

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

Filed January 8, 2007

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)

RONALD S. PARKER)

A Member of the State Bar.)

00-O-13979

OPINION ON REVIEW

In this original disciplinary proceeding, both respondent Ronald S. Parker and the State Bar have requested review of a hearing judge's decision recommending a two-year stayed suspension and a two-year probation on various conditions including a one-year actual suspension. The hearing judge determined that, in a single client matter, respondent was culpable of recklessly and repeatedly failing to perform legal services with competence and failing to pay client funds promptly upon request. On review, the State Bar asserts that the appropriate sanction in this case is a two-year actual suspension. Respondent asserts that he committed no misconduct and that the charges should be dismissed. He also appears to argue that, should this court find any culpability on review, his case is more like prior disciplinary cases in which the Supreme Court has imposed public reproof. Upon our independent review of the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge's findings and conclusions as to culpability with minor modifications as more fully set forth below. As we discuss *post*, we increase the hearing judge's recommended periods of stayed suspension and probation to three

years but adopt her recommendation of one-year actual suspension, as we determine that this level of discipline will more fully protect the public, the courts, and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.3.)¹

I. STATEMENT OF FACTS

Respondent was admitted to practice law in California in December 1974. As noted *post*, he was actually suspended for one year in 1984 after his misdemeanor conviction of attempted receipt of stolen property.

In May 1998, Byron Davis, a deputy clerk of the Los Angeles County Superior Court, employed attorney Stanley Clough to represent him in claims arising from a car accident that occurred on May 16, 1998.² Davis signed a written fee agreement with Clough on May 20, 1998. Davis never met with Clough and dealt mainly with Heather Pak, Clough's employee. Clough's law office was located in Los Angeles, California.

On May 14, 1999, Clough filed an action on Davis's behalf in the Los Angeles Municipal Court entitled *Davis v. Okonko*, case no. 99K10527.

In the fall of 1999, respondent moved into an office in the suite formerly occupied by attorney Clough. Because Clough intended to leave the practice of law, respondent agreed to take over some of Clough's cases, including Davis's case.³ Some of the staff who were

¹All further references to standards are to this source.

²Davis was driving his mother's car at the time of the accident.

³In May 2002, the Supreme Court accepted Clough's resignation from State Bar membership with disciplinary charges pending.

previously employed by Clough, including Heather Pak, the office manager; Toni Parker (respondent's wife); and a woman named Jennifer, assisted respondent on the Davis case.⁴

On October 26, 1999, respondent gave a written memorandum to Jennifer instructing her to prepare substitution of attorney forms, have the clients sign them, and then give the forms to Toni Parker to obtain Clough's signature. On October 29, 1999, respondent signed a substitution of attorney form containing the purported signature of Davis, which was filed in the municipal court case on November 5, 1999. Davis had not, in fact, signed the substitution of attorney form. Nevertheless, on November 12, 1999, Pak sent a memorandum to respondent informing him that a conformed copy of the substitution of attorney form was in the file.⁵ Respondent testified that he also asked a staff member to obtain Davis's signature on a retainer agreement and that he had previously seen a signed copy of a retainer agreement in the file. However, the retainer agreement was missing at the time of trial. Davis never signed a retainer agreement with respondent.

On November 15, 1999, respondent prepared a written memorandum to Pak asking her to, among other things: (1) prepare and file a trial-setting memorandum; (2) serve requests for admissions and offers to compromise on the defendant; (3) prepare other discovery documents;

⁴Although respondent testified that these people remained on Clough's staff rather than respondent's staff, the hearing judge found respondent's testimony to be lacking in credibility in general and found particularly troubling the testimony that Clough's staff volunteered to assist respondent on some cases but never actually worked for respondent. In view of respondent's heavy reliance on this staff for all communications with Davis and numerous other ministerial tasks, as well as respondent's statement in his letter to Davis dated February 10, 2000, referring to the office staff as "my staff," we find no reason to reject the hearing judge's credibility determination on review. (Rules Proc. of State Bar, rule 305(a) [review department gives great weight to hearing judge's findings resolving issues of credibility]; *Franklin v. State Bar* (1986) 41 Cal.3d 700, 708.)

⁵At trial, respondent stated that he had no idea at the time that there were any problems with the staff's handling of the matter, but he subsequently suspected that Pak had forged Davis's signature.

and (4) calendar discovery dates. On that same date, respondent signed a written offer to compromise on behalf of Davis in the amount of \$10,099. This offer to compromise was made under Code of Civil Procedure section 998 and was served upon counsel for the defendant in the lawsuit on November 22, 1999. Although respondent had never personally discussed the case with Davis, since he relied on staff to do so, he testified that it was his understanding that Davis had authorized respondent to settle for \$11,000.

Soon thereafter, the defendant offered to settle the matter for \$9,000. Respondent directed his staff to contact Davis, and a handwritten notation in the file, dated December 10, 1999, states: “settled – 9000. (II OK)” On December 10, 1999, respondent agreed to the \$9,000 offer and signed a request for dismissal form, which was filed on December 14, 1999. On December 22, 1999, respondent caused a release form to be mailed to counsel for the defendant. The release contained Davis’s purported signature and was dated December 22, 1999, but Davis had not, in fact, signed the form.

On January 6, 2000, counsel for the defendant sent respondent a draft from the defendant’s insurance carrier in the amount of \$9,000.⁶ This settlement draft was made payable to Davis and respondent. On about January 12, 2000, respondent endorsed the settlement draft and, without having Davis endorse the draft, deposited the funds into his client trust account (CTA) at Hanmi Bank, account number 006-801374. Because Davis had signed a lien in favor of the medical provider sometime in January or February 2000, respondent sent a check to Davis’s medical provider in the amount of \$3,000 from the settlement funds held in respondent’s CTA.

⁶A release form on behalf of Davis’s mother had also been sent to counsel for the defendant settling the matter for \$210, and on January 6, 2000, counsel sent a settlement draft for Davis’s mother in that amount.

In late January, Pak informed Davis that his case had been settled for \$9,000. On February 9, 2000, Davis and his mother, Yvonne Davis, went to the law office to meet with their attorney to discuss the settlement breakdown. This was the first time Davis had met respondent; he thought Clough was still his attorney of record. At some point during approximately the first ten minutes of the meeting, Davis realized he was not speaking with Clough, and he asked respondent where Clough was. Respondent explained that he was now Davis's attorney. Davis asked about a substitution of attorney form, telling respondent he had never signed one or retained respondent's services. Respondent instructed his staff to locate the signed substitution of attorney form, but they could not find it, and respondent told Davis that they would provide him with a copy once it was located.

Davis informed respondent that he would not accept the amount respondent intended to give him as his share of the settlement funds. Davis and his mother left without taking the checks respondent had prepared for them.⁷ The next day, Davis went to court to view the file in his case and discovered that his signature and that of his mother on the substitution of attorney forms were forged.⁸ The same day, Davis wrote a letter to respondent demanding the full \$9,000 and stating that he would pay the medical provider himself. He informed respondent that the signatures on the substitution of attorney forms were forged and that respondent would not receive a fee because he never retained respondent. He also told respondent he would report him to the State Bar.

⁷Davis testified at trial that he was not happy with the \$9,000 settlement, although he did not object when first informed of that settlement by Heather Pak, because he had been told by someone from Clough's office prior to the time the case was filed in municipal court that the defendant had offered to settle the matter for \$8,000. Based on that information, he did not see why they had waited so long to settle the case.

⁸Davis testified at trial that he had been a deputy clerk of the Los Angeles Superior Court for 18 years.

Also on February 10, 2000, respondent sent a letter to Davis acknowledging that Davis was unhappy with the amount Davis was to receive pursuant to respondent's proposed disbursement of the settlement funds, acknowledging that Davis had verbally requested of respondent's staff member that respondent forward to Davis \$6,000 of the settlement funds, and refusing to agree to forward the \$6,000. Instead, he stated in his letter that "neither you nor your mother are entitled to any more money than the Retainer Agreement provides for."

On May 18, May 31, and June 19, 2000, respondent sent identical letters to Davis proposing that they submit their dispute to fee arbitration and informing Davis that the funds remained in a client trust account. Davis declined to submit the matter to fee arbitration because he was afraid that he would thereby admit that respondent was his attorney. On July 9, 2000, Davis's mother sent respondent a lengthy letter requesting \$6,000 from respondent and stating that if they did not receive those funds by the close of business July 14, 2000, they would report the matter to the State Bar. On July 14, 2000, respondent sent a letter to Davis's mother acknowledging receipt of her letter of July 9, 2000, but refusing the demand for resolution and again requesting that the matter be submitted for fee arbitration. Davis complained to the State Bar on September 22, 2000.

In early 2005, after trial in this matter, respondent decided to close his law office and wanted to distribute the settlement funds he had been holding in his trust account for Davis and his mother. Respondent therefore transferred \$3,210 in funds from his trust account to counsel representing respondent in these State Bar proceedings, and that counsel forwarded checks in the amount of \$3,000 to Davis and in the amount of \$210 to Davis's mother.

II. CULPABILITY

A. Moral Turpitude

Respondent was charged in count one of the Notice of Disciplinary Charges (NDC) with violating section 6106.⁹ The NDC alleged that respondent violated this section by placing or causing to be placed false signatures on the substitution of attorney form and the liability release, by offering to settle and in fact settling the lawsuit on behalf of Davis without Davis's consent, by delivering the liability release to counsel for the defendant without advising counsel that the signature was not that of Davis, and by depositing or causing to be deposited the settlement check into the CTA without Davis's endorsement. The hearing judge found no culpability on this charge based on her determination that respondent honestly, albeit mistakenly and unreasonably, believed he had the authority to handle and settle the matter and that respondent's "irresponsible delegation of his fiduciary duties" was limited to one case over a relatively short period of time.

We agree that there is no evidence in the record that respondent knew before February 9, 2000, of any problem with the Davis case, i.e., that Davis's signature had been forged on numerous documents and that no one had contacted Davis or received Davis's authorization to take any action on the case. Under these circumstances, we do not find moral turpitude based on the forged signatures.

The remaining question is whether respondent committed moral turpitude through gross neglect of his fiduciary duty to Davis by failing to properly supervise staff in their work on

⁹This and all further statutory references are to the Business and Professions Code unless otherwise indicated. Section 6106 provides: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

Davis's case and by failing to personally communicate with Davis even once after deciding to take the case. (Cf. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410-411.) However, the facts upon which this portion of the moral turpitude charge is based also constitute the basis for the charge that respondent failed to perform legal services competently, as we discuss *post*. Because we agree with the hearing judge's conclusion that respondent's acts constituted a failure to perform competently, we need not and do not determine whether his acts also constituted moral turpitude due to gross neglect. Such a determination would not affect the level of discipline on the facts of this case.

B. Failing to Perform Services with Competence

Respondent was charged in count two with violating Rules of Professional Conduct, rule 3-110(A),¹⁰ intentionally, recklessly, or repeatedly failing to perform legal services with competence. The hearing judge concluded, and we agree, that respondent recklessly failed to perform with competence by delegating certain work on the Davis matter to support staff without providing proper supervision. Respondent delegated all communications with his client to support staff throughout the entire case, from obtaining Davis's signature on the substitution of attorney form and entering into a retainer agreement, to settling the case and disbursing funds. Respondent may never have met with Davis, and Davis may never have discovered the wrongdoing, had Davis not requested to meet with his attorney to discuss the settlement disbursement. We conclude that this failure to take any personal responsibility to communicate with a client, especially as to the basic authority reserved to a client over settlement of a case, constitutes a reckless failure to perform with competence. (Cf. *In the Matter of Hindin* (Review

¹⁰All further references to rules are to the Rules of Professional Conduct unless otherwise indicated.

Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680-681.)¹¹ At a minimum, *some* client contact is required as a basic part of an attorney's competent performance of the relationship evidenced here, and client contact was particularly crucial in this setting, where respondent was utilizing staff with which he did not have a long-standing relationship. Here, respondent had no knowledge as to whether the staff would adequately discharge their own office duties, let alone discharge respondent's duties. "[W]here the facts demonstrate that the attorney's failure to communicate with the client . . . foreclosed the client from choices regarding [his] cause of action, . . . the attorney has engaged in more serious misconduct than merely a failure to communicate," and here respondent's misconduct constituted a reckless failure to perform with competence. (*Id.* at p. 680.)

C. Failing to Notify Client of Receipt of Funds

Respondent was charged in count three with violating rule 4-100(B)(1) by failing to notify Davis until February 9, 2000, that respondent had received the \$9,000 settlement check on January 12, 2000. The hearing judge found no culpability as to this charge. In view of the short period of time that elapsed between the time that the settlement check was sent to respondent on January 6, 2000, and the time that Pak informed Davis that the matter had settled, i.e., late January or early February 2000, we agree with the conclusion that there is no clear and convincing evidence that respondent's conduct constituted a willful violation of rule 4-100(B)(1).

¹¹We also agree with the State Bar that, despite the absence of an attorney-client relationship, because respondent assumed a fiduciary relationship in performing services for Davis, he may be disciplined for violating his duty as if there had been an attorney-client relationship. (Cf. *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297, 307.)

D. Failing to Pay Client Funds Promptly

Respondent was charged in count four with violating rule 4-100(B)(4) by failing to pay Davis any portion of the settlement funds. The hearing judge concluded that, because Davis and his mother never retained respondent as their attorney in the case, respondent was not entitled to any attorney fees. As the hearing judge noted, an attorney-client relationship cannot be created by one party's unilateral declaration (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729), and therefore respondent was not entitled to recover under a contract theory.

Moreover, one who renders services to another due to a mistake is not normally entitled to compensation under a quasi-contract theory if the services were rendered without the other's knowledge, since the other person may not want the services. (See *Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 613-614; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §1029, p. 1121.) Thus, because Davis never knew or had reason to know that respondent was performing services on his behalf, respondent was not entitled to compensation for the value of the legal services rendered to Davis.

Additionally, despite the absence of an attorney-client relationship, rule 4-100(B)(4) required respondent "to make prompt payment on demand of client trust funds not only to the client, but also to a third party with a legitimate claim to those particular funds." (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9, fn. omitted.) Because respondent collected the funds on Davis's behalf despite not being Davis's attorney, he held the settlement funds in trust for Davis and his mother and should have turned them over as requested. (*Ibid.*) While we recognize that respondent also held a portion of the funds on behalf of the medical provider, who appeared to have a valid lien on the settlement funds for the value of the medical services, we note that Davis specifically requested the full amount of the remaining settlement

funds after the medical provider was paid, i.e., \$6,000. Respondent refused to pay those funds to Davis, insisting instead that Davis submit to fee arbitration. We conclude that by failing to promptly pay to Davis upon his request the funds remaining in the trust account after payment of the medical provider, respondent wilfully violated rule 4-100(B)(4).¹²

III. DISCIPLINE

In determining the appropriate level of discipline, we consider the aggravating and mitigating factors.

A. Aggravation

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On February 10, 1984, the Supreme Court filed an order suspending respondent from the practice of law for three years commencing on the effective date of respondent's interim suspension in a disciplinary case following his criminal conviction. This suspension was stayed and he was placed on probation for three years on conditions, including that he be actually suspended during the first year of probation, which period was deemed to have begun on the date of his interim suspension. In that case, respondent stipulated to violating his duties as an attorney under sections 6103, 6067, and 6068, and committing acts of moral turpitude in violation of section 6106. These violations were based upon respondent's misdemeanor conviction after a no contest plea of attempted receipt of stolen property, i.e., rings, diamonds, and a watch. In that case, in March of 1982, respondent agreed to represent a client in the defense of a burglary case for \$1,500. Some weeks later, when the client advised respondent of the client's difficult financial situation, the client offered respondent a video recorder as partial payment toward the fee. The client represented that it was

¹²While we recognize that respondent forwarded a total of \$3,210 to Davis and his mother after trial, this partial, belated payment of the funds to which they were entitled does not affect our conclusion that respondent failed to promptly pay Davis the funds to which he was entitled upon request.

not stolen, and respondent accepted it. After making another six appearances on the client's behalf without receiving any further payment, respondent agreed to accept two additional video recorders knowing that they had been stolen. He then sold them to unknowing friends. After that transaction, the client began to cooperate with police and recorded conversations with respondent, including one in which respondent acknowledged receipt of the stolen video machines and declined to accept a stolen watch in exchange for handling a civil case for the client. A few weeks later, at the client's sentencing, respondent accepted some jewelry from the client in payment of the balance of fees owed.¹³ While we agree with the hearing judge's determination that this prior record of discipline is remote in time, nevertheless it is based on serious misconduct, and we therefore decline to reduce significantly the weight to be accorded this factor. Moreover, we recognize that there is some commonality between the earlier misconduct and the current matter, i.e., respondent's taking property to which he is not entitled in order to satisfy his attorney fees. However, given that the prior misconduct occurred 17 years before the current misconduct, we are unable to conclude that this commonality necessarily indicates some kind of a pattern of behavior on respondent's part.

We agree with the hearing judge that respondent committed uncharged misconduct. (Std. 1.2(b)(iii).) Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where appropriate. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) In *Edwards*, the court considered evidence of uncharged misconduct in aggravation where the "evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was

¹³While the stipulation does not explicitly recite that respondent knew this jewelry was stolen, accepting this jewelry appears to have been the basis for the criminal conviction for attempted receiving stolen property.

based on petitioner's own testimony” (*Id.* at p. 36.) As to this uncharged misconduct, when respondent was questioned at trial about his failure to pay out funds upon Davis’s request, respondent admitted that, after four years of holding the Davis settlement funds in a trust account, he unilaterally decided to take his attorney fees and costs from the disputed funds in the amount of \$2,566.16.¹⁴ Because this evidence was elicited in the context of inquiring about the charged misconduct and was based on respondent’s own admission, we may consider the uncharged misconduct as aggravation.

Respondent claimed that he was entitled to take his fees and costs from the settlement funds because the civil statutes of limitations had run on Davis’s claim to those funds. As we discussed *ante*, respondent was not entitled to any attorney fees in this case because he never represented Davis. In any event, the question of entitlement to fees should not determine an attorney’s ethical duties. Although respondent approaches this case as one who is owed fees, he was not entitled to unilaterally determine the amount to which he was entitled and remove that amount from his trust account even if respondent had an honest belief that he was entitled to some attorney fees. (E.g., *Most v. State Bar* (1967) 67 Cal.2d 589, 597; *Jackson v. State Bar* (1979) 25 Cal.3d 398, 404.) His proper recourse was to file an independent civil action to resolve the dispute. (See *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 400.) Respondent’s unilateral withdrawal of disputed funds to satisfy his claim to attorney fees and costs constituted a misappropriation of funds. (Cf. *Marquette v. State Bar* (1988) 44 Cal.3d 253, 265.)

¹⁴Respondent testified at trial that, out of the \$9,000 settlement, he paid \$3,000 to the medical provider, and after he deducted his fees and costs, \$3,433.84 was remaining for Davis and his mother. We note, however, that the evidence presented in the motion to augment establishes that respondent ultimately provided Davis and his mother with only \$3,210. Because the amount respondent ultimately took as his fees does not affect our conclusions as to culpability of charged and uncharged misconduct, we need not further address the discrepancy.

We agree with the hearing judge's conclusion that respondent's misconduct significantly harmed Davis and his mother (std. 1.2(b)(iv)) since they were deprived of their funds for several years.

We also agree with the hearing judge's conclusion that respondent's refusal to recognize any misconduct in this matter or to take steps to rectify the harm to Davis and his mother constitutes indifference towards rectification or atonement. (Std. 1.2(b)(v).) At the time respondent learned that the signatures of Davis and his mother on various documents in the case were not genuine, he should have immediately communicated further about the issue with Davis to resolve the problem. Furthermore, after discovery of the forged signatures, although there were many opportunities to rectify the situation, respondent failed to adequately investigate or in any way demonstrate remorse for the problems caused to his clients. Instead, respondent took no responsibility for the forged signatures, insisting not only that he had done nothing wrong (despite his failure to adequately supervise staff) but also that he was nevertheless entitled to his full fees as set forth in the retainer agreement.

B. Mitigation

We give some weight in mitigation to respondent's cooperation with the State Bar in entering into a stipulation as to facts in this case. (Std. 1.2(e)(v); see *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

Respondent presented the testimony of two attorneys¹⁵ who had each known him for at least 16 years, had read the NDC and respondent's answer, and nevertheless testified that

¹⁵Although three attorneys testified on behalf of respondent, the State Bar correctly notes in its opening brief on review that one did not testify as a character witness but during the culpability phase of trial as to the propriety of respondent's delegation of duties to support staff.

respondent is honest and has good moral character. Because respondent presented extremely limited character evidence, we give the most minimal weight to this evidence. (Std. 1.2(e)(vi).)

We also give respondent mitigation credit for his pro bono and community service activities, including his service as a judge pro tem in municipal court and as a volunteer referee in the State Bar Court. Such evidence is entitled to some weight in mitigation, although its weight is somewhat limited because respondent's testimony was the only evidence on the subject, and the extent of his service is unclear. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647-648; *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158 & fn. 22.)

C. Discussion

In determining the appropriate level of discipline, we first consider the standards applicable to this case. While we are “not compelled to strictly follow [the standards] in every case,” we look to them for guidance (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and they should generally be given great weight in order to assure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220.) While numerous standards are applicable to the misconduct found in this case, standard 1.6(a) provides in part that “[i]f two or more acts of professional misconduct are found . . . and different sanctions are prescribed . . . the sanction imposed shall be the more or most severe of the different applicable sanctions.” The standards applicable to this case are 1.7(a), 2.2(b), and 2.4(b). While standard 2.4(b) provides for reproof or suspension for culpability of failing to perform services with competence in an individual matter, standard 2.2(b) provides for at least a three-month actual suspension, irrespective of mitigating circumstances, for a violation of rule 4-100. Moreover, standard 1.7(a) indicates that respondent should be given greater discipline than that imposed in the prior proceeding.

In arguing that respondent should receive a two-year actual suspension, the State Bar relies in part on *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468. However, we agree with the hearing judge's determination that *Rubens* is distinguishable in that *Rubens* concerned "serious misconduct by [Rubens] in two successive personal injury practices dominated by non-attorneys." (*Id.* at p. 472.) Rubens was culpable of failing to supervise staff for nine months at his first practice and for eighteen months at his second practice, notwithstanding that he suspected insurance fraud and the use of cappers at both practices and knew of forgeries and significant misappropriations at the second practice. (*Ibid.*) In this case, the record is devoid of evidence to show how respondent acquired Clough's cases or what respondent's office practices were beyond the Davis case.

The hearing judge cited *Hipolito v. State Bar* (1989) 48 Cal.3d 621 to support her determination that a one-year actual suspension is appropriate in this case. In a one-client matter, Hipolito commingled funds, failed to pay out client funds upon request, and misappropriated \$2,000 of client funds. In a second client matter, Hipolito abandoned his client. In both matters, Hipolito's misconduct caused harm to the clients. In mitigation, Hipolito had practiced for eight years without discipline, he was spontaneously candid and cooperative with the clients and the State Bar, he made an extraordinary demonstration of good character, he demonstrated good faith, and he spontaneously demonstrated remorse and recognition of wrongdoing. The Supreme Court imposed a one-year actual suspension, concluding that "the record amply shows that significant mitigating factors predominate in this case." (*Id.* at p. 628.)

We agree with the hearing judge's determination that *Hipolito* is similar to the instant case, given respondent's failure to perform competently and failure to pay out client funds promptly upon request. Although the State Bar correctly notes that the present matter involves

more factors in aggravation, one of the most serious factors in aggravation, respondent's uncharged misappropriation, constituted part of the misconduct in *Hipolito*, making the overall misconduct in *Hipolito* more serious than that in the present case. We also note, however, that respondent has a prior record of serious misconduct, while Hipolito had none.

We also consider *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 129, in which we recommended a one-year actual suspension. In four matters, Lantz misappropriated funds through gross neglect, withheld an illegal fee for over two years, recklessly failed to perform legal services competently, failed to return unearned fees promptly, failed to comply with an order of a workers' compensation judge, committed moral turpitude through gross neglect in failing to obtain approval of a workers' compensation judge before settling a workers' compensation matter, and failed to render an appropriate accounting. In mitigation, Lantz had no prior record of discipline in seven years of practice, presented good character evidence, presented evidence of pro bono work, and presented evidence that the misappropriation of funds was unintentional. (*Id.* at p. 135.) In aggravation, Lantz committed multiple acts of misconduct, he caused significant harm to clients, his misconduct was surrounded by overreaching and bad faith, he demonstrated indifference to rectification or atonement, and he displayed a lack of candor in testimony. (*Ibid.*)

The misconduct in *Lantz* was far more extensive than the misconduct found in the instant case, although respondent's uncharged misappropriation makes respondent's misconduct similarly serious. Additionally, respondent's prior record of discipline, involving serious misconduct, renders the instant case worthy of similarly serious discipline.

In *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, we recommended an 18-month actual suspension where, in six different matters, an attorney

committed acts of moral turpitude, failed to perform competently, and failed to notify a client of receipt of client funds. This misconduct was due to Sampson's failure to supervise his personal injury cases and disregard of his trust account obligations for almost a year. In aggravation, Sampson committed multiple acts of misconduct and caused significant harm to a medical provider. In mitigation, Sampson had no prior record of misconduct in 13 years of practice. While Sampson's misconduct was similar to that committed by respondent if we consider respondent's uncharged misconduct, Sampson's failure to supervise his personal injury cases was more extensive. Again, however, respondent was culpable of serious prior misconduct, while Sampson had no prior misconduct.

Upon weighing the culpability conclusions with all of the other factors, particularly the prior and uncharged misconduct which render this case more serious than it would otherwise seem, we conclude that the gravity of the misconduct presented in this case is similar to that presented by the cases upon which the hearing judge relied. While we are mindful of the provisions of standard 1.7(a), we note that a literal application would force an increase in discipline in every subsequent disciplinary case whether or not it was as serious as an earlier case or regardless of the amount of passage of intervening time. We emphasize that the charged and found misconduct here – failure to perform with competence and failure to pay out client funds promptly – is far less serious than the uncharged misconduct of misappropriation, which uncharged act we are precluded from considering as an independent ground for discipline. (*Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.) Moreover, we take into account that over 15 years elapsed from the imposition of discipline in respondent's prior disciplinary case to the start of the misconduct in the current case. However, because respondent's prior misconduct was serious, we do weigh it in determining the ultimate level of discipline to recommend.

We also determine, since there is some relationship between the prior and present misconduct, that a greater degree of stayed suspension and probation is warranted than that recommended by the hearing judge. Accordingly, we recommend a three-year stayed suspension and a three-year period of probation on condition of a one-year actual suspension as appropriate to protect the public, the courts, and the legal profession, maintain high professional standards, and preserve confidence in the legal profession. In that regard, we note that, along with the increase we have recommended in the length of the stayed suspension period and the probationary period, our recommendation of a three-year stayed, a three-year probation, and a one-year actual suspension to be carried out *prospectively* constitutes a form of an increase from the three-year stayed, three-year probation, and one-year actual suspensions in the prior disciplinary case in that the prior disciplinary terms were credited *retroactively* to the date of respondent's interim suspension.

IV. RECOMMENDATION

We recommend that respondent Ronald S. Parker be suspended from the practice of law in the State of California for three years, that execution of that suspension be stayed, and that respondent be placed on probation for three years on the following conditions:

1. That respondent be actually suspended from the practice of law in the State of California during the first year of probation and until he pays restitution to Byron Davis in the amount of \$6,000 plus simple interest thereon at the rate of 10 percent per annum from January 12, 2000, and to Yvonne Davis in the amount of \$210 plus simple interest thereon at the rate of 10 percent per annum from January 12, 2000, until paid (or to the Client Security Fund to the extent of any payment from the fund to Byron or Yvonne Davis, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof of such restitution to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:
 - (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
 - (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.
6. Within one year after the effective date of the Supreme Court order in this matter, respondent must attend and satisfactorily complete the State Bar's Ethics School and Client Trust Accounting School and provide satisfactory proof of such completion to the

State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing these courses. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. And, at the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending respondent from the practice of law for three years will be satisfied, and the suspension will be terminated.

We further recommend that respondent 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 and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

We further recommend that respondent be ordered to comply with rule 955 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

We further recommend that if respondent is actually suspended for two years or more, he remain actually suspended until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

V. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

STOVITZ, J.*

We concur:

WATAI, Acting P. J.

EPSTEIN, J.

*Retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.