from a Debt Barter employee. It contained a page and a half of names and addresses for clients that Debt Barter had signed up in Nadim's name. In late June, Nadim wrote to the clients on this list notifying them that "Debt Barter, Inc. has no relationship with Nadim Law Firm and Nadim Law Firm has never received any files, funds from clients, or instructions to assist you" in a loan modification with any lender. He gave the clients three options: (1) continue with or request a full refund from Debt Barter; (2) transfer their files officially to the Nadim Law Firm; or (3) request the return of their files or transfer to another organization. Nadim took no other affirmative steps at the time to assist these clients or to prevent Debt Barter from continuing to improperly use his name or the name of his law firm.

Debt Barter moved out of its Irvine office in July 2009. In November 2010, Nadim prepared a civil lawsuit against Debt Barter, Roberts and others, alleging various causes of action, including fraud and breach of contract. Throughout Nadim's verified complaint, he refers to his relationship with the defendants as a "partnership" or "joint-venture" and the prayer for relief mentions the "partnership" and "partnership assets." Nadim was unable to serve the complaint on Roberts or any other defendants.

### **Count Ten: Forming a Partnership with a Non-Lawyer (Rule 1-310)<sup>9</sup>**

The hearing judge found Nadim culpable of violating rule 1-310 by entering into an agreement with Debt Barter and Roberts, a non-lawyer, to provide loan modification services to clients, resulting in Debt Barter's practice of law. Nadim asserts that the Agreement with Debt Barter did not create a partnership. We reject Nadim's claims and find him culpable.

Even though the Agreement Nadim entered into with Debt Barter was not labeled a "partnership agreement," the activities Debt Barter engaged in pursuant to their business arrangement constituted the practice of law by a non-lawyer in violation of rule 1-310. The Agreement permitted Debt Barter to sign up clients without Nadim's prior review and to evaluate client files for "loan modification[s] or for the commencement of appropriate administrative claims or lawsuits on the client's behalf." Pursuant to the arrangement, Nadim agreed to pay Debt Barter \$2,775 for each loan modification client Debt Barter obtained from its marketing efforts and for support services. He would pay those fees "daily based on collected fees availability." Nadim admitted at trial that he authorized Debt Barter to use his name to obtain clients. In essence, Nadim agreed to share the legal fees with Debt Barter that were collected from the loan modification clients referred by Debt Barter.

Additional evidence revealed that Nadim formed a partnership with Debt Barter. First, he spent no time managing the Debt Barter Irvine office and "Nadim Law Firm" and Nadim's "plaques" were displayed in the Debt Barter Irvine office's reception area. Nadim admitted that Debt Barter was his agent for loan modification services and he approved the legal services agreement with his letterhead that Debt Barter used to market and obtain clients. Nadim also alleged in a verified complaint he prepared and presented to the State Bar that his relationship

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<sup>9</sup> Rule 1-310 prohibits attorneys from entering into a partnership with a non-lawyer "if any of the activities of that partnership consist of the practice of law."

with Debt Barter was a “partnership” or “joint-venture,” and the prayer for relief alleged the relationship was a “partnership” producing “partnership assets.” This evidence clearly supports a finding that Nadim was in a partnership with a non-lawyer where the activities of the partnership included the practice of law. (See, e.g., *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 326-327 [attorney violated rule 1-310 where business arrangement with non-lawyer involved receiving legal matter referrals, sharing legal fees and maintaining joint checking account]; *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, 184-185 [attorney in partnership with non-lawyer where non-lawyer signed up clients without attorney’s review, conducted client interviews, managed attorney’s client trust account and exerted control over attorney’s practice].)

**D. THE DELEON, ESPINOZA, CARO, AND ALLEN MATTERS  
(Case Nos. 09-O-13807, 09-O-14713, 09-O-15337, 09-O-16250)**

**1. The DeLeon Matter**

In May 2009, Victor DeLeon received a telephone call from Mark Helsing. Helsing said he was with the Nadim Law Firm and he offered loan modification services. Helsing was not an attorney but was an employee at Debt Barter. DeLeon agreed to hire the Nadim Law Firm to negotiate a home mortgage loan modification on his property. He also agreed to pay the Nadim Law Firm \$1,995 in three installments.

On June 5, 2009, DeLeon issued a \$795 check payable to “Nadim Law Firm.” Later, that check was altered, Debt Barter was entered as the payee, and the check was deposited into Debt Barter’s bank account. The memo on the check stated “Loss Mitigation/Nadim.” DeLeon had never heard of Debt Barter before seeing the name on the altered check after it was cashed.

Sometime in June 2009, DeLeon called Helsing regarding his loan modification. He left several messages but his calls were not returned. Eventually, DeLeon was able to speak to someone in the Debt Barter Irvine office and he requested a full refund. The individual

told DeLeon that she would tell the bookkeeper and a refund would be sent. As a result of the State Bar's investigation into the matter, Nadim refunded the \$795 fee to DeLeon in November 2010.

## **2. The Espinoza Matter**

On June 13, 2009, Imelda Espinoza received a call from an individual stating he worked for the Nadim Law Firm and could assist Espinoza with obtaining a loan modification for three of her properties. On June 16, 2009, Espinoza received an email from "Dan Hanley, Senior Underwriter, Nadim Law Firm." In fact, Hanley worked for Debt Barter. In the email, Hanley represented to Espinoza that the loan modification fees were refundable if she did not receive a modification. He provided her with a Nadim Law Firm legal services agreement, which she signed on June 18, 2009. Although Hanley's email identified him as an underwriter, Espinoza believed she was dealing with an attorney.

When Espinoza returned the legal services agreement, she spoke to an individual about payment. Espinoza believed she was speaking to "Nadim," who instructed her to make her check payable to Debt Barter. Thus, on June 19, 2009, Espinoza's husband mailed a \$6,585 check, payable to Debt Barter. Espinoza's last conversation with Hanley was on June 22, 2009. Between June 23 and July 30, 2009, she left approximately 20 telephone messages at the number provided by Hanley regarding her loan modification. No one from Debt Barter or Nadim Law Firm returned Espinoza's telephone calls. In July 2009, Debt Barter moved from its Irvine office without notifying Espinoza, and she has not received a refund of the \$6,585.

## **3. The Caro Matter**

In April 2009, a friend referred Phyllis Caro to the Nadim Law Firm for loan modification services. On April 27, 2009, Caro spoke to Robert Jenkins, who represented that he was an agent for the Nadim Law Firm. In fact, Jenkins worked for Debt Barter. He sent Caro an

11-page packet of documents to complete and sign, including a Nadim Law Firm legal services agreement. On the same date, Caro signed and returned the documents to Jenkins and issued a check in the amount of \$2,495 made payable to the Nadim Law Firm. Caro did not realize it at the time, but the check was cashed by Debt Barter.

In early May 2009, Caro went to the Irvine office address listed in the legal services agreement, which she believed was the Nadim Law Firm, to meet with Jenkins. While there, she saw “Nadim Law Firm” displayed on the wall behind the reception area. Caro was aware that Jenkins was not an attorney and he assured her that Nadim would review all documents in her matter.

On June 29, 2009, Caro received Nadim’s letter stating that his office had no relationship with Debt Barter, fees paid to Debt Barter had not been transferred to Nadim Law Firm, and consequently, his firm had not and would not be representing her. This was the first time Caro had heard of Debt Barter since all communications had been with the Nadim Law Firm. In the letter to Caro, Nadim did not offer to refund any legal fees.

In response to Nadim’s letter, Caro called him at his Santa Monica office on several occasions in July 2009, leaving approximately five messages. When she was finally able to speak with Nadim, he denied ever representing her and refused to take her case. Nadim stated that he previously had a relationship with Debt Barter, but it was over. He suggested that she call Roberts at Debt Barter for a refund. As a result of the State Bar investigation, Nadim refunded \$2,495 to Caro in December 2010.

#### **4. The Allen Matter**

In April 2009, Angela Allen received two phone calls from individuals stating that they were from the Nadim Law Firm and were offering loan modification services. After the second call, Allen agreed to hire the firm to obtain a loan modification. That same month, Allen and her

husband signed the Nadim Law Firm legal services agreement and an authorization form, permitting the firm to represent them during the loan modification process. On May 5, 2009, Allen wrote a \$1,000 check payable to the Nadim Law Firm and signed a form authorizing the Nadim Law Firm to electronically debit the \$1,000 from Allen's checking account. But it was Debt Barter who withdrew the \$1,000 from Allen's account. Allen later agreed to pay the law firm additional fees to complete her loan modification. On June 11, 2009, an additional \$500 was withdrawn from Allen's account, again by Debt Barter.

In June 2009, Allen called the number on the legal services agreement (Debt Barter's Irvine office) and left a message requesting information about her case. No one returned her call. Also in June, Allen received the same letter from Nadim that he sent to Caro, disavowing his relationship with Debt Barter. Allen received no services for her loan modification. As a result of the State Bar investigation, Nadim refunded \$1,500 to Allen in November 2010.

**Counts Eleven, Thirteen, Seventeen, and Nineteen: Aiding and Abetting UPL Rule 1-300(A)<sup>10</sup>**

Clear and convincing evidence supports the hearing judge's finding that Nadim aided and abetted UPL in violation of rule 1-300(A). Nadim contends that he is not culpable because: (1) Debt Barter obtained fees in his name from DeLeon, Espinoza, Caro and Allen (the loan modification clients) without his permission; (2) he never met or spoke to any of the loan modification clients; (3) he never signed the legal services agreements between himself and Espinoza, Caro, or Allen; and (4) he is not responsible for any of Debt Barter's actions beyond May 28, 2009, when he terminated his relationship with Debt Barter. We reject Nadim's claims.

We find that Nadim improperly allowed Debt Barter to use his status as a lawyer to recruit clients and then provided no supervision over any of those clients' loan modification

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<sup>10</sup> Rule 1-300(A) provides: "A [lawyer] shall not aid any person or entity in the unauthorized practice of law."

cases. Debt Barter was “accepting clients in the name of [Nadim] . . . with . . . no attorney control,” and maintained the loan modification client files “at a location away from [Nadim’s] principal office.” (*In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, 625.) Nadim gave non-lawyer agents “access to [his] attorney-client retainer agreements” and created an environment where those agents could quote and “explain the . . . details of [his] fee agreements and accompanying documents to prospective clients.” (*In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 651.) Nadim’s lack of supervision over non-lawyer agents “created a situation where [Debt Barter] was . . . practicing law,” resulting in Nadim’s violation of rule 1-300(A). (*In the Matter of Bragg, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 625-626 [attorney aided non-attorney in UPL by allowing non-attorney to control pre-litigation cases with minimal or no control].)

**E. FAILURE TO COOPERATE IN STATE BAR INVESTIGATIONS  
(Case Nos. 09-O-13807, 09-O-14713, 09-O-15337, 09-O-16250, 09-O-16261)**

During the investigations into the DeLeon, Espinoza, Caro, Allen and the Thau Lor matters,<sup>11</sup> the State Bar wrote seven letters to Nadim dated January 7, 11, 25 and 26, February 3 and 17, and March 4, 2010. The State Bar requested written responses to the allegations of misconduct in each matter and provided a deadline for Nadim’s responses. The January 7 and January 25 letters were returned as “undeliverable.” However, the subsequent correspondence included a copy of the returned letters. Nadim testified that he received all of the delivered letters, but did not open them until June 2010 because he had not been in his office since January 2010 due to his heavy use of cocaine.

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<sup>11</sup> Thau Lor was another client obtained by Debt Barter. Lor did not testify at trial and the State Bar dismissed Count Twenty-One, alleging another violation of rule 1-300(A) related to Lor’s case.



**Counts Twelve, Fourteen, Eighteen, Twenty, and Twenty-Two: Failure to Cooperate in State Bar Investigation (§ 6068, subd. (i))<sup>12</sup>**

The hearing judge determined that Nadim violated section 6068, subdivision (i), when he failed to respond to the State Bar's investigation letters. We reject Nadim's claims that he is not culpable of failing to cooperate because he responded to the State Bar's letters on July 28, 2009. His July 28, 2009 letter was in response to the State Bar's investigation into the Debt Barter matter, not the DeLeon, Espinoza, Caro, Allen, or Lor matters. We find that Nadim failed to cooperate with the State Bar. (*In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589 [attorney violated § 6068, subd. (i) when he did not respond to two State Bar investigator's letters about client's complaint].)

**F. THE KEYVANFAR MATTER (Case No. 10-O-01087)**

On October 30, 2006, Jalal Keyvanfar employed Nadim to represent him and his adult son, Kamran Keyvanfar,<sup>13</sup> in an auto accident personal injury matter. Pursuant to the fee agreement, Jalal agreed to pay Nadim one-third of any settlement proceeds from the personal injury claims.

In August 2008, Nadim settled the Keyvanfars' bodily injury claims and received two settlement checks: \$6,700 payable to Jalal and Nadim and \$5,200 payable to Kamran and Nadim. On September 2, 2008, Nadim deposited both checks into his client trust account (CTA). Nadim was entitled to one-third of the total settlement of \$11,900, or \$3,962.70.

On September 5, 2008, Nadim disbursed to himself \$6,466 in legal fees from the settlement proceeds, which was \$2,503.30 over the amount to which he was entitled. On December 4, 2008, he issued a check to Jalal for \$8,326.25, which included both Jalal's and

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<sup>12</sup> Section 6068, subdivision (i), requires an attorney to cooperate in any disciplinary investigation or proceeding.

<sup>13</sup> We use first names to avoid confusion, not out of disrespect.

Kamran's settlement proceeds, and a \$392.25 payment Nadim had received for Jalal's rental car reimbursement. Between September 3 and December 4, 2008 (the date after he deposited the settlement checks and the date he paid Jalal), the only deposits Nadim made into his CTA were *other* client funds totaling \$69,994.55. Thus, Nadim used \$2,500 of other client funds to make the \$8,326.25 payment to Jalal.

**Count Three: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))<sup>14</sup>**  
**Count Four: Moral Turpitude (§ 6106)<sup>15</sup>**

The hearing judge found that Nadim violated rule 4-100(A) by failing to maintain \$2,503.30 of Jalal's and Kamran's settlement funds in his CTA, and he also misappropriated \$2,500 of other clients' funds in violation of section 6106. We agree.

We reject Nadim's claim that he is not culpable of violating rule 4-100(A) because he previously deposited a settlement check in another matter into his CTA but had not paid himself. Nadim testified that he combined payment for both cases with the \$6,466 payment to himself. The hearing judge's culpability finding indicates that this testimony was rejected. Moreover, the record contradicts Nadim's testimony. Nadim made the \$6,466 payment to himself with two checks, both of which had only "Keyvanfar" handwritten on the memo line. Nadim failed to produce any evidence of the "other" settlement check he claims he deposited without paying himself.

We also conclude that Nadim violated section 6106 because he intentionally misappropriated \$2,503.30 from the Keyvanfars' settlement funds for his personal use and \$2,500 from other client trust funds to repay the Keyvanfars. (*Jackson v. State Bar* (1975) 15

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<sup>14</sup> Rule 4-100(A) requires that all funds received or held for the benefit of clients be deposited in a trust account.

<sup>15</sup> Section 6106 is violated when an attorney commits "any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . ."

Cal.3d 372, 380-382 [appropriating funds without client consent clearly supports finding attorney misappropriated funds in violation of § 6106].) We note that not every misappropriation that is willful necessarily involves moral turpitude, but Nadim failed to provide financial records to support his argument that he was entitled to any portion of the \$2,500. (*Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 900 [failure to produce financial records supports inference that proceeds were converted to attorney's own use].)<sup>16</sup>

**F. THE REVZANI MATTER (Case No. 10-O-10825)**

In January 2009, Kazem Revzani hired Nadim to represent him in an employment contract dispute. Nadim and Revzani had been close personal friends for approximately 30 years. The two never discussed a fee for Nadim's services. In February 2009, Nadim filed a complaint on behalf of Revzani and represented him until September 2010.

Sometime in February 2009, Nadim asked Revzani for a \$15,000 loan. Nadim told Revzani that he would not have to pay attorney fees if he loaned him the money. Nadim promised to repay the loan in three months. Revzani did not have the funds so he borrowed \$15,000 from his cousin to lend to Nadim. By March 14, 2009, Revzani gave Nadim three \$5,000 cashier's checks.

Nadim did not provide any security in exchange for the loan, nor did he prepare a written agreement outlining its terms. And he never advised Revzani in writing to seek the advice of independent counsel.

After the three months had elapsed, Revzani asked Nadim to repay the loan but Nadim kept stalling by promising to pay him soon. Finally, in July 2009, Revzani asked Nadim for a

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<sup>16</sup> The hearing judge granted the State Bar's motion to dismiss Count One that charged a rule 3-310(C)(1) violation for representing multiple clients with potentially conflicting interests. For lack of clear and convincing evidence, the hearing judge also dismissed with prejudice Count Two that charged a rule 3-110(A) violation for failing to honor medical liens. The State Bar does not challenge this dismissal, and upon independent review, we find no basis to disturb it.

receipt for the \$15,000 loan. He gave Revzani an unsigned receipt dated February 10, 2009. Nadim has not repaid the loan.

**Count Five: Business Transaction with a Client (Rule 3-300)**

The hearing judge found that Nadim violated rule 3-300, which prohibits an attorney from entering into a business transaction with a client unless: (1) the terms of the transaction are fair and reasonable to the client and are fully disclosed in writing; (2) the client is given written notice of the right to seek the advice of independent counsel and is afforded a reasonable opportunity to do so; and (3) the client consents in writing to the transaction. We agree.

Nadim asserts that he is not culpable because the “personal” loan Revzani gave him was negotiated in October 2008 before Revzani hired him in 2009. The hearing judge found that Nadim’s testimony on this point was not credible. We give great deference to this credibility finding (*In the Matter of Brockway, supra*, 4 Cal. State Bar Ct. Rptr. at p. 951), which is supported by the record. Nadim *stipulated* that Revzani hired him in January 2009 and the evidence shows that Revzani provided Nadim with two \$5,000 cashier’s checks in February 2009 and the third one in March 2009.

Moreover, Revzani provided credible testimony that Nadim sought the loan in February 2009. This testimony was bolstered by Revzani’s September 2010 email to Nadim reminding him that Nadim turned to Revzani for “financial help” in “Feb. of 2009” when he was “in a desperate situation.” In Nadim’s reply, he never disputed Revzani’s assertions. Clear and convincing evidence shows that Revzani agreed to loan Nadim \$15,000 after Revzani hired Nadim to represent him. Thus, Nadim willfully violated rule 3-300.

**G. THE ERMOLOVA MATTER (CASE NO. 10-O-09240)**

In October 2009, Larisa Ermolova hired Nadim to represent her in a homeowner claim for water damage to her residence. Ermolova agreed to pay Nadim 20% of the recovery proceeds for his legal services. In December 2009, Ermolova’s husband, Alexander Nikolaychuk, signed a separate retainer agreement for Nadim to represent him in the same homeowner claim.

In November 2009, Nadim began receiving checks on Ermolova’s behalf from Fidelity National Insurance Company. The following represents the amounts received, the amounts Nadim and Ermolova were entitled to, and how they were disbursed:

Check Date	Amount Received	Nadim’s 20%	Ermolova’s 80%	Actual Payment to Ermolova	Amount Required to Be Held in CTA
11/30/2009	\$23,400.00	\$4,680.00	\$18,720	\$0.00	\$18,720
12/31/2009	\$20,330.49	\$4,066.10	\$16,264.39	\$16,264.00	\$0.39
12/31/2009	\$7,800.00	\$1,560.00	\$6,240	\$0.00	\$6,240
<b>Subtotal</b>	<b>\$51,530.49</b>	<b>\$10,306.10</b>	<b>\$41,224.39</b>	<b>\$16,264.00</b>	<b>\$24,960.39</b>
04/21/2010	\$18,234.88	\$3,646.97	\$14,587.90	\$14,594.88	\$0.00
<b>Totals</b>	<b>\$69,765.37</b>	<b>\$13,953.07</b>	<b>\$55,812.29</b>	<b>\$30,858.88</b>	<b>\$24,953.41</b>

Nadim disbursed funds to himself out of those he held in trust for Ermolova. As of December 31, 2009, Nadim was required to maintain \$24,960.39 in trust for Ermolova, but by January 25, 2010, his CTA balance was only \$11,703.20. As of January 25, 2010, he paid himself \$28,200, which was \$17,893.90 more than he was entitled to receive.

Fidelity made the checks payable to Ermolova and Nadim, but the April 21, 2010 check for \$18,234.88 named “Extreme Clean Restoration” as an additional payee. Extreme Clean Restoration, owned by Edgar Grigoryan, performed repairs on Ermolova’s home. Grigoryan

testified that he met with Nadim and Nikolaychuk at Nadim's office, and Nikolaychuk paid Grigoryan \$8,000 in cash. Grigoryan *believed* that Nadim gave Nikolaychuk the money to pay him, but never saw the money transfer. He also believed that Nikolaychuk still had cash remaining after paying him but does not know how much.

In May 2010, Ermolova learned that Nadim had received the \$23,400 check in early December 2009 and the \$7,800 check in early January 2010. Ermolova requested that Nadim pay her \$24,960, which represented 80% of the \$31,200 to which she was entitled. On June 1, 2010, Nadim disbursed \$8,494 to Ermolova. On July 2, 2010, Ermolova emailed Nadim a request for the funds that Nadim still owed her. Nadim failed to respond to Ermolova's email, and he has not provided her the remaining \$16,459.41.<sup>17</sup>

**Count Six: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))**

**Count Seven: Moral Turpitude (§ 6106)**

**Count Eight: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4))<sup>18</sup>**

The record reveals that Nadim violated several ethics rules when he deposited and withdrew funds held on Ermolova's behalf from his CTA. We reject Nadim's claim that he is not culpable of violating rule 4-100(A), section 6106 or rule 4-100(B)(4) because Nikolaychuk was the "real" client and he paid him \$16,500 in cash. The documentary evidence clearly contradicts Nadim's contention. The December 2009 representation agreement Nikolaychuk signed and Ermolova initialed did not "revoke" Ermolova's October 2009 agreement to hire Nadim, but merely establishes that Nikolaychuk also was his client. Nadim's representation letter to Fidelity states that the client is "Larisa Ermolova" and he never notified Fidelity that Nikolaychuk was replacing her as the client. All checks from Fidelity were made payable to

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<sup>17</sup> Since Nadim actually paid Ermolova \$6.98 more than he owed her from the April 21, 2010 Fidelity payment, the remaining balance owed is \$16,459.41.

<sup>18</sup> Rule 4-100(B)(4) requires that an attorney promptly pay or deliver client money "in the possession of the [attorney]."

Ermolova and Nadim. Moreover, Nadim made the \$16,264, \$14,594.88, and \$8,494 checks payable to “Larisa Ermolova.” We therefore find that Ermolova was Nadim’s client.

Nadim provided insufficient evidence that he paid Nikolaychuk \$16,500. Although it is undisputed that Nikolaychuk paid \$8,000 to Grigoryan for the work performed on Ermolova’s home, the source of the payment has not been established. Nadim also failed to provide evidence of any other payments he made to Nikolaychuk. However, any cash payment made to Nikolaychuk does not relieve Nadim of his fiduciary obligations to Ermolova, who was his client and the payee on the Fidelity checks.

Nadim violated his ethical duties to Ermolova. The evidence reveals that from late November 2009 through January 25, 2010, Nadim was entitled to \$10,306.10 in legal fees from the CTA funds deposited on Ermolova’s behalf. Instead, he disbursed \$28,200 to himself, \$17,893.90 more than he was owed, and he failed to maintain the entire \$24,960.39 in his CTA on Ermolova’s behalf. This misappropriation violated section 6106 and rule 4-100(A). (*Jackson v. State Bar, supra*, 15 Cal.3d at pp. 380-382 [appropriating funds without client consent clearly supports finding attorney misappropriated funds in violation of § 6106]; *In the Matter of Acuna*, (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 504 [allowing balance in trust account to drop below level owed to client is willful violation of rule 4-100(A)].)<sup>19</sup> In addition, in July 2010, Nadim violated rule 4-100(B)(4) by failing to provide the remaining funds to Ermolova.

## **II. SUBSTANTIAL AGGRAVATION AND NO MITIGATION**

The offering party bears the burden of proof for aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence (Rules Proc. of State Bar, tit. IV, Standards for Attorney Sanctions for Prof.

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<sup>19</sup> We assign no additional weight to the rule 4-100(A) violation because the misconduct underlying the rule and the section 6106 violation is the same, and the code violations support the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

Misconduct, std. 1.2(b)),<sup>20</sup> while Nadim has the same burden to prove mitigating circumstances (std. 1.2(e)).

#### **A. FOUR AGGRAVATING FACTORS**

The hearing judge found five factors in aggravation: prior discipline; multiple acts of misconduct; client harm; indifference toward rectification; and the inability to account to the client for trust funds. We agree with the first four factors. Overall, the serious aggravating factors clearly demonstrate that a severe sanction “is needed to adequately protect the public, courts and legal profession.” (Std. 1.2(b).)

##### **1. Prior Discipline (Std. 1.2(b)(i))**

In 2003, the Supreme Court placed Nadim on probation for two years based on misconduct in 2000 in three client matters: failing to maintain client funds in his CTA and proper CTA records in the first case; improperly withdrawing from employment in the second case; and representing clients with potentially conflicting interests in the third case. The single aggravating factor was his multiple acts of misconduct. He received mitigating credit for no prior discipline and extensive pro bono services. Nadim’s prior discipline aggravates the case before us because his present misconduct is similar to, but far more extensive than, the previous misconduct.

##### **2. Multiple Acts (Std. 1.2(b)(ii))**

Over three years from 2008 to 2010, Nadim committed multiple acts of misconduct by misappropriating funds, failing to perform competently, failing to promptly return a client file, engaging in UPL, aiding UPL, entering into a partnership with a non-lawyer, violating multiple trust account rules, and entering into a business transaction without fulfilling his ethical duties. We consider the extent of his misconduct to be a significant aggravating factor.

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<sup>20</sup> Unless otherwise noted, all references to “standard(s)” are to this source.



### **3. Significant Client Harm (Std. 1.2(b)(iv))**

Nadim significantly harmed Gharibian because the superior court dismissed her lawsuit after Nadim failed to prosecute her case. His failure to repay the \$15,000 loan to Revzani was also grievous. Revzani testified, “I’m ashamed to my cousin” who loaned him the money for Nadim, which Revzani is unable to repay. The significant harm Nadim caused his clients is a serious aggravating factor.

### **4. Indifference (Std. 1.2(b)(v))**

During trial, Nadim acknowledged that he “did things wrong” in his law practice and he “didn’t use correct judgment,” but he also revealed his lack of insight. Nadim minimizes his misconduct in the Gharibian matter by stating “[a]ll I did in this case, I didn’t appear in the court twice in a matter of seven days.” He fails to realize that the consequences severely prejudiced his client – the superior court dismissed her case. Notably, he also describes himself as a “victim just like [the loan modification clients], and everybody else” who dealt with Debt Barter. Nadim fails to accept responsibility for allowing Debt Barter to use his name without any supervision, thereby creating a situation where non-attorneys could practice law and take advantage of clients. More troubling, once he discovered the Debt Barter problems, Nadim took no affirmative steps to protect the loan modification clients’ interests. While the law does not require him to be falsely penitent, it “does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) We assign significant weight to this aggravating factor because Nadim’s lack of insight makes him an ongoing danger to the public.

### **5. Inability to Account (Std. 1.2(b)(iii))**

The hearing judge found Nadim’s failure to account for his clients’ funds to be an aggravating factor. We may find aggravation when the misconduct involves client trust funds

and the respondent has the “inability to account to the client” for those funds. (Std. 1.2(b)(iii).) Nadim’s failure to account, however, forms the basis for his rule 4-100(B)(3) violation in the Pejman-Zadeh matter. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497 [facts forming basis of substantive violations “not appropriately” considered as aggravating factors].) And although Nadim could not account for the \$2,500 he misappropriated in the Keyvanfar matter, the State Bar failed to identify the “client or person” the funds belonged to as the standard requires. (Std. 1.2(b)(iii).) Under the circumstances of this case, we decline to consider this an aggravating factor.

## **B. MITIGATION**

The hearing judge found three mitigating factors: extreme emotional difficulties; cooperation; and good character. We do not agree that Nadim’s emotional difficulties, purported good character, or cooperation constitute mitigation. Thus, Nadim is not entitled to any credit in mitigation.

### **1. Extreme Emotional Difficulties (Std. 1.2(e)(iv))**

Standard 1.2(e)(iv) provides that an attorney may receive mitigating credit if he or she suffered from (1) extreme emotional difficulties at the time of the misconduct, (2) that were directly responsible for the misconduct, (3) provided he or she no longer suffers from such difficulties. We find that Nadim established he had family problems coupled with drug abuse, but failed to satisfy the standard’s other two requirements.

Nadim submitted a report from Dr. Romana Zvereva, who evaluated him to determine if he was eligible for the State Bar Lawyers Assistance Program (LAP). She met with Nadim once for a little over an hour. The report provides that he used cocaine from 2007 through June 2010, but contains no evidence as to whether the use was intermittent or continuous. Regardless, it does not satisfy the clear and convincing standard merely by stating that his cocaine use kept him

out of the office and that his memory loss may have impacted his overall ability to perform. Nadim provided no other expert testimony about the extent of his substance abuse and personal problems, and the causal connection between his misconduct and those problems. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [no mitigation credit given where no expert testimony provided to establish emotional and financial difficulties directly caused misconduct].)

As for his rehabilitation, Nadim produced evidence that he participated in LAP and Alcoholics Anonymous (AA) meetings, took drug tests, and completed a “Survivors I Workshop” that focused on family and relational trauma issues. However, he offered no evidence that he has overcome his problems. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 222-223 [attorney who abused cocaine and alcohol entitled to substantial reduction in discipline after extensive expert and lay testimony about her rehabilitation]; *In re Lamb* (1989) 49 Cal.3d 239, 246 [before emotional difficulties can serve as mitigating circumstance, proof of complete, sustained recovery and rehabilitation must be established].) Nadim is not entitled to mitigation under this standard.

## **2. Cooperation (Std. 1.2(e)(v))**

Cooperation during a disciplinary investigation and proceeding is a mitigating factor. (Std. 1.2(e)(v).) Nadim cooperated with the State Bar during these formal proceedings by stipulating to certain basic facts, but he was unwilling to stipulate to material facts that could have reduced the duration of the trial. (Compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded mitigation for cooperation by stipulating to facts not easily provable].) Also, he has been found culpable of failing to cooperate during disciplinary investigations. We therefore assign no mitigation for cooperation.

### **3. Good Character (Std. 1.2(e)(vi))**

As to his good character, Nadim offered the testimony of one witness who knew him over 30 years and hired him to represent him in breach of contract and personal injury cases. He testified that he gave Nadim a “10” on a scale from one to 10 for loyalty to a client. He also testified that Nadim is an “excellent” lawyer because he “never lost any cases.” This witness, however, was unaware of the extent of Nadim’s misconduct. Nadim also submitted two unsworn letters and one declaration from clients he met in AA and an additional letter from his AA sponsor. None of the letters’ authors mentions awareness of Nadim’s misconduct. The authors were not subject to cross-examination on this important issue and their statements do not satisfy the basic foundational requirement of this mitigating standard. (Std. 1.2(e)(vi) [references must be aware of full extent of member’s misconduct].) Further, Nadim’s clients and AA sponsor do not constitute a wide range of references in the general *and* legal communities, as required by the standard. (*Ibid.*) Consequently, the testimony and letters are not clear and convincing evidence of good character for purposes of mitigation. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1130-1131 [seven witnesses and 20 support letters not “significant” mitigation because witnesses unfamiliar with details of misconduct].)<sup>21</sup>

### **III. MISCONDUCT CALLS FOR DISBARMENT**

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. 1.3.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the

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<sup>21</sup> In his brief, Nadim mentions his pro bono work, but he did not introduce at trial any evidence or testimony regarding such work. Thus, he is ineligible for mitigation credit for that factor.

discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) This case clearly calls for Nadim’s disbarment.

Our analysis begins with the standards. The Supreme Court has instructed that we should follow them “whenever possible” (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11), and give them great weight to promote “the consistent and uniform application of disciplinary measures.” (*In re Silvertan* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) We focus on standard 2.2(a), which is the most severe and deals specifically with misappropriations.<sup>22</sup>

Under standard 2.2(a), misappropriation of entrusted funds calls for disbarment unless “the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate . . . .” Neither exception applies. Nadim misappropriated more than \$22,000, a significant sum. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of \$1,355.75 considered significant].) He also failed to establish that the “most compelling mitigating circumstances clearly predominate.” (Std. 2.2(a).) Nadim has no mitigating factors.

We find the overall nature and extent of Nadim’s misconduct to be particularly distressing. This case involves 21 violations in 11 cases over three years, including two instances of misappropriation. Even more troublesome is the fact that Nadim completed the State Bar Ethics School and Client Trust Accounting School as part of his 2003 discipline, yet his misconduct escalated after his probation ended. Based on his prior and present misconduct,

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<sup>22</sup> Standard 1.6(a) directs that when multiple acts of misconduct call for different sanctions, we apply the most severe sanction. Other applicable standards include: 1.7(a) provides that if a “member has a record of one prior imposition of discipline . . . the degree of discipline imposed in the current proceeding shall be greater . . . .”; 2.2(b) provides for at least a three-month actual suspension for non-misappropriation trust account violations under rule 4-100; 2.3 provides for actual suspension to disbarment for moral turpitude violations under section 6106; 2.6 provides for suspension to disbarment for violations of an attorney’s duties under section 6068 or other Business and Professions Code sections; and 2.10 provides for reproof to suspension for all other violations not covered by a particular standard.

and considering his lack of insight, we believe that there is a high risk of recidivism and a potential for further harm. Thus, while we may “temper the letter of the law with considerations peculiar to the offense and the offender” (*Howard v. State Bar, supra*, (1990) 51 Cal.3d at pp. 221-222), we find no basis on this record to deviate from the disbarment recommendation of standard 2.2(a) and the relevant case law.<sup>23</sup>

#### IV. RECOMMENDATION

We recommend that Mohammad Reza Nadim, member number 129366, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

We further recommend that Nadim must make restitution to the following persons (or to the Client Security Fund to the extent of any payment from the fund, plus interest and costs, in accordance with section 6140.5), and furnish satisfactory proof thereof to the State Bar’s Office of Probation: (1) Imelda Espinoza in the amount of \$6,585 plus 10% interest per annum from June 19, 2009; (2) Kazem Revzani in the amount of \$15,000 plus 10% interest per annum from March 14, 2009; and (3) Larisa Ermolova in the amount of \$16,459.41 plus 10% interest per annum from January 25, 2010.

We further recommend that he must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

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<sup>23</sup> *Grim v. State Bar* (1991) 53 Cal.3d 21 (attorney with prior discipline for mismanagement of trust funds was disbarred for misappropriating \$5,546 from client, despite good character, candor and cooperation); *In the Matter of Acuna, supra*, 3 Cal. State Bar Ct. Rptr. 495 (attorney disbarred for multiple rule violations including misappropriating \$9,000, practicing law while suspended, mishandling trust funds, and entering into a business transaction with a client without full disclosure; aggravating circumstances of prior record for mishandling trust funds, multiple acts of wrongdoing, harm to administration of justice, and indifference greatly outweighed mitigation credit for pro bono work and voluntarily repaying clients).

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

**V. ORDER**

The order that Nadim be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective December 5, 2011, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

WE CONCUR:

PURCELL, J.

EPSTEIN, J.