

**PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION**

**FILED DECEMBER 2, 2010**

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of	)	<b>No. 05-O-03475; 05-O-04281</b>
	)	
<b>BENJAMIN ROBINSON,</b>	)	<b>OPINION</b>
	)	
Member No. 107550	)	
A Member of the State Bar.	)	
_____	)	

In his second disciplinary proceeding, respondent Benjamin Robinson requests review of a hearing judge’s recommendation that he be actually suspended from practicing law for two years and until he establishes his rehabilitation and fitness to practice. The hearing judge found Robinson culpable of nine counts of misconduct based on his improper handling of money, including commingling personal funds in his client trust account (CTA), issuing checks against insufficient funds, misappropriating entrusted client funds and failing to promptly refund advanced fees or costs. Robinson seeks review, contesting most of the hearing judge’s culpability determinations and arguing that any actual suspension is excessive discipline. The State Bar supports the hearing judge’s decision.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we uphold the hearing judge’s factual and culpability findings, and agree that a two-year actual suspension

is supported by the record, the Standards for Attorney Sanctions for Professional Misconduct<sup>1</sup> and the decisional law.

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Robinson was admitted to practice law in 1983, and worked on probate, civil, and employment law matters. These proceedings commenced on October 31, 2007, when the State Bar filed a Notice of Disciplinary Charges (NDC) in correlated case numbers 05-0-03475 (05-O-03781; 06-O-15286). A second NDC was filed on November 16, 2007, in case number 05-O-04281, and the two matters were consolidated. Prior to trial, the hearing judge granted the State Bar's motion to dismiss nine counts with prejudice.

The parties stipulated to many relevant facts at the beginning of the trial. The hearing judge made additional factual findings after rejecting much of Robinson's testimony, which he found to be not credible.<sup>2</sup> Upon our review of the record, we give great deference to the hearing judge's findings based on testimonial credibility. (Rules Proc. of State Bar, rule 305(a).)

### **A. THE RANDALL MATTER**

#### **1. Findings of Fact**

In February 2001, Frank Randall (Randall), who was the executor of his deceased brother Floyd Randall's estate (the Estate), hired Robinson to represent him in probate. Under Floyd's

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<sup>1</sup>Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

<sup>2</sup>The hearing judge also found that Robinson's testimony lacked candor, but did not consider it as an aggravating factor. (Std. 1.2(b)(vi).) We agree that the record clearly supports a finding that Robinson's testimony was not credible, but it does not contain clear and convincing evidence that Robinson lied. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [distinguishing determination that testimony is not credible (i.e., believable), which "is primarily within the province of the hearing judge because he or she saw and heard the witness testify," from determination that testimony lacks candor (i.e., witness is lying), "which must ordinarily be found by clear and convincing evidence"].)

1999 will and trust agreement, Randall and Rosa Mundy (daughter of Floyd's previously deceased wife) would each receive one-half interest in Floyd's real property in Inglewood, California. Over two years, Robinson represented Randall in three litigation matters involving the Estate: a contest of the will, a foreclosure action against the Inglewood property, and a contest to the authority to sell that property.

The litigation matters were resolved in Randall's favor in July 2003. On July 18, 2003, Randall deposited \$30,000 in a Bank of America account created for the sale of the Inglewood property (the Estate Account). Shortly thereafter, Mundy filed a creditor's claim in the amount of \$3,582 against the Inglewood property. On September 24, 2003, Randall issued a \$3,582 check from the Estate Account to the "Benjamin Robinson Client Trust Account" with a notation: "deposit re: Mundy lien," and Robinson deposited the check into his CTA. Mundy's claim was rejected by the Estate. However, the \$3,582 was to remain in trust for 90 days from the date the claim was rejected (i.e., September 29, 2003), during which time Mundy could contest the Estate's rejection of her claim. (Prob. Code, § 9353, subd. (a)(1).) Despite this requirement, within a week of depositing the check into his CTA, Robinson withdrew the funds on October 1, 2003, and his CTA balance dropped to \$130.64.

Robinson testified that Randall authorized the money to be used for attorney's fees, and that he withdrew the money and placed it in his safe deposit box at home to protect it from an unidentified female roommate whom he feared would access his CTA. Robinson also testified that he eventually returned the funds as part of the final accounting of the Estate and his request for attorney's fees in 2006.

## **2. Conclusions of Law**

### **Count 4: Improper Use of CTA Funds (Rules Prof. Conduct, rule 4-100(A)<sup>3</sup>)**

Under rule 4-100(A), funds received for the benefit of clients shall be deposited into a trust account. The estate funds were entrusted to Robinson to cover a claim asserted by Mundy and Robinson was required to maintain them in trust while that claim was pending. His withdrawal of any portion of the \$3,582 before resolution of Mundy's claim violated rule 4-100(A).

Like the hearing judge, we reject as unbelievable Robinson's testimony that he removed the money and placed it in his home safe deposit box. Further, even if Randall had authorized using the money to pay attorney's fees, it did not excuse Robinson's use of the funds before the 90-day statutory period expired. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 977-979 [lack of intent to deceive or good faith not defenses to misappropriation].)

### **Count 5: Moral Turpitude (Bus. & Prof. Code, § 6106<sup>4</sup>)**

"[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]" (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) The estate funds were entrusted to Robinson to cover a claim Mundy had asserted to them. Although Mundy was not his client, Robinson owed her a fiduciary duty as a potential creditor of the estate. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 285-286 [fiduciary duty to maintain in trust funds to pay medical liens on behalf of clients].) We find that by withdrawing these funds for his own personal use, Robinson misappropriated them in violation of section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034 [attorney

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<sup>3</sup>Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

<sup>4</sup>Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

who withdrew CTA funds under mistaken belief that client had authorized use of funds for fees culpable of willful misappropriation and moral turpitude].)

**B. MISUSE OF CTA**

**1. Findings of Fact**

For over three years from April 2003 until June 2006, Robinson frequently used his CTA as a personal checking account. He did not promptly withdraw earned fees from his CTA. He also issued the following 23 checks for personal expenses, totaling \$9,007.29:

<b>Withdrawal Date</b>	<b>Amount Withdrawn</b>	<b>CTA Check No.</b>	<b>Payee</b>
4/8/03	\$1,941.94	1053	Mercedes-Benz/Long Beach
8/5/03	\$421.95	1079	Costco
9/3/03	\$56.18	1091	Ralph's
1/26/04	\$240.29	1101	Costco
3/25/04	\$74.27	1107	Ralph's
3/25/04	\$85.80	1113	French Hand Laundry
4/26/04	\$123.75	1138	French Hand Laundry
6/1/04	\$13.10	1169	Trader Joe's
8/16/04	\$259.99	1252	Mervyn's
11/26/04	\$95.49	1378	Ralph's
12/6/04	\$48.67	1394	Tower Records
12/27/04	\$339.91	1376	Nordstrom
12/27/04	\$603.00	1398	DMV
1/6/05	\$270.52	1417	Nordstrom
2/15/05	\$60.85	1451	French Hand Laundry
3/1/05	\$290.93	1477	Mercedes-Benz/Long Beach
5/18/05	\$136.38	1572	Costco
5/31/05	\$354.86	1578	Mercedes-Benz/Long Beach
6/05	\$63.36	1596	Santa Monica Seafood
8/31/05	\$3,171.24	1625	Mercedes-Benz/Long Beach
1/17/06	\$119.78	1654	Costco
2/3/06	\$180.96	1663	Costco
6/15/06	\$54.07	1647	Albertson's

Between July 2003 and May 2005, Robinson issued the following 18 additional checks that were returned or paid against insufficient funds:

<b>Date Presented</b>	<b>Check Amount</b>	<b>Check No.</b>	<b>Payee</b>
7/21/03	\$16.62	1067	LASC
3/16/04	\$65.10	1105	Costco
4/5/04	\$29.02	1117	Ralph's
4/9/04	\$74.74	1126	Kinko's
4/19/04	\$200	1132	Ralph's
5/6/04	\$40	1148	Cash
5/19/04	\$17.49	1153	Fed Ex
6/8/04	\$15.91	1179	Kinko's
6/9/04	\$59.97	1175	Santa Monica Seafood
8/24/04	\$500	1261	Class Auto Center
10/21/04	\$15.40	1332	LASC
11/23/04	\$220	1370	LASC
11/26/04	\$95.41	1383	Ralph's
12/7/04	\$2,200	1357	William S. Epps
12/16/04	\$421.18	1389	Fretze Majied
3/21/05	\$32.89	1502	Albertson's
4/25/05	\$75.78	1546	Ralph's
5/26/05	\$25	1575	Kaiser

Robinson claims that at the time of these violations, he was unaware of the rules prohibiting use of personal funds in his CTA. He testified that he has since stopped using the CTA for personal purposes. As for the NSF, Robinson indicted his unidentified female roommate, whom he feared would access his CTA. According to Robinson, he was concerned about leaving money in the CTA, so he maintained a minimum balance and would deposit money to cover a check only after it was issued. If he forgot to deposit the funds, Robinson testified that he had an arrangement with a bank representative, who would call him personally to notify him of insufficient funds. Robinson testified that he did not think there was any other option available to him, and this practice continued for almost two years.

## **2. Conclusions of Law**

### **Count 9: Commingling (Rule 4-100(A))**

Rule 4-100(A) requires that “[n]o funds belonging to the [attorney] . . . be deposited [in his CTA] or otherwise commingled therewith . . . .” “The rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.) Robinson stipulated that he violated the rule by not promptly withdrawing earned fees from his CTA and by depositing personal funds into it. He also issued 23 CTA checks for personal purposes in violation of the rule.

### **Count 10: Moral Turpitude (§ 6106)**

An attorney who issues checks knowing that they will not be honored acts dishonestly and with moral turpitude. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426.) “Knowledge that a check was issued without sufficient funds is an integral element of a charge of moral turpitude premised on writing a bad check. [Citation.]” (*Read v. State Bar* (1991) 53 Cal.3d 394, 409.) Here, Robinson issued 18 checks with knowledge that his CTA might have insufficient funds and he disregarded the ethical rules governing CTA use. This conduct was grossly negligent and amounted to moral turpitude in violation of section 6016. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876 [attorney who used CTA for personal expenses and issued several NSF checks acted with gross negligence where he made no effort to track CTA balances or to determine proper use of CTA].)

In defense of this charge, Robinson asserts a bank representative reminded him to deposit funds into the CTA whenever checks were presented against insufficient funds. But, even if we were to accept Robinson’s explanation, it was unreasonable for him to rely on any such reminder after he repeatedly issued NSF checks for almost two years. (*In the Matter of McKiernan, supra,*

3 Cal. State Bar Ct. Rptr. at p. 426 [“a justifiable and reasonable belief that a check will be honored is a defense” to charge that attorney acted with moral turpitude by issuing NSF checks].) Likewise, we reject Robinson’s argument that he did not commit misconduct by issuing NSF checks because his trust account overdraft protection paid the check amounts due. Overdraft protection for a client trust account may be a “good idea” for occasional bank or accounting errors. (Ops. State Bar of Cal., No. 169 (2005) p. 4.) But here, Robinson repeatedly used it for an impermissible and non-delegable purpose – to manage his CTA. (*Ibid.*)

### **C. THE ADDISON MATTER**

#### **1. Findings of Fact**

In June 2004, Joseph Addison hired Robinson to file suit against Addison’s employer, the Department of Public Works of Los Angeles County (DPW). Addison agreed to pay Robinson a “retainer” of \$8,000, and on June 6, 2004, he paid Robinson \$1,000 in fees. On June 14, 2004, Addison signed a written contract, which included the agreement to pay a “non-refundable retainer fee” of \$8,000. At the same time, he paid Robinson an additional \$7,000. When Robinson requested money to file the complaint he claimed he had completed, Addison gave him another check for \$500 on August 9, 2004. This check bore the notation “filing fees and incidentals.” Robinson deposited this check into his CTA on August 15, 2004. On October 5, 2004, Robinson’s CTA had a negative balance of \$299.96.

Addison intended for Robinson to file a lawsuit against DPW as soon as possible. He had received a “Right to Sue Notice” on July 15, 2004, that allowed him to file a discrimination action, and he repeatedly requested that Robinson do so. Robinson never filed the action, despite his statement that the complaint was completed on August 9, 2004. On October 1, 2004, Addison hand-delivered a letter terminating Robinson, requesting a full refund of \$8,500, and

offering to reimburse him for fees and costs substantiated by adequate receipts. At some point, Robinson had prepared a draft complaint, but Addison did not see it until Robinson provided it, along with a statement of fees, during the State Bar investigation in 2006.

Robinson did not refund Addison's \$8,500 for five years. In 2007, Addison sought to recover these funds in fee arbitration proceedings before the Committee of Arbitration of the Los Angeles County Bar Association Dispute Resolution Services. Robinson did not participate in those proceedings and Addison won an arbitration award of \$8,975, representing the \$8,500 plus arbitration costs. Robinson unsuccessfully sought to set aside the award in the Los Angeles County Superior Court and the Court of Appeals. He paid the award in full on September 21, 2009, after he was placed on involuntary inactive status by the State Bar Court for failing to comply with the arbitration award.

Pursuant to Addison's complaint, the State Bar opened an investigation on September 16, 2005. The investigator sent Robinson letters on October 5, 2005 and November 1, 2005, requesting a written response to allegations in the Addison complaint and reminding him of his duty to cooperate with the investigation. On November 17, 2005, Robinson called the investigator and told him that he would provide a written response by December 1, 2005, but failed to do so. After the State Bar filed the NDC on April 7, 2006, Robinson sent letters to the State Bar on April 26, 2006, and May 3, 2006.

On June 27, 2006, Robinson and the State Bar entered into an Agreement in Lieu of Discipline (ALD) for his conduct in the Addison matter. Part of the ALD required Robinson to comply with conditions over the course of one year, including timely filing quarterly reports and attending the State Bar Ethics School. On July 7, 2006, the Office of Probation sent Robinson a reminder of these ALD terms. Over the course of that year, Robinson filed all four quarterly reports late as follows:

<b>Report Due Date</b>	<b>Date Report Filed</b>	<b>Days Overdue</b>
10/10/06	11/13/06	34
1/10/07	7/26/07	197
4/10/07	5/9/07	29
6/27/07	6/29/07	2

Robinson submitted the January 2007 quarterly report and completed the Ethics School only after the Office of Probation called him on July 14, 2007, to remind him of these obligations. He completed the Ethics School requirement on August 24, 2007, almost two months after the June 27, 2007 deadline.

## **2. Conclusions of Law**

### **Count 1: Failure to Perform with Competence (Rule 3-110(A))**

Rule 3-110(A) prohibits intentional, reckless, or repeated failures to perform legal services with competence. Robinson violated this rule by repeatedly and recklessly failing to file Addison’s complaint as promised, despite his assertion that he had completed it. (*Guzzetta v. State Bar, supra*, 43 Cal.3d at p. 979 [attorney failed to perform competently by taking no action towards purpose client retained him to accomplish]).)

### **Count 2: Failure to Refund Unearned Fees (Rule 3-700(D)(2))**

Rule 3-700(D)(2) provides that an attorney must “promptly refund any part of a fee paid in advance that has not been earned.” Robinson argues he did not fail to refund unearned fees because the \$8,000 was a non-refundable retainer fee. However, the attorney-client fee contract does not contain any of the elements necessary to create a true retainer fee; it does not define “retainer fee,” state payment was due even if professional services were not rendered, or set aside blocks of Robinson’s time to devote to Addison’s case. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950-51.) Thus, we find the \$8,000 was an advanced fee and not a true retainer. Robinson did not return the unearned fees for five years,

and then did so only after he was placed on inactive status for failing to satisfy a fee arbitration award. Thus, we find Robinson violated rule 3-700(D)(2).

**Count 3: Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))**

Rule 4-100(B)(4) requires prompt payment, as requested by the client, of funds, securities or other property being held by the attorney that the client is entitled to receive. Robinson failed to refund the \$500 advanced costs upon Addison's request. Addison was entitled to receive these funds and Robinson's failure to promptly pay them as requested by Addison violated rule 4-100(B)(4). (*In the Matter of Lais* (Review Dept. 1998) 3 State Bar Ct. Rptr. 907, 923 [rule 4-100(B)(4) applies to advanced costs].)

**Count 4: Failure to Cooperate with State Bar Investigation (§ 6068, subd. (i))**

Robinson also failed to cooperate with the State Bar's investigation in violation of section 6068, subdivision (i), which requires an attorney to cooperate and participate in disciplinary proceedings. He did not respond in writing to the State Bar's October 5 and November 1, 2005 letters, even though he was expressly warned that failure to do so could result in additional disciplinary action. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

**Count 5: Failure to Comply with ALD (§ 6068, subd. (l))**

Section 6068, subdivision (l) requires an attorney to keep all agreements made in an ALD. Robinson concedes, and the record supports, culpability for failing to comply with the conditions of his ALD, including repeatedly filing quarterly reports late and attending ethics school almost two months late.

## **D. AGGRAVATION AND MITIGATION**

We determine the appropriate discipline in light of all relevant circumstances, including aggravation and mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must establish aggravation by clear and convincing evidence (std. 1.2(b)), while Robinson has the same burden of proof for mitigating circumstances. (Std. 1.2(e).)

### **1. Mitigation for Stipulation**

Although the hearing judge found no factors in mitigation, we give Robinson minimal mitigating credit for entering into a partial pre-trial stipulation with the State Bar, but we discount this factor since he failed to cooperate with the investigation. Further, in light of his overall lack of credibility, we do not assign mitigation for Robinson's vague and self-serving testimony about pro bono work for members of his church.

### **2. Four Factors in Aggravation**

We agree with the hearing judge that there are four factors in aggravation: (1) a prior record of misconduct (std. 1.2(b)(i)); (2) multiple acts of wrongdoing (std. 1.2(b)(ii)); (3) misconduct that significantly harmed Addison by depriving him of \$8,500 for almost five years and unjustifiably forcing Addison to seek arbitration to obtain his refund (std. 1.2(b)(iv)); and; (4) indifference toward rectification of or atonement for the consequences of his misconduct (std. 1.2(b)(v)).

We find most significant Robinson's prior record of discipline, which contains similarities to his misconduct in the Addison matter. In October 1998, the Supreme Court ordered a 60-day actual suspension based on Robinson's misconduct in one client matter. Robinson had accepted \$2,500 in advanced fees in an employment discrimination case. After prevailing on the claim, he filed an application for attorney's fees without the client's knowledge. Robinson was awarded over \$9,000 in fees based on his false statements that the

client had agreed to an hourly billing rate, but did not inform the client of that award. After the client won a small claims action to recover the \$2,500, Robinson initiated a small claims action against the client for alleged additional fees, which action was unsuccessful.

Robinson committed multiple acts of misconduct. He failed to properly account to his client (rule 4-100(B)(3)), failed to refund unearned fees (rule 3-700(D)(2)), brought an unjust action against his client (§ 6068, subd. (c)), and committed uncharged misconduct of failing to use means consistent with the truth (§ 6068, subd. (d)), and moral turpitude (§ 6106) for his false statements in obtaining the attorney's fee award.

Robinson also failed to cooperate in the disciplinary investigation. He seriously aggravated his misconduct by his continued intractable position after the judgments in three civil court proceedings and the decision of the hearing judge, which showed a failure to gain meaningful insight into his misconduct.

Robinson has displayed indifference toward rectification of or atonement for the consequences of his misconduct in the current proceeding as well. He blamed Addison for his misconduct throughout the disciplinary proceedings. He also raises on review the untenable contention that he was not required to retain the \$3,582 in the CTA because Mundy's claim expired when he served her the rejection notice. This is contrary to the stipulated facts, Robinson's testimony at the trial, and the plain language of the Probate Code. His continued insistence that his conduct was justified is "particularly troubling" because it suggests his conduct may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

## **II. DISCIPLINE DISCUSSION**

The purpose of 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 standards for attorneys. (Std. 1.3.) In determining the appropriate discipline, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.)

Our discipline analysis begins with the standards. Although they are not mandatory, the Supreme Court has instructed us to follow the standards “whenever possible” (*In re Young*, *supra*, 49 Cal.3d at p. 267, fn. 11) to ensure the consistent and uniform discipline of attorneys. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Several standards apply here, under which the appropriate discipline for Robinson’s misconduct ranges from a three-month actual suspension to disbarment.<sup>5</sup>

Standard 2.2(a) provides for the most severe sanction, suggesting disbarment for willful misappropriation unless “the most compelling mitigating circumstances clearly predominate,” in which case a one-year actual suspension is warranted. However, the Supreme Court has noted that in considering the application of this standard, the suggested discipline of disbarment, or even the imposition of a one-year suspension, is not faithful to the teachings of its decisions. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 518.) Moreover, “the term willful misappropriation covers ‘a broad range of conduct varying significantly in the degree of culpability.’ [Citation.]” (*Ibid.*) In cases where the misappropriation is “willful” but where only one client has been harmed, disbarment is rarely appropriate. (*Edwards v. State Bar* (1990) 52 Ca1.3d 28, 38.)

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<sup>5</sup>We have considered the following standards: 1.6(a) (imposing most severe of different applicable sanctions); 1.7(a) (imposing greater degree of discipline than that imposed in prior disciplinary proceeding); 2.2(b) (minimum three months’ actual suspension for violation of rule 4-100); 2.3 (actual suspension or disbarment for act of moral turpitude, depending on extent of harm and on magnitude of act of misconduct and its relation to respondent’s practice of law); 2.4(b) (reproval or suspension, depending upon extent of misconduct and degree of harm to client, for failure to perform services); 2.6 (suspension or disbarment, depending on gravity of offense, for failure to cooperate with State Bar investigation and failure to comply with ALD).

Like the hearing judge, we do not recommend disbarment based on Robinson's single isolated act of misappropriation. Despite his gross negligence in handling his CTA, no evidence shows that he acted intentionally or in bad faith. More importantly, there is no evidence of client harm. Robinson has expressed a greater understanding of the rules governing entrusted funds since his misconduct. And although we are concerned about Robinson's attitude towards the Addison matter and its similarities to his prior disciplinary matter, we are satisfied that the public will be protected by a lengthy actual suspension and the requirement under standard 1.4(c)(ii) that he establish his rehabilitation, fitness to practice and learning and ability in the general law before he resumes his practice.

Therefore, we recommend a two-year actual suspension, which is supported by comparable case law as the appropriate sanction to ensure discipline proportionate to the misconduct. (*In the Matter of Davis, supra*, 4 Cal. State Bar Ct. Rptr. 576 [two-year actual suspension for willful misappropriation of almost \$30,000 where misconduct significantly aggravated by overreaching, concealment, duplicity and lack of insight, but mitigated by no prior discipline, good character evidence and community service]; *Matter of Brockway, supra*, 4 Cal. State Bar Ct. Rptr. 944 [two-year actual suspension where attorney failed to perform competently, return unearned fees, or release files in four client matters with no mitigation and significant aggravation for prior discipline in areas of common concern, significant harm to clients, and indifference towards rectification or atonement].)

### **III. RECOMMENDATION**

We recommend that Benjamin Robinson be suspended from the practice of law for three years, that execution of such suspension be stayed and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of the period of his probation, and he will remain suspended until he provides proof to the

State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.
4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
6. Within one year of the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any MCLE requirement, and he will not receive MCLE credit for attending Client Trust Accounting School.
8. 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 period of probation, if he has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

We also recommend that Robinson be required to take and pass the Multistate Professional Responsibility administered by the National Conference of Bar Examiners during

the period of his suspension in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period.

We further recommend that Robinson be ordered to comply with rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, from the effective date of the Supreme Court order. Failure to do so may result in disbarment or suspension.

Finally, we 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 of that code and as a money judgment.

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.