

Filed October 10, 2013

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 11-O-16820, 11-O-18691
	)	
VERNE CRAIG SCHOLL,	)	OPINION
	)	
A Member of the State Bar, No. 48634.	)	
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Verne Craig Scholl was admitted to the California Bar in 1971, and practiced law for almost 40 years without discipline before breaching his ethical duties in the two client matters before us. Scholl readily admits his misconduct, and stipulated to most of the underlying facts. Based largely on that stipulation, the hearing judge found Scholl culpable of five of the six charged violations: (1) misappropriating \$49,640 from one client based on his gross neglect in failing to properly supervise an employee; (2) failing to maintain that client's funds in trust; (3) failing to return the funds to his client for approximately six months; and in the second matter, (4) committing the unauthorized practice of law (UPL) by practicing in Illinois without a license; and (5) collecting an illegal fee based on his UPL. The hearing judge found two factors in aggravation (multiple acts of misconduct and client harm) and four factors in mitigation (no prior record, candor and cooperation, good character and community service, and remorse and recognition of wrongdoing). Deeming Scholl's good character evidence worthy of considerable weight in mitigation, the judge recommended that Scholl be suspended from the practice of law for one year.

The State Bar's Office of the Chief Trial Counsel (State Bar) appeals and seeks Scholl's disbarment. It concedes that the misappropriation was due to gross negligence, but stresses that

Scholl's client suffered significant harm. Based on that client harm and other alleged aggravating circumstances, the State Bar asserts that there are no grounds to deviate from the presumptive discipline of disbarment for a misappropriation of this size. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 2.2(a) [disbarment for misappropriation of client funds unless "the most compelling mitigating circumstances clearly predominate" in which case discipline shall be at least one-year suspension].)<sup>1</sup> Scholl asks that we affirm the hearing judge's recommended discipline due to his isolated misconduct and his compelling mitigation.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we note that the trial evidence was very limited. And while the evidence supports the culpability findings and two aggravating factors found by the hearing judge, it does not establish the additional factors in aggravation urged by the State Bar. The record does, however, fully support the hearing judge's findings of compelling mitigation based on five factors: Scholl's lengthy discipline-free practice, candor and cooperation with the State Bar, good character, extensive community service, and remorse. The compelling mitigation clearly predominates in this case and justifies a departure from the presumptive discipline of disbarment under standard 2.2(a). Considering that Scholl's most serious misconduct was a single act of grossly negligent misappropriation, we adopt the hearing judge's recommended one-year suspension, which is supported by both the standards and case law.

## **I. FACTS AND CULPABILITY**

There are few facts in dispute on review—the main issue is the appropriate degree of discipline. The hearing judge based his findings on the parties' stipulation as to undisputed facts

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<sup>1</sup> All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

and the limited evidence offered at trial.<sup>2</sup> Accordingly, we adopt and summarize the hearing judge's findings below. (See Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

**A. UPL in Illinois (Case No. 11-O-16820)**

On September 16, 2010, Illinois resident Ralph Apato employed Scholl, who was doing business as VS Legal Center, to modify the loan on his Illinois home. Apato entered into an Attorney Fee Agreement with Scholl and paid a \$2,500 advanced fee. Scholl has never been admitted to practice law in the state of Illinois.<sup>3</sup>

**Count One: Rule 1-300(B), Rules of Professional Conduct (UPL in Another Jurisdiction)<sup>4</sup>**

**Count Two: Rule 4-200(A) (Charging and Collecting Illegal Fees)**

Scholl stipulated to two violations in counts one and two: (1) rule 1-300(B), by practicing law in Illinois without a license, in violation of that state's laws;<sup>5</sup> and (2) rule 4-200(A), by charging and collecting illegal fees from Apato based on his UPL in Illinois. These legal conclusions are not in dispute, and we adopt them.

**B. Misappropriation of Client Funds (Case No. 11-O-18691)**

When Scholl started practicing law in 1971, he focused primarily on real estate matters, providing land development and related financial services, including real estate lending. Over the years, his business included developing land with manufactured housing, and expanded to the

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<sup>2</sup> The State Bar presented only one witness (Michaels), and did not call Scholl as a witness in its case-in-chief, relying exclusively on the stipulated facts for culpability.

<sup>3</sup> These narrow findings are based on the stipulation. Scholl was not questioned on the case, and no other testimony was provided. As for the \$2,500 fee, a failure to return unearned fees was neither charged nor raised as an issue at any time during these proceedings.

<sup>4</sup> All further references to rules are to the Rules of Professional Conduct of the State Bar.

<sup>5</sup> Rule 5.5 of the Illinois Rules of Professional Conduct prohibits out-of-state attorneys from practicing law except for limited exceptions. None of the exceptions applies to Scholl's representation of Apato.

construction of on-site homes. He also provided loans to the purchasers. The business, however, did not survive the lending crisis. Many loans Scholl made for the houses he developed went into foreclosure. In the summer of 2008, he started working on loan modifications.

On July 8, 2009, Kiowa Michaels employed Scholl's firm, VS Legal Center, to obtain a modification on the loan securing Michaels's mobile home located in California. Scholl delegated responsibility for Michaels's matter to Frank Trotman, a non-attorney. Scholl and Trotman had been partners in a prior real estate business, and despite a falling out in 2006, they began working together again in 2008 on loan modifications. Michaels never dealt with Scholl, and his contact with Scholl's office was solely through Trotman. Scholl admits that he failed to properly supervise Trotman.

Chase Bank was the lienholder on Michaels's mobile home loan. In the spring of 2010, Chase and Michaels agreed on the terms of a trial loan modification. However, in August of that year, before the loan modification was final, Michaels's mobile home was completely destroyed by a fire. Michaels paid Scholl \$6,000 to settle the claims between his insurance company (Foremost) and Chase, and to help Michaels purchase a mobile home with any remaining settlement funds. The misconduct allegations against Scholl involve the handling of Michaels's settlement funds.

Scholl's office settled Michaels's claim with Foremost in September 2010. In February 2011, after determining the approximate cost of replacing Michaels's mobile home, Foremost paid \$124,880. Foremost issued settlement drafts payable to Michaels and Chase. Michaels endorsed the drafts, and Chase deposited the funds in an account it maintained for Michaels.

While the insurance claim was being processed, Michaels contacted Maple Ridge Mobile Home Sales (Maple Ridge) to find a used mobile home. Maple Ridge found Michaels a possible home in El Cajon. In March 2011, after Chase approved the El Cajon home, it released \$62,440

for the purchase, which Michaels authorized Maple Ridge to deposit into an escrow account. Shortly thereafter, the sellers of the El Cajon home cancelled the purchase agreement. Michaels anticipated that Maple Ridge would continue to attempt to locate another home for him.

After the sale of El Cajon fell through, Maple Ridge forwarded \$49,640 of Michaels's funds to Scholl's office. As of April 14, 2011, Scholl should have held that amount in his client trust account (CTA) on behalf of Michaels, but the funds were never deposited into his CTA or in any other account he maintained or controlled. The entire amount was misappropriated.

On April 18, 2011, Michaels requested \$3,000 of his money from Scholl's office to complete electrical repairs on his property where the mobile home had been destroyed. Trotman paid him with funds from other sources.

In July 2011, Maple Ridge located a foreclosed home in Lancaster, California, that it intended to purchase for Michaels. Again using funds obtained from other sources, Trotman disbursed \$28,000 to Maple Ridge on Michaels's behalf to purchase the Lancaster home. In July 2011, Maple Ridge purchased that home under the assumption that Michaels had approved the purchase. But several months later, after Michaels had inspected the home, he informed Maple Ridge and Scholl's office that he did not want to purchase the Lancaster home. Michaels had never signed a purchase or other written agreement to authorize the transfer of funds.

On September 26, 2011, Michaels sent a letter to Trotman, terminating the services of VS Legal Center, and demanding the return of all his funds. Shortly thereafter, he complained to the State Bar, who contacted Scholl. In December 2011, Scholl admitted his misconduct to the State Bar, noting that his failure to supervise Trotman had allowed Michaels's funds to be commingled and misappropriated. At the time, Scholl believed that Michaels had authorized the purchase of the Lancaster home, and therefore, it needed to be sold to obtain and return that portion of Michaels's funds.

Meanwhile, Michaels entered into a contract to purchase a new mobile home in October 2011. Escrow was opened by Cimarron Escrow. After Michaels rejected the Lancaster home, Maple Ridge sold it at a loss and delivered \$15,000 to Scholl in March 2012. On March 24, 2012, Scholl deposited \$33,640 in the Cimarron Escrow on behalf of Michaels, using the funds he obtained from Maple Ridge and other sources. On April 5, 2012, Scholl deposited an additional \$13,000 in the Cimarron Escrow to cover the amount lost in the resale of the Lancaster home. This payment resulted in a return of the entire \$49,640 that Scholl had received on behalf of Michaels in April 2011.<sup>6</sup>

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

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a CTA. It is undisputed that Scholl violated this rule by not depositing the \$49,640 of Michaels's funds into his CTA. Thus, we adopt the hearing judge's culpability finding.

**Count Four: Business and Professions Code, Section 6106<sup>7</sup> (Moral Turpitude)**

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The hearing judge found that Scholl committed an act of moral turpitude by misappropriating Michaels's \$49,640 through his gross negligence, in willful violation of section 6106. At oral argument, the State

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<sup>6</sup> As correctly summarized by the hearing judge, the breakdown of funds is as follows:

\$ 49,640	Total amount received by Scholl's office from Maple Ridge in April 2011
- 3,000	Paid to Michaels in April 2011
- 28,000	Paid to Maple Ridge to buy Lancaster mobile home in July 2011
+ 15,000	Received from Maple Ridge on resale of Lancaster home in March 2012
\$ 33,640	Total
- 33,640	Paid to Cimarron Escrow in March 2012
-0-	
+ 13,000	Amount lost in Lancaster home resale (\$28,000 - \$15,000)
- 13,000	Paid to Cimarron Escrow in April 2012
-0-	

<sup>7</sup> All further references to sections are to the Business and Professions Code.

Bar agreed that the misappropriation was not due to any evil or intentional act, but rather to Scholl's "extremely reckless" conduct. The record supports a finding of misappropriation by gross neglect.

Scholl stipulated that his office received the funds, they were not maintained in his CTA, and they were misappropriated. The limited evidence at trial established that Scholl himself was not involved with this matter or any of the funds until he was contacted by the State Bar in December 2011 and delivered a check to Cimarron Escrow in March 2012. But he was grossly negligent in failing to supervise his office, particularly Trotman, to whom he had delegated the handling of Michaels's matter. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403 [attorney suspended for 30 days based on, among other things, § 6106 violation for gross negligence in failing to maintain client funds in CTA in two cases].)

**Count Five: Rule 4-100(B)(4) (Promptly Pay/Deliver Client Funds)**

Rule 4-100(B)(4) requires an attorney to "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties" in the attorney's possession which the client is entitled to receive. We adopt the hearing judge's finding that by failing to return Michaels's funds to him for nearly six months, Scholl failed to pay promptly, as requested by his client, any funds in Scholl's possession that the client was entitled to receive.

**Count Six: Section 6068, subdivision (m) (Failure to Communicate)**

Section 6068, subdivision (m), provides that an attorney has a duty to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. The State Bar alleged that Scholl violated this section by failing to tell Michaels that he disbursed \$28,000 to Maple Ridge to purchase the Lancaster home. The hearing judge found that the record was unclear as to whether Scholl's office had prior authority from Michaels to

forward the funds to Maple Ridge and, therefore, he dismissed count six with prejudice. We agree the evidence is insufficient as to the circumstances surrounding the purchase of the Lancaster home and whether Michaels authorized the distribution. Accordingly, we adopt the hearing judge's order of dismissal.

## **II. SCHOLL'S MITIGATION IS COMPELLING**

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 (std. 1.2(b)), while Scholl has the same burden to prove mitigating circumstances (std. 1.2(e)). Like the hearing judge, we find two factors in aggravation, but conclude that the evidence establishes five factors in mitigation. As discussed below, the mitigation is compelling and clearly predominates in this discipline proceeding.

### **A. Aggravation**

The hearing judge found two aggravating factors: (1) multiple acts of misconduct; and (2) harm to the client.

#### **1. Multiple Acts**

Standard 1.2(b)(ii) provides for aggravation if "the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct." Scholl committed five violations in two client matters over an approximate two-year period. However, in each of the matters, the misconduct centered on a single transaction: committing UPL in the first and mishandling client funds in the second. Based on the limited nature and extent of the misconduct, this factor is given nominal weight in aggravation. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [two matters of misconduct may or may not be considered multiple acts of misconduct]; cf. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [where misconduct involved



collecting illegal fee and committing act of moral turpitude with both counts arising from single transaction, violations did not constitute multiple acts].)

## **2. Harm to Client**

Standard 1.2(b)(iv) states that we can consider in aggravation whether “the member’s misconduct harmed significantly a client, the public, or the administration of justice.” The hearing judge found that Scholl’s “misappropriation and failure to promptly deliver client funds caused financial harm to Michaels” since he was forced to buy a smaller home. But the judge found that the harm was minimized because Michaels chose to use some of the funds for other purchases, including a car.<sup>8</sup> The State Bar contends that it was inappropriate to minimize Michaels’s harm based on how he spent his money, urging us to find that the harm to Michaels predominates in this case. Although we find harm to Michaels based on the six-month delay in returning his funds, we do not find the harm justifies Scholl’s disbarment, as argued by the State Bar.<sup>9</sup>

Michaels was working with Trotman to find a mobile home from October 2010 until the end of September 2011. The evidence is not clear and convincing that the delay to 2011 was caused by Scholl’s office or due to a lack of available funds. Ultimately, it appears there was a disagreement over the type of home Michaels could afford to purchase—used versus new.<sup>10</sup>

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<sup>8</sup> Out of the approximate \$124,880 in settlement funds to replace his mobile home, Michaels paid \$72,00 for the new mobile home, \$15,000 for a motor home, and \$23,000 for a car (his uninsured car was destroyed in the fire). The remainder went to new furniture, loans, and other debts.

<sup>9</sup> We do not intend to diminish Michaels’s troubles. He suffered from serious health and financial problems for many years, some dating back to 1987. Neither the fire that destroyed his mobile home nor the difficulty in finding a replacement unit helped his distressing situation. However, these unfortunate problems were not due to Scholl’s misconduct.

<sup>10</sup> In his September 26, 2011 letter to Trotman, Michaels states, “Firstly, I want to thank you for your help in trying to get us a replacement home for me and my family. Unfortunately, after 14 months of living in a small, uncomfortable motor home I have no choice but to try to work this situation out on my own.”

When Michaels opted to purchase a new home, it was apparently 200 square feet smaller and lacking all the options he wanted, due to the limited remaining funds after Michaels made other purchases and paid his bills. While we are not questioning Michaels's financial decisions, we cannot use those decisions to conclude that Scholl's misconduct resulted in significant harm to Michaels, justifying disbarment.

Nonetheless, we agree with the State Bar's argument that the delay in returning the funds from October 2011 to March 2012 "contributed to Michaels's financial woes continuing longer than was necessary." He was in poor health and in need of a better home. Although Scholl and his office were not solely responsible for the initial delay, the lack of funds for the final six months clearly had a negative impact on Michaels's standard of living. The harm caused by this delay is a significant factor in aggravation.

## **B. Mitigation**

### **1. No Prior Record**

Standard 1.2(e)(i) provides for mitigation credit for a lengthy practice without prior discipline if the present misconduct "is not deemed serious." Scholl is entitled to significant mitigation for his 39 years of discipline-free practice from his admission to the Bar in 1971 through 2010 when he first engaged in misconduct. Although the misappropriation violation is serious, it appears to be aberrational and was the result of his gross negligence. No evidence indicates that Scholl committed any other misappropriation or that his CTA was otherwise mismanaged in almost 40 years. The Supreme Court has found that a lengthy record of discipline-free practice may be considered as a "strong" mitigating factor where serious misconduct is found to be aberrational and therefore future misconduct unlikely. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.) We find that to be the case here.

We reject the State Bar’s argument that Scholl’s many years of experience should be considered in aggravation because, essentially, “he should have known better.” In support of its argument, the State Bar points to the same facts that support culpability: Scholl should have placed Michaels’s funds in a CTA, and he was obligated to properly supervise Trotman. We are unwilling to use the same general facts that support culpability to make a finding in aggravation. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to establish culpability, it is improper to again consider in aggravation].)

## **2. Candor/Cooperation to Victims/State Bar**

The hearing judge gave Scholl mitigation credit under standard 1.2(e)(v) for his candor and cooperation. In December 2011, Scholl admitted his mistakes to the State Bar during its initial contact. He fully cooperated with the State Bar in March 2012 by describing all the facts to an investigator and later, by entering into a full stipulation of facts in September 2012. As found by the hearing judge, this dramatically reduced the time necessary for trial. In addition, Scholl does not dispute culpability on review. He is entitled to significant credit in mitigation for such conduct. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation given to those who admit culpability and facts].)

## **3. Good Character**

We agree with the hearing judge that Scholl provided clear and convincing evidence of “an extraordinary demonstration of good character . . . attested to by a wide range of references in the legal and general communities and who are aware of the full extent of [his] misconduct.” (Std. 1.2(e)(vi).) Scholl presented six character witnesses, three of whom are admitted to the California Bar and all of whom commented favorably. We give significant consideration to attorney witnesses because they have a “strong interest in maintaining the honest administration of justice.” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

According to all the character witnesses, Scholl is honest and always acts with integrity. All of the witnesses were aware of the charges against Scholl yet maintained their opinion of his high moral character. We assign significant weight to Scholl's good character evidence.

#### **4. Community Service**

Scholl is also entitled to mitigating credit for his extensive service activities on behalf of many community organizations. (See *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, 729 [attorney given credit for good character plus additional mitigation for pro bono and community service].) The hearing judge set forth in detail Scholl's long and extensive history of contributions to the public, which we summarize below. They are impressive and commendable.

Scholl's community service started in high school, where he was involved in sports, service clubs, and student government. He continued his extracurricular activities in college, where he formed a student service club, was elected to the student council as a sophomore, was Student Athletic Director, and was named to the President's Club as an advisor to the system-wide President of the University of California. He also was involved in ROTC and graduated from college as a second lieutenant in the Army. He was deferred from service to attend law school at the University of Michigan. Thereafter, he went to military police school and was assigned to riot control in 1968. He was later ordered to Vietnam where he saw combat and received a Vietnam campaign medal and a bronze star.

After his military service, Scholl was admitted to the California Bar and entered private practice in 1971. While in practice, Scholl continued to focus on public service. He became active in Rotary International, a service club that supports several charitable causes. Through Rotary, he worked with the House of Hope orphanage in Tijuana, Mexico for 15 years. He was also active in Rotary's polio project, was President of his local club from 1985 to 1986, and

helped sponsor an Interact Club, the high school branch of Rotary International. For the past seven years, he has been an International Board Member of Rotary. He was selected as a Paul Harris Fellow of Rotary, the highest honor given to Rotarians.

Based on his real estate experience, Scholl started a microfinance project, which has made approximately 65 microloans to assist women in business in San Diego. For 15 years, he also has worked with Project Mercy, building houses in Tijuana. The organization has constructed almost 1,000 houses near the border to serve the homeless. Scholl has traveled to Mexico approximately 20 times over a three-year period to work at a school for the handicapped near Tijuana Airport, building an accessible playground.

Scholl also has worked with the Boys and Girls Clubs and the YMCA, where he was chair of the Major Funds Committee. Recently, he became involved in various environmental projects encouraging conservation and composting. He received a “master composter” certificate, and has lent his expertise to others in building composting centers and worm farms. He volunteers with the San Diego Integrated Waste Task Force, seeking to achieve a 75 percent recyclable goal for San Diego. Taken as a whole, Scholl’s commitment to community service is outstanding, and we give it significant weight in mitigation. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigating weight assigned for demonstrated legal abilities and zeal in undertaking pro bono work].)

##### **5. Remorse/Recognition of Wrongdoing**

Scholl has expressed recognition of his wrongdoing. (Std. 1.2(e)(vii) [mitigation for objective steps promptly taken by member demonstrating remorse, recognition of wrongdoing and designed to atone for consequences of misconduct].) Based on Scholl’s trial testimony, the hearing judge found that he now understands that his supervision of his legal assistant, Trotman, was inadequate, and he feels remorse about the financial problems he created for Michaels.

Further, as noted above, Michaels was repaid in full shortly after Scholl first learned of the situation. Scholl's remorse for and recognition of wrongdoing mitigates this case.

### III. DISBARMENT IS UNWARRANTED

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.) Ultimately, 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; see *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

We begin our analysis with the standards, which the Supreme Court instructs us to follow "whenever possible." (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11.) We give them great weight to " " "promote the consistent and uniform application of disciplinary measures." ' ' ' (*In re Silvertown* (2005) 36 Cal.4th 81, 91.) The standards call for discipline ranging from reproof to disbarment.<sup>11</sup>

Standard 2.2(a) is the most relevant. It calls for disbarment when an attorney willfully misappropriates entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case a minimum one-year suspension may be imposed. The amount Scholl misappropriated is significant, but we agree with the hearing judge's conclusion that "compelling mitigating circumstances clearly predominate in this case." He has practiced for almost 40 years without any disciplinary problems. His UPL and CTA violations must be viewed as aberrational in light of his lengthy

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<sup>11</sup> Applicable standards include: 1.6(a) (where multiple sanctions apply, most severe shall be imposed); 2.2(b) (rule 4-100 violation shall result in at least three-month actual suspension irrespective of mitigation); 2.3 (committing act involving moral turpitude shall result in actual suspension or disbarment depending on client harm); and 2.10 (reproof or suspension imposed for other rule and statute violations not otherwise specified).

career, impressive community service, and overall good character, as well as his cooperation and remorse for his misconduct. This is clearly a case in which the exception to disbarment set forth in standard 2.2(a) applies. Thus, we look to case law for further guidance as to the appropriate discipline.

The Supreme Court has stated that “[a] year of actual suspension, if not less, has been more commonly the discipline imposed in our published decisions involving but a single instance of misappropriation.” (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1368.) The State Bar does not dispute that Scholl allowed his client’s funds to be misappropriated through his gross neglect, not out of any intent to defraud his client. Based on these unique facts and Scholl’s overall mitigation, we conclude that the one-year suspension provided for under standard 2.2(a) will promote the goals of attorney discipline and is consistent with relevant case law. (See *Sugarman v. State Bar* (1990) 51 Cal.3d 609 [one-year actual suspension for grossly negligent misappropriation of over \$15,000 in one matter and improper business transaction with client in another matter; aggravated by harm to clients due to delayed restitution, and mitigated by family problems and good faith efforts to improve office procedures]; *Hipolito v. State Bar* (1989) 48 Cal.3d 621 [one-year actual suspension for commingling and negligent misappropriation of \$2,000 in one matter and failure to competently perform and communicate in another; significant mitigation that predominated including no prior record, good character, candor and cooperation, and remorse by paying restitution and hiring management firm to prevent recurrence of misconduct].)

#### **IV. RECOMMENDATION**

For the foregoing reasons, we recommend that Scholl be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. Scholl must be suspended from the practice of law for the first year of the period of his probation.
2. Scholl must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
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 and the State Bar Office of Probation.
4. 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.
5. Scholl 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 of the conditions of his 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.
6. Scholl must comply with the following reporting requirements:
  - a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:
    - i. He has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and
    - ii. He has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.
  - b. If Scholl does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he need not file the certificate described above. The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.
7. Within one year after the effective date of the discipline herein, Scholl 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 shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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

We further recommend that Scholl be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

We further recommend that Scholl be ordered to comply with the requirements of 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, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.