

Filed March 13, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 15-O-11512
)	
MICHAEL WHITCOMB SGANGA,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 227179.)	
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Michael Whitcomb Sganga stipulated to, and was found culpable of, multiple acts of misconduct, including intentionally misappropriating \$61,500 in a two-client litigation matter. A hearing judge found that Sganga established mitigating circumstances compelling enough to overcome the presumed sanction of disbarment, and recommended a 60-day actual suspension.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals. It seeks disbarment, arguing that the record contains more aggravation and significantly less mitigation than found by the hearing judge. Sganga does not appeal and requests that we affirm the judge’s decision.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings, but find additional aggravation and a lack of compelling mitigation. Under these circumstances, the applicable disciplinary standards call for disbarment. We find no reason to depart from them, and therefore recommend that Sganga be disbarred.

I. PROCEDURAL BACKGROUND

Sganga was admitted to the practice of law in California on December 1, 2003. On December 15, 2015, OCTC filed a six-count Notice of Disciplinary Charges (NDC) alleging that Sganga paid personal expenses out of his client trust account (CTA), in violation of

rule 4-100(A) of the Rules of Professional Conduct (count one);¹ failed to timely withdraw funds, in violation of rule 4-100(A)(2) (count two);² withdrew disputed client funds, in violation of rule 4-100(A)(2) (count three); failed to maintain client funds in his CTA, in violation of rule 4-100(A) (count four);³ misappropriated client funds, an act involving moral turpitude, dishonesty, or corruption, in violation of section 6106 of the Business and Professions Code (count five);⁴ and failed to obey a court order, in violation of section 6103 (count six).⁵

On February 9, 2017, the parties filed a Stipulation as to Facts and Conclusions of Law (stipulation) in which they stipulated to Sganga's culpability on counts one, four, five, and six, and to the dismissal of counts two and three. The hearing judge approved the stipulation on February 13, 2017, held trial on February 15 and 16, 2017, and issued her decision on April 18, 2017. We focus our review on the issues OCTC raised, namely, whether Sganga proved compelling mitigation and whether disbarment is the appropriate level of discipline.

¹ All further references to rules are to the Rules of Professional Conduct unless otherwise noted. Rule 4-100(A) provides, "No funds belonging to the member . . . shall be deposited [into a CTA] or otherwise commingled therewith"

² Rule 4-100(A)(2) provides, "In the case of funds belonging in part to a client and in part presently or potentially to the member . . . , the portion belonging to the member . . . must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member . . . to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved."

³ Rule 4-100(A) provides, "All funds received or held for the benefit of clients by a member . . . shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import"

⁴ All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6106, in relevant part, states, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

⁵ Section 6103 provides that an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

II. FACTS AND CULPABILITY

The facts are based on the parties' stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)⁶ We adopt the judge's findings with minor changes, as summarized below.

A. Factual Background

On December 17, 2012, Murahari Amarnath and Jayaram Velagapudi hired Sganga to represent them in an action against SAI Technology Inc. and one of its officers (collectively, SAI) relating to investments they made in SAI (SAI action). Under their written Attorney-Client Fee Contract (fee agreement), Sganga was entitled to a fee that included a \$5,000 initial payment, which he received in December 2012, plus 20 percent of any recovered direct, actual, or compensatory damages, and 40 percent of any recovered punitive or exemplary damages. The fee agreement did not anticipate a structured settlement, and thus was silent on this issue.

Sganga settled the SAI action 10 months later in October 2013. As part of a structured settlement, SAI was required to make installment payments to Amarnath and Velagapudi in a minimum amount of \$725,000 if paid in full by October 1, 2016, and a maximum amount of \$825,000 if not paid in full until October 1, 2018. SAI began making payments in January 2014 and continued through August 2016, ultimately paying \$725,000 in total.⁷

⁶ We note that the hearing judge included information in her decision (e.g., facts suggesting Sganga withdrew more than the stipulated amount) for which there is no supporting evidence in the record. As to such information, we instead adopt the parties' stipulated facts.

⁷ The hearing judge found that Sganga credibly testified that \$150,000 of the \$725,000 recovered was punitive damages. Further, the judge found that Sganga was entitled to at least \$175,000 under the fee agreement: $(\$150,000 \text{ [punitive damages]} \times 40 \text{ percent}) + (\$575,000 \text{ [compensatory damages]} \times 20 \text{ percent}) = \$175,000$. We give great weight to the judge's credibility and factual findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032; Rules Proc. of State Bar, rule 5.155(A).)

On January 9, 2014, before SAI made its first payment, and while Sganga was hospitalized,⁸ Amarnath and Velagapudi informed Sganga that they disputed his fee. Sganga initially refused their flat fee offers of \$80,000 and then \$100,000, but proceeded to negotiate with them by countering with \$132,500—an offer that Amarnath and Velagapudi did not timely accept and Sganga then revoked. Ultimately, they were unable to reach agreement. Because Amarnath and Velagapudi disputed his fee on January 9, 2014, Sganga was not authorized to take any portion of the settlement funds. In addition, they expressly told him on February 26, 2014, not to withdraw any funds until their fee dispute was resolved.

Between January 21, 2014, and January 14, 2015, Sganga deposited a total of \$120,000 (via five separate payments) in settlement funds he received from SAI, which he was required to maintain in his CTA on behalf of Amarnath and Velagapudi.⁹ However, Sganga's CTA balance repeatedly fell below the amount he was required to hold. Sganga made 13 separate withdrawals from his CTA between January 28, 2014, and February 2, 2015, for his own personal use, including a \$15,000 check from his CTA to pay his office rent on October 1, 2014. Sganga stipulated that he did not disburse any funds to Amarnath and Velagapudi during this time.¹⁰ By February 28, 2015, when his CTA balance was \$58,500, and not the \$120,000 he was obligated to hold, Sganga had intentionally and knowingly misappropriated \$61,500 (\$120,000 – \$58,500) from his clients.

⁸ While on vacation in Germany, Sganga fell and sustained serious injuries—a fractured clavicle, broken foot, and broken rib. After receiving treatment in Germany, he returned to the United States. Following a nine-hour flight, he collapsed at a New York airport and was rushed to a hospital, where he stayed from January 4 to 16, 2014. While hospitalized, Sganga was diagnosed with, and treated for, a bilateral pulmonary embolism.

⁹ OCTC and Sganga agreed that at all times after January 21, 2014, Sganga was entitled to a fee for the legal services he provided to his two clients.

¹⁰ In response to OCTC's questioning, Sganga testified that after he received the first settlement check (\$20,000) from SAI, he sent Amarnath and Velagapudi checks for what he believed they were entitled to under the fee agreement, but they did not cash them because, Sganga assumed, they believed doing so would acknowledge the proportions they were due.

Amarnath and Velagapudi eventually hired another attorney (new counsel) to file a civil lawsuit against Sganga to collect their settlement proceeds (Sganga action). On May 12, 2015,¹¹ the court in the Sganga action ordered Sganga to pay to the court all funds he had received on behalf of Amarnath and Velagapudi. Sganga did not obtain relief from, or fully comply with, the order. Instead, he paid the court \$60,000 on June 9, 2015, and \$25,000 on July 13, 2015. His payments were neither timely nor sufficient given that as of July 13, 2015, he had received a total of \$170,000 on his clients' behalf.

The Sganga action settled in September 2015. Sganga agreed to accept \$132,500 in fees. One term of the settlement agreement that new counsel offered to induce Sganga to settle was that Amarnath and Velagapudi would "take all reasonable steps as are within their power to have the State Bar claim dismissed, including but not limited to promptly notifying the State Bar that they are withdrawing their State Bar claim against [Sganga]." The hearing judge found no evidence that Sganga sought this term. We give great weight to, and adopt, this finding of the judge. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032.)

Nearly a year after the Sganga action settled, Sganga received a final \$380,000 payment from SAI in August 2016. As discussed below in aggravation, he did not disburse the \$380,000 to Amarnath and Velagapudi until February 2017, at least in part because they had not complied with the settlement agreement term regarding the State Bar complaint.

B. Culpability

Based on the parties' stipulation and the trial evidence, the hearing judge found Sganga culpable of misusing his CTA to pay personal expenses by issuing a \$15,000 check to pay his office rent (count one); failing to maintain Amarnath and Velagapudi's settlement funds in his CTA (count four); intentionally and knowingly misappropriating \$61,500 of their funds (count

¹¹ The NDC and the hearing judge cited May 13, 2015, as the order's date. The stipulation cited May 12, 2015, which we adopt. This discrepancy is immaterial and harmless.

five); and violating a court order by failing to timely deliver to the court in the Sganga action all settlement funds he had received on Amarnath and Velagapudi's behalf (count six). Consistent with the parties' request, the judge dismissed counts two and three. We adopt and affirm the judge's unchallenged findings as supported by the record. However, we accord no additional weight to the rule 4-100(A) failure to maintain client funds violation (count four) in assessing the degree of discipline because the same misconduct underlies the section 6106 misappropriation violation (count five). (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

III. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct¹² requires OCTC to establish aggravating circumstances by clear and convincing evidence.¹³ Sganga has the same burden to prove mitigation. (Std. 1.6.)

A. Aggravation

1. Multiple Acts of Wrongdoing

The hearing judge correctly found that Sganga's multiple acts of misconduct constitute an aggravating factor. (Std. 1.5(b).) We assign moderate aggravating weight because Sganga was found culpable of four counts of varied misconduct involving 14 separate acts that occurred over a period of a year and a half. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

¹² All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

¹³ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

2. Overreaching

The hearing judge found that Sganga engaged in overreaching by refusing to disburse the final \$380,000 until Amarnath and Velagapudi fulfilled their offered promise to inform the State Bar about the Sganga action settlement. (Std. 1.5(g).) We agree.

Sganga received the \$380,000 in August 2016, but did not promptly disburse the funds. He argued with Amarnath and Velagapudi about disbursing the funds through November 2016, and they met on November 30 to discuss what Sganga felt needed to be done. He told Amarnath and Velagapudi that they needed to sign W-9 forms, “turn over” their SAI stock certificates, and fulfill their promise to inform the State Bar of the Sganga action settlement.

By December 9, 2016, the W-9 form and stock certificate issues were resolved. That same day, Sganga sent a \$380,000 check to new counsel to maintain and distribute upon resolution of the dispute regarding the State Bar complaint. Sganga did not receive a response from new counsel until December 26, 2016, and new counsel refused to accept the check. At the time, Sganga was in Texas for his upcoming wedding, after which he went on a two-week honeymoon. He returned to his office on January 18, 2017, and ultimately disbursed the funds to Amarnath and Velagapudi, in full, on February 3, 2017, without any preconditions.

We assign Sganga’s overreaching moderate weight in aggravation. How the settlement term to inform the State Bar found its way into the settlement agreement is irrelevant. (§ 6090.5 [it is cause for suspension or disbarment for attorney “to agree or seek agreement” that “[t]he plaintiff shall withdraw a disciplinary complaint”].) Far more troubling is that Sganga attempted to enforce the term by forwarding the \$380,000 check to opposing counsel with instructions not to distribute the check until the dispute regarding his clients’ compliance with the term was resolved. While his gambit was unsuccessful, because new counsel refused the check, it nevertheless represented an attempt to use improper means to force an illegal result. In more

basic terms, although he did not initially seek the settlement agreement term, Sganga nonetheless owed a fiduciary duty to Amarnath and Velagapudi not to accept the term. (See *Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [essence of fiduciary or confidential relationship is that parties do not deal on equal terms because person in whom trust and confidence is reposed is in superior position to exert unique influence over dependent party].)¹⁴

3. Significant Harm to Clients

Unlike the hearing judge, we find that Sganga's misconduct significantly harmed his clients. Sganga first received settlement funds in January 2014, but did not disburse any to Amarnath and Velagapudi until June 2015. He thus deprived his clients of their money for up to 17 months. (See *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 413 [significant client harm for six-month delay in distributing \$5,618 in medical malpractice settlement proceeds].) While Amarnath was forgiving and noted that people "all make mistakes," he testified that the delay in receiving funds put "tremendous pressure" on him and his family and caused him to "[e]xtremely suffer[]" and lose an investment opportunity. Similarly, while Velagapudi accepted Sganga's apology and noted his harm was "not life-threatening," he testified that he also lost an investment opportunity and had his home refinancing delayed. Moreover, Amarnath and Velagapudi had to retain new counsel and incurred around \$35,000 in attorney fees to obtain their funds. For these reasons, we find Sganga's misconduct significantly harmed his clients. (See *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm where client hired new attorney, incurred fees, and suffered for three years due to attorney's misconduct].)

¹⁴ In response to Sganga's contentions on review, we note that we do not find additional culpability based on his accepting the settlement agreement term offered by new counsel and withholding the \$380,000, given that the NDC did not reference these acts and OCTC did not amend the NDC to charge this misconduct. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [as general rule, attorney may not be disciplined for violation not alleged in NDC].)

4. No Other Aggravation Warranted

On review, OCTC seeks additional aggravation for Sganga's intentional misconduct and lack of insight and indifference. We find that no other aggravation is warranted. First, we do not assign additional aggravation for intentional misconduct (see std. 1.5(d)) because we found Sganga culpable for *intentionally* misappropriating his clients' funds. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used for culpability, improper to consider them in aggravation].) Second, OCTC did not present clear and convincing evidence that Sganga lacked insight or was indifferent toward the consequences of his misconduct. (See std. 1.5(k).)

B. Mitigation

1. No Prior Record of Discipline

Mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) Sganga was admitted to practice law in December 2003, and his misconduct began in January 2014. The hearing judge found that Sganga's years of discipline-free practice¹⁵ are a mitigating factor, but did not assign a specific weight.

Ten-plus years of discipline-free practice could warrant significant weight in mitigation (*Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [more than 10 years of discipline-free practice is significant mitigation]), but we do not assign such weight because we disagree with the hearing judge's conclusion that Sganga's misconduct was aberrational. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].) Given that he made 13 separate, unauthorized, and undisclosed CTA withdrawals over a one-year period, violated a court order

¹⁵ The judge incorrectly credited Sganga with "over 11 years" of practice with no prior discipline; we find instead that he had just over 10 years.

approximately five months later, and failed to pay the final \$380,000 until just before trial in this matter, we do not view his misconduct as aberrational. (*In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, 386 [conduct not found aberrational where multiple acts were committed and attorney had time to reflect before each subsequent act].) As such, we assign limited mitigating weight to Sganga’s 10 years of discipline-free practice. (See *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 395, 398–399 [minimal weight afforded for 22 years of discipline-free practice where misconduct, which included filing 82 fraudulent bankruptcy petitions, “was most serious, involved intentional dishonesty, and continued over three and a half years,” and was not proven aberrational].)

2. No Mitigation for Good Faith

The hearing judge gave nominal weight in mitigation to Sganga’s good faith belief that he was entitled to pay himself from the settlement funds. We find that Sganga does not deserve mitigating credit for this factor. Even if he believed he acted in good faith because the amount he withdrew from his CTA was less than the lowest amount offered by Amarnath and Velagapudi, it was not objectively reasonable for Sganga to maintain he could pay himself from the settlement funds when his clients informed him on January 9, 2014 (i.e., before Sganga deposited the first SAI settlement check), that they disputed his fee, and expressly told him on February 26, 2014, not to withdraw any funds until their fee dispute was resolved. These circumstances preclude any finding of good faith mitigation. (Std. 1.6(b) [mitigation for “good faith belief that is honestly held and objectively reasonable”].)

3. No Mitigation for Extreme Emotional and Physical Difficulties

Mitigation is available for “extreme emotional difficulties or physical or mental disabilities” if (1) the attorney suffered from them at the time of the misconduct; (2) they are

established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. (Std. 1.6(d).)

The hearing judge found Sganga’s “extreme mental and physical disabilities to be a compelling mitigating factor” for a number of reasons. Sganga had two near-death experiences (the fall and the embolism) resulting in serious injuries and a grave medical condition in January and February 2014 for which he was prescribed several medications, including Vicodin and Warfarin. Also around January 2014, his son suffered a mental breakdown and moved into his home. In addition, while Sganga was hospitalized, his clients demanded that he lower his fee. The judge found that Sganga “was experiencing anxiety, betrayal, anger, agitation, and rage.”

We acknowledge Sganga’s serious injuries and health issues, as well as the stresses in his family life. We also note that Amarnath and Velagapudi testified that Sganga did a good job on their case and they were pleased with the outcome, and that Sganga testified he “felt heartbroken and betrayed” by their fee reduction request. However, we disagree that his “extreme mental and physical disabilities [are] a compelling mitigating factor.”

First, Sganga did not prove that his emotional or physical problems were directly responsible for him intentionally misappropriating his clients’ money or violating a court order. While he need not necessarily prove this nexus through expert testimony (see *In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation afforded to evidence of attorney’s illness despite lack of expert testimony]), he failed to provide clear and convincing evidence establishing that his problems caused his misconduct.

Second, Sganga also did not prove he suffered from his problems at the time of *all* of his misconduct. While his difficulties overlapped in time with *some* of his misconduct, Sganga confirmed that he stopped using prescription drugs—which he also confirmed did not alter his ability to distinguish right from wrong—by around July 2014, which was about six months after

he returned home from Germany. Nevertheless, he continued to make improper CTA withdrawals for approximately another six months until February 2015, and violated a court order approximately one year later in July 2015. Finally, Sganga did not provide clear and convincing evidence that his emotional and physical difficulties no longer pose a risk of future misconduct. As such, we find no mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigative credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].)

4. Cooperation with State Bar

The hearing judge found that Sganga's cooperation with the State Bar in entering into a stipulation as to facts and culpability is a significant mitigating factor. We agree and assign significant weight. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar is mitigating]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation given to those who admit culpability and facts].)

5. Good Character

Sganga is entitled to mitigation if he establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of [his] misconduct." (Std. 1.6(f).) The hearing judge found Sganga's good character evidence to be a significant mitigating circumstance. We agree.

Seven witnesses testified to Sganga's good character. They included people with long-term relationships with Sganga, including five attorneys (one was his former employee) and two former clients. The witnesses convincingly testified to Sganga's honesty, integrity, and trustworthiness, and stated that he is extremely upright and straightforward. Witnesses opined that Sganga's admission to culpability was a measure of his character and his acceptance of responsibility. They had at least a basic understanding of the circumstances surrounding his

misconduct, and stated their high opinion of him did not change. Specifically, one witness, a church deacon, described Sganga as his “angel” for taking his case for a nominal fee, and noted that, after the successful outcome of his lawsuit, he referred Sganga to coworkers due to Sganga’s good reputation and honesty. An attorney witness summed up Sganga’s reputation in the legal community as a person who is “[h]ardworking, trustworthy, [and] someone you want on your team.” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to testimony of attorneys due to their “strong interest in maintaining the honest administration of justice”].)

Overall, we find that these witnesses include representatives of both the general and legal communities, and their endorsements are impressive and persuasive. We thus assign Sganga’s good character evidence significant mitigating weight. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant weight given to testimony of three character witnesses who had long-standing familiarity with attorney and broad knowledge of his good character, work habits, and professional skills].)

6. Pro Bono and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge found Sganga has completed hundreds of hours of community service, and credibly testified that he has been active in pro bono and community service activities since he became an attorney in 2003. The judge also noted Sganga’s “civil service deserves recognition as a compelling mitigating circumstance,” and concluded his pro bono work and community service are a significant mitigating circumstance. We find Sganga is entitled to credit for these activities, but assign less weight than the judge did.

Sganga testified to his involvement in several community and pro bono activities. From about 2004 to 2008, he served as a volunteer attorney in the Bar Association of San Francisco’s

Volunteer Legal Services Program (VLSP), through which he did pro bono work on family law and small business matters for indigent clients. He also regularly participated in a diversion court, located in San Francisco's Tenderloin district, through which people charged with certain (mostly drug-related) crimes could be diverted into programs providing housing or other assistance, and, if they complied with certain conditions, have their criminal cases dismissed. In addition, he participated once a month in another community legal assistance program sponsored by VLSP and based at U.C. Hastings where people would be directed to attorneys, including Sganga, who would provide free legal advice. Sganga testified that he received a certificate of recognition from the California Senate for his volunteer work for VLSP.

Sganga further testified that he continued his community activities after he moved to Placer County in 2008. There, he volunteered as a Minimum Continuing Legal Education (MCLE) presenter on forensic science and DNA cases for public defenders, district attorneys, and other legal organizations, and also did volunteer work for the paralegal and criminal justice programs at Heald College. In 2013, Sganga moved back to the Bay Area and became a member of the San Mateo County Bar Association. He has volunteered at its community law day, served as a scorer for a high school moot court competition held in the Redwood City courthouse, and done numerous MCLE presentations for different organizations in San Mateo County. He also volunteers to hold family law status conferences for the family law court once a month. In addition, he volunteers once a month for the Street Church program, through which he helps feed homeless people in Redwood City.

We decline to extend significant mitigation, however, because Sganga offered no corroborating evidence of his service, and most of his stated activities predated his misconduct by many years. Based only on Sganga's own testimony, we assign moderate weight in mitigation. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr.

829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony].)

7. No Mitigation for Remorse and Recognition of Wrongdoing

The hearing judge found that Sganga recognizes his wrongdoing, is remorseful, and now knows he must not touch disputed funds in a CTA. The judge believed Sganga's misconduct was aberrational and resulted "from a confluence of events."

We find insufficient evidence to warrant this mitigation. (See std. 1.6(g).) We acknowledge Sganga's concession that he deserves discipline by his request that we uphold the hearing judge's recommended 60-day actual suspension, and we recognize his efforts to admit culpability, express remorse, and apologize to his clients through his attorney. Even though these expressions of remorse are sincere, he did not offer them until *years* after his misconduct. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 (*Spaith*) [greatly reduced mitigating weight attached to respondent's confession of misdeeds to client a year later, as it was not "an objective step 'promptly taken' spontaneously demonstrating remorse and recognition of the wrongdoing"].) We thus conclude his expressions of remorse do not merit mitigation simply because he expressed them by the time of trial. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 [expressing remorse is "an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline"].)

IV. DISBARMENT IS THE PRESUMPTIVE AND APPROPRIATE DISCIPLINE¹⁶

Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91–92), and should be followed whenever possible (std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11).

¹⁶ The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to maintain the highest professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1.)

Here, several standards apply, but standard 2.1(a) is the most severe. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].)¹⁷ Standard 2.1(a) provides that disbarment is the presumed sanction for intentional misappropriation “unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.” Sganga intentionally misappropriated \$61,500, a significant amount. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [\$1,355.75 deemed not insignificant amount].) Further, his mitigation is neither compelling nor does it clearly predominate over his serious misconduct and aggravation.

Unlike the hearing judge, who considered this matter to stem from a good faith fee dispute, we see this case in a far more serious light as one primarily of intentional misappropriation. Misappropriation of client funds “breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]” (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 38.) “Even a single ‘first-time’ act of misappropriation has warranted such stern treatment.” (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 657.)

While we acknowledge that this is not a typical misappropriation case, in that Sganga’s actions were not venal, they were nonetheless clearly intentional. Sganga testified he believed his clients agreed he was entitled to at least \$80,000 in fees, he intended to withdraw no more than that, and he “was running [his] law practice” by using those funds to pay employees, to no avail. “Whether the money went directly into his pockets, or indirectly into his pockets through payment of office expenses he was obligated to pay, matters little. [Sganga] intentionally took

¹⁷ Standards 2.2(a), 2.2(b), 2.11, and 2.12(a) also apply and provide for presumed discipline ranging from reproof to disbarment.

his client[’s] money for his personal benefit. . . . [T]he impact of this misconduct on the client[s] is the same.” (*Spaith, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 519–520.)

We further acknowledge Sganga’s contention that his misconduct resulted from a confluence of events that led him to engage in aberrational behavior. He was dealing with serious injuries and health issues, as well as family stresses, during early 2014. At the same time, he felt anger, betrayal, and heartbreak that his clients wanted him to reduce his fees despite their own admission that he obtained a favorable outcome for them. Moreover, we agree that Sganga now recognizes his wrongdoing and has learned from his mistakes. Yet, many attorneys experience physical and emotional difficulties comparable to those Sganga faced without committing misconduct. “While these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities, as did [Sganga].” (*Spaith, supra*, 3 Cal. State Bar Ct. Rptr. at p. 522.) “Misappropriation of a client’s funds simply cannot be excused or substantially mitigated because of an attorney’s needs, no matter how compelling.” (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709.) Indeed, Sganga himself insightfully testified, “I’m not going to blame what I did on those things. I know it was wrong to do it, and all those things were going on at the same time. I know my judgment was clouded, but those things didn’t force me to write those checks.”

On review, Sganga argues that the 60-day actual suspension recommended by the hearing judge is appropriate. He cites multiple cases, including many the judge relied upon, where discipline less than disbarment was imposed. The circumstances of these older cases, however, are fact-specific and distinguishable from Sganga’s intentional misconduct.

First, several cases did not involve misappropriation of entrusted client funds.¹⁸ Second, in cases where the attorney willfully misappropriated client funds but was not disbarred, the attorney established compelling mitigating circumstances relating to character or background or to unusual difficulties experienced at the time of the misconduct that tended to show the misconduct was aberrational and unlikely to recur.¹⁹ Third, some cases were decided before the standards' implementation in 1986 and did not involve an attorney who entered into a settlement agreement with a client that improperly obligated the client to take steps to have a State Bar complaint dismissed.²⁰

We find *Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511, to be most similar to this case. In *Spaith*, we found disbarment appropriate where the attorney was “culpable in a single matter of intentionally misappropriating approximately \$40,000 from a client and of intentionally misleading the client over a period of approximately a year as to the status of the money,” and where the aggravation included multiple acts, uncharged misconduct (i.e., violation of a court

¹⁸ E.g., *In re Brown, supra*, 12 Cal.4th 205 [misdemeanor conviction for failure to remit to state funds withheld from employees' wages; 60-day actual suspension]; *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 [commingling and failure to promptly pay funds to client due to honest mistake; public reproof]; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335 [failure to keep disputed legal fee in trust; private reproof]; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716 [negligent handling of client's check and failure to restore disputed funds; private reproof].

¹⁹ E.g., *Edwards v. State Bar, supra*, 52 Cal.3d 28 [no prior discipline, no acts of deceit, full repayment made within three months and before aware of complaint to State Bar; one-year actual suspension]; *Howard v. State Bar* (1990) 51 Cal.3d 215 [rehabilitation from alcoholism and drug dependency; six-month actual suspension]; *Friedman v. State Bar* (1990) 50 Cal.3d 235 [over 20 years' discipline-free practice, stress arising from marital problems; three-year actual suspension]; *Weller v. State Bar* (1989) 49 Cal.3d 670 [prompt voluntary restitution and character evidence; three-year actual suspension]; *Chefsky v. State Bar* (1984) 36 Cal.3d 116 [nearly 20 years' discipline-free practice, illness, loss of full-time secretary, relocation of practice; 30-day actual suspension].

²⁰ E.g., *Chasteen v. State Bar* (1985) 40 Cal.3d 586 [willful misappropriation and other misconduct, bulk of which appeared closely related to attorney's alcohol abuse; 60-day actual suspension]; *Most v. State Bar* (1967) 67 Cal.2d 589 [intentional misappropriation and other misconduct; two-year actual suspension].

order), and significant client harm. (*Id.* at pp. 514, 518.) We recommended disbarment even though the attorney established mitigation for financial and emotional problems at the time of the misconduct, his confession to his client regarding his conduct, restitution of the misappropriated money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with the State Bar. (*Id.* at pp. 518–521.)

Like the attorney in *Spaith*, Sganga intentionally misappropriated a significant amount of client funds (\$61,500). Further, the mitigation we assigned to his lack of a prior record, cooperation, good character, and pro bono and community service work, while notable, is neither compelling nor does it clearly predominate over his very serious misconduct²¹ and aggravation for multiple acts of wrongdoing, significant client harm, and, particularly, overreaching. Under these circumstances, we find no basis to recommend a more lenient sanction than disbarment under standard 2.1(a). (See stds. 1.2(i), 1.7(c) [lesser sanction than recommended in standard may be warranted where misconduct is minor, little or no injury to client, public, legal system, or profession, and attorney able to conform to ethical responsibilities in future]; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) As such, disbarment is warranted under the facts of this case, the standards, and relevant case law,²² and it is necessary to protect the public, the courts, and the legal profession.

V. RECOMMENDATION

We recommend that Michael Whitcomb Sganga be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

²¹ We note that Sganga’s violation of the court order in the Sganga action could, itself, result in disbarment. (See std. 2.12(a) [“Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law”].)

²² E.g., *Kelly v. State Bar, supra*, 45 Cal.3d 649 (disbarment for misappropriating nearly \$20,000, moral turpitude, dishonesty, and improper communication with adverse party, despite no prior record and no aggravation); *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarment for misappropriating around \$30,000, despite mitigation, including 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, and remorse).

We further recommend that Sganga 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 days, respectively, after the effective date of the Supreme Court order in this matter.

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

VI. ORDER OF INACTIVE ENROLLMENT

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Michael Whitcomb Sganga is ordered enrolled inactive, effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.