**PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION**

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

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| In the Matter of<br>**LISA J. JACKSON,**<br>A Member of the State Bar. | **05-J-05031**<br><br>**OPINION ON REVIEW** |

## I. INTRODUCTION

In November 2005, respondent Lisa Jane Jackson, a member of the California Bar since 1998 and of the Connecticut Bar since 2002, was suspended from the practice of law in Connecticut for one year and one day and ordered to pay restitution in the amount of $16,500 no later than November 12, 2006. In May 2006, the State Bar of California sought to discipline respondent in California based on the misconduct in Connecticut. After a three-day trial in September and October 2006, the hearing judge found that under the provisions of Business and Professions Code section 6049.1,[1] respondent's misconduct in Connecticut conclusively established her culpability under California State Bar Rules of Professional Conduct, rule 4-100(A)[2] and under section 6106. The hearing judge recommended that respondent be actually suspended from practice in California for two years and until she completed restitution and satisfied the requirements of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).[3]

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[1]Unless noted otherwise, all further references to sections are to the Business and Professions Code.

[2]Unless noted otherwise, all further references to rules are to the California State Bar Rules of Professional Conduct.

[3]Unless noted otherwise, all further references to standards are to this source.

Both parties sought review. The State Bar contends that the hearing judge erred in concluding that respondent's mishandling of client funds did not involve moral turpitude, the hearing judge denied the State Bar a fair hearing by erroneously excluding impeachment evidence, the hearing judge improperly declined to find additional factors in aggravation, and that the standards mandate respondent's disbarment. Respondent contends that the hearing judge erroneously concluded that her commission of conduct prejudicial to the administration of justice in the state of Connecticut involved moral turpitude and that she was denied due process when the hearing judge precluded respondent from presenting evidence in her defense.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we adopt many of the hearing judge's findings, modify others, and reduce the period of actual suspension recommended from two years to eighteen months.

## II. STATUTORY OVERVIEW

Under the provisions of section 6049.1, subdivision (a), when an attorney is disciplined in another jurisdiction for ethical misconduct, the "certified copy of [the] final order . . . determining that a member of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state . . . ." Thus, we are required to "rely on the formal record of discipline in another state as conclusive evidence of professional misconduct in this state." (*In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 353.) "A respondent may challenge the imposition of discipline in California under section 6049.1 only by affirmatively showing that as a matter of law the culpability found in the other jurisdiction would not warrant discipline in California or that the proceeding in the other jurisdiction lacked fundamental constitutional protection. [Citations.]" (*Ibid.*) Absent such a showing, the only matter at issue is the degree of discipline. (§ 6049.1, subd. (b)(1).) In this matter, respondent made no challenge to the fundamental constitutional protection afforded her in the Connecticut proceedings.

## III. FACTS AND CIRCUMSTANCES OF RESPONDENT'S MISCONDUCT AS ESTABLISHED IN THE CALIFORNIA DISCIPLINARY PROCEEDING[4]

The hearing judge made several findings with respect to the facts and circumstances surrounding respondent's misconduct in Connecticut. With minor modification, we adopt those findings, summarizing them as follows:

### A. Respondent's Mishandling of Settlement Funds

Beginning in 2002, respondent represented two brothers, Brian and Raymond Carey (Brian and Raymond), and Carey Industries in multiple legal matters. At the time, respondent was romantically involved with Brian. In 2003, respondent represented Raymond in a lawsuit to collect a past-due debt. After the matter was resolved in Raymond's favor, two settlement checks payable to Raymond in the amounts of $3,000 and $13,500 were sent in August and December 2003, respectively. The checks were mailed to the care of respondent at a post office box shared by respondent, Raymond, Brian, and Carey Industries.

Brian retrieved both checks from the post office box, signed Raymond's name to them, and used the proceeds from the $13,500 check for his own purposes. He gave respondent the $3000 check as payment for her services. Although respondent deposited the check into her personal bank account, she did not notify Raymond that the check had arrived, that Brian had endorsed it, and that she had deposited it into her account. Similarly, respondent knew that the $13,500 check had been received, but she neither informed Raymond of its arrival nor that Brian had taken it. Respondent testified that she believed Brian was authorized to receive checks and endorse them on Raymond's behalf because she had witnessed this practice between the brothers on numerous occasions over three to four years. In July 2004, respondent provided Raymond with an invoice for her legal services in which she indicated that the past-due debt matter had been settled for $24,000.

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[4]Although these findings are made for purposes of determining the appropriate level of discipline, and are not relied on to determine culpability, we summarize them at the outset to assist the reader.

Although Raymond testified that he did not authorize Brian to sign his name on checks, he acknowledged that numerous checks made payable to him were endorsed and deposited into his account during the period of March through December 2003, and that Brian signed Raymond's name to those checks.

**B. Respondent's False Acknowledgment of Loan Documents**

In 2004, Brian obtained a loan secured by real property to which Raymond held title. Brian signed Raymond's name to a deed of trust and a grant deed that respondent notarized on February 14, 2004, and February 25, 2004, respectively. Respondent explained that on two separate occasions, after she and Brian drove from Connecticut to North Carolina where Raymond was living, "Raymond authorized [her] to notarize the documents that . . . Brian had signed with Raymond's name." Although respondent claimed she notarized the documents in North Carolina and knew that Brian had actually simulated Raymond's signatures, she falsely attested that Raymond had executed each document by personally appearing before her in New Fairfield County, Connecticut.

During trial, respondent testified that these two documents were the only signature pages that she notarized. Contrary to her testimony, however, respondent also notarized a signature affidavit on February 25, 2004, relating to the loan Brian obtained. This document required a sample signature of Raymond in order to certify his true and correct signature. His signature appears on the affidavit, but respondent admitted that Raymond did not sign the document. As with the deed of trust and the grant deed, respondent falsely attested that Raymond had executed the signature affidavit by personally appearing before her in Fairfield County, Connecticut.[5]

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[5]The "State of CALIFORNIA ¶ County of LOS ANGELES" was typed on the signature affidavit but a line was drawn through the words CALIFORNIA and LOS ANGELES. Handwritten next to them were the words CONNECTICUT and FAIRFIELD, respectively.

## IV. DISCUSSION

### A. Respondent's Violations

The final record of discipline in Connecticut (the Connecticut discipline), which the State Bar placed in evidence, consisted of a disciplinary order filed November 9, 2005, a Presentment of Attorney Pursuant to Practice Book Section 2-82, an Order for Hearing and Notice, a Summons, a Conditional Admission and Agreement as to Discipline, a sworn Affidavit of Respondent, and a transcript of the disciplinary proceeding conducted in the Superior Court for the Judicial District of Hartford.

In ordering respondent's suspension, the Connecticut Superior Court judge found only "that the Respondent has admitted violations of Rules 1.15(c), Safekeeping of property, 3.7 Lawyer as witness, and 8.4(4) Conduct prejudicial to the administration of justice, of the Rules of Professional Conduct."[6] Since respondent has failed to show that the culpability found in Connecticut would not warrant discipline in California or that the proceeding in Connecticut lacked fundamental constitutional protection (§ 6049.1, subd. (b)(2) and (3)), relying only on the

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[6]Connecticut Rules of Professional Conduct (Connecticut rules), rule 1.15(c) states: "When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

Connecticut rule 3.7 states: "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where: [¶] (1) The testimony relates to an uncontested issue; [¶] (2) The testimony relates to the nature and value of legal services rendered in the case; or [¶] (3) Disqualification of the lawyer would work substantial hardship on the client. [¶] (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9."

Connecticut rule 8.4 states: "It is professional misconduct for a lawyer to: [¶] (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [¶] (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; [¶] (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [¶] (4) Engage in conduct that is prejudicial to the administration of justice; [¶] (5) State or imply an ability to influence improperly a government agency or official; or [¶] (6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law."

record of discipline in Connecticut, we agree with the hearing judge's conclusion that this finding conclusively establishes that respondent is culpable of misconduct in California.

In its Notice of Disciplinary Charges (NDC), the State Bar asserted that respondent's violation of Connecticut rule 1.15(c) conclusively established her violation of rule 4-100(A)[7] and section 6106.[8] The hearing judge agreed that respondent's violation of Connecticut rule 1.15(c) conclusively established her violation of rule 4-100(A) because the provisions of the two rules are substantially similar. Neither party challenges this finding on appeal, and based on our independent review of the record, we leave it undisturbed.

However, the hearing judge declined to determine that respondent's violation of Connecticut rule 1.15(c) conclusively established a violation of section 6106. We agree. The provisions of Connecticut rule 1.15(c) and section 6106 are not substantially similar. Furthermore, our review of the Connecticut discipline reveals only that respondent agreed in her sworn affidavit that she "violated rule 1.15(c) in that [she] allowed a third person to obtain and cash checks payable to the Complainant in connection with a case in which [she] represented him. Complainant never received the funds." Without more, these facts do not conclusively establish that respondent committed acts involving moral turpitude. But, as we discuss *post*, this does not preclude the State Bar from establishing by clear and convincing evidence that the facts

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[7]This rule provides that: "All funds received or held for the benefit of clients by [an attorney], including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts . . . . No funds belonging to the [attorney] shall be deposited therein or otherwise commingled therewith except as follows: [¶] . . . [¶] (2) In the case of funds belonging in part to a client and in part presently or potentially to the [attorney], the portion belonging to the [attorney] must be withdrawn at the earliest reasonable time after the [attorney's] interest in that portion becomes fixed. However, when the right of the [attorney] 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."

[8]This section provides, in relevant part: "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."

and circumstances surrounding respondent's violation of Connecticut rule 1.15(c) involve additional misconduct to be considered in aggravation. (Std. 1.2(b)(iii); *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

The State Bar also alleged in the NDC that respondent's violation of Connecticut rule 3.7 conclusively established her violation of rules 3-300 and 5-210.[9] The hearing judge determined that the State Bar no longer contended that respondent's conduct violated rule 3-300. The State Bar does not contest this determination, and based on our independent review of the record, we adopt the hearing judge's finding.

The hearing judge also declined to find that respondent's violation of Connecticut rule 3.7 conclusively established a violation of rule 5-210 because the Connecticut rule precludes an attorney from acting as an advocate for a party in any trial in which the lawyer is likely to be a witness whereas rule 5-210 precludes such representation only before a jury which will hear the lawyer's testimony. The State Bar does not challenge this finding, and after review of the Connecticut discipline, we find that respondent stipulated only that she violated Connecticut rule 3.7 "by representing the Complainant's brother and sister in an action against the Complainant, her former client, in which she would be a necessary witness." Since these facts do not conclusively establish that respondent violated rule 5-210, we adopt the hearing judge's finding.

The State Bar alleged that respondent's violation of Connecticut rule 8.4(4) conclusively established a violation of section 6106. In agreeing with the State Bar, the hearing judge found that, despite differences in the texts of Connecticut rule 8.4(4) and section 6106, they are substantially similar in proscribing conduct involving moral turpitude. We disagree. Engaging in conduct prejudicial to the administration of justice does not necessarily involve moral turpitude. The hearing judge also found that the commentary to Connecticut rule 8.4 indicates

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[9]Rule 5-210 states "A member shall not act as an advocate before a jury which will hear testimony from the member unless: [¶] (A) The testimony relates to an uncontested matter; or [¶] (B) The testimony relates to the nature and value of legal services rendered in the case; or [¶] (C) The member has the informed written consent of the client."

that conduct prejudicial to the administration of justice involves moral turpitude. Again, we disagree. The commentary neither states that conduct prejudicial to the administration of justice involves moral turpitude nor that the various acts proscribed in Connecticut rule 8.4 involve moral turpitude.

On the other hand, we agree with the hearing judge's finding that the Connecticut discipline conclusively established respondent's violation of section 6106. In her sworn affidavit, respondent attested "that [she] violated Rule 8.4(4) . . . in that [she] falsely acknowledged the Complainant's signature on two documents, a deed of trust on February 4, 2004, and a Grant Deed on February 25, 2004, in connection with the refinance of real property owned by the Complainant in California."

Respondent attempted to assert at trial that she had a good faith belief with respect to the execution of certain documents. She argues that the hearing judge's refusal to allow her to introduce such evidence in her defense denied her due process. Since the Connecticut discipline does not conclusively establish that her misconduct involved moral turpitude, respondent was entitled to fully defend against a finding of culpability for moral turpitude, including introducing evidence of her good faith belief. However, as we discuss *post*, the facts and circumstances prove clearly and convincingly that respondent's false acknowledgments were done knowingly, which therefore involved moral turpitude. Accordingly, respondent's claim that she should have been allowed to introduce such evidence did not prejudice her since it would not negate the fact that respondent knowingly made false acknowledgments as a notary.

**B. Degree of Discipline**

Having determined that the Connecticut discipline conclusively established professional misconduct in California, the remaining issue is the degree of discipline to recommend. (§6049.1, subd. (b)(1).) Although the standard of proof for disciplinary proceedings in Connecticut is clear and convincing evidence (*Ansell v. Statewide Grievance Committee* (2005) 87 Conn.App. 376, 383 [865 A.2d 1215, 1220]), other than the limited facts in the Connecticut record, there are no additional facts and circumstances surrounding respondent's misconduct.

Therefore, in determining discipline, we must weigh the misconduct found in Connecticut with the aggravation and mitigation separately shown by clear and convincing evidence in this proceeding as summarized in Part III. (See, e.g., *In the Matter of Freydl, supra,* 4 Cal. State Bar. Ct. Rptr. at p. 359.)

**1. Aggravating circumstances**

We agree with the hearing judge's findings that respondent is culpable of multiple acts of misconduct (std. 1.2(b)(ii)); that respondent's actions deprived Raymond of $16,500, causing him significant harm (std. 1.2(b)(iv)); and that respondent committed uncharged misconduct by not promptly notifying Raymond of receipt of the settlement funds in violation of rule 4-100(B)(1).[10] (Std. 1.2(b)(iii).)

The hearing judge declined to find that respondent's mishandling of Raymond's settlement checks constituted a misappropriation involving moral turpitude on the basis that respondent believed that Raymond had authorized Brian to manage the proceeds. Although respondent's mishandling of Raymond's settlement proceeds constitutes misappropriation (*Jackson v. State Bar* (1979) 25 Cal.3d 398, 403 [the fact that the balance in an attorney's trust account has fallen below the amount due his client will support a finding of willful misappropriation]), this was addressed by the finding that respondent failed to maintain client funds in trust in violation of rule 4-100(A). (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1365 [attorney who placed client funds in his refrigerator because he believed his wife would freeze his trust account was only found culpable of violating former rule 8-101 (present rule 4-100].)

Not every willful misappropriation is equally culpable. In addition to those instances where an attorney intends to permanently deprive a client of his or her funds, a willful

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[10]Respondent's July 2004 invoice merely indicated that the debt matter had settled, not that respondent had received settlement funds. Furthermore, assuming, arguendo, that this invoice constituted sufficient notification, respondent did not provide it to Raymond for at least 11 months after the first settlement check was received.

misappropriation involves moral turpitude if there is dishonesty (*Edwards v. State Bar, supra,* 52 Cal.3d at p. 38) or if the misappropriation is the result of gross negligence (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021.) In light of Raymond's acknowledgment that Brian endorsed Raymond's name to several checks which were deposited into Raymond's account, along with respondent's claim that such practice between the brothers occurred many times over an extended period of time, we agree with the hearing judge that the misappropriation did not involve moral turpitude. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10-11.)

We are also unpersuaded by the State Bar's contention that respondent was grossly negligent in relying on Brian's representations without first confirming that Raymond agreed to allow her to deposit the first check into her private bank account. There is no evidence that respondent knew or should have known that the check-handling practice between the brothers had been terminated or otherwise altered. Although respondent's failure to communicate with Raymond before deferring to Brian's handling of the settlement funds could be fairly characterized as negligent, we do not view respondent's conduct under these circumstances as rising to the level of recklessness or gross negligence.

Although the State Bar attempted to cross-examine respondent as to her knowledge of Brian's trustworthiness in order to impeach her alleged belief that Brian was authorized to manage the settlement funds, the hearing judge repeatedly sustained respondent's objections. As a result, the State Bar contends that the hearing judge erroneously precluded impeachment evidence and denied the State Bar a fair trial. To prevail, the State Bar must demonstrate both abuse of discretion by the hearing judge and specific prejudice resulting from the alleged error. (*In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 474.)

An important theory of respondent's case at trial was that she honestly believed Brian was authorized to act on behalf of Raymond. After respondent presented her evidence, it was entirely appropriate for the State Bar to try to impeach respondent regarding her state of mind. (See, e.g., *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688-689.) Competent

evidence rebutting respondent's purported state of mind should have been admitted, and the hearing judge erred in excluding such evidence. Nevertheless, we find that no prejudice resulted from this error. Even if the State Bar had shown that Brian was untrustworthy or that respondent should not have blindly accepted his representations to her, we cannot ignore the fact that respondent corroborated her belief with documentary evidence of the practice of Brian endorsing checks on Raymond's behalf. Therefore, we decline to remand the matter for further proceedings on this issue.

We also do not find that respondent's conduct involved bad faith as contended by the State Bar, but instead find that she displayed a lack of candor to the court. (Std. 1.2(b)(vi).) She testified that she had falsely acknowledged only two signatures when in fact there was a third signature she falsely acknowledged, and that she indirectly paid restitution to Raymond by offsetting approximately $10,000 that he owed her when in fact Raymond had rejected her request to offset.

We do not adopt the hearing judge's finding that respondent displayed a lack of insight since she credibly testified that she realized her conduct was wrong and now understands how to prevent future misconduct.

We reverse the hearing judge's finding that respondent displayed indifference toward rectification by not paying the required restitution since respondent had until November 12, 2006, to satisfy that requirement and the trial in this matter concluded on October 16, 2006. Respondent seeks to augment the record with evidence that she had made full restitution to Raymond as of August 23, 2007. Since the State Bar does not oppose it, we grant respondent's request. (Rules Proc. of State Bar, rule 306(c).) However, as respondent did not satisfy her restitution requirement by the November 12, 2006 deadline, we afford it no weight in mitigation.

**2. Mitigating circumstances**

Like the hearing judge, we afford some weight in mitigation as the result of the testimony of five character witnesses, consisting of three attorneys, a financial consultant, and psychotherapist.

Although respondent has no prior record of discipline, we do not afford this any mitigative weight since her misconduct began less than five years after obtaining her license to practice. (*In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 810 [five years of practice without a history of discipline was too short a time period to constitute mitigation].)

As previously mentioned, respondent claims she was denied due process when the hearing judge precluded her from introducing evidence of her good faith belief that Brian was acting as Raymond's amanuensis with respect to the execution of the loan documents and that Brian was the equitable owner of the property used to secure the loan. On appeal, respondent seeks to augment the record with documents pertaining to ownership of the property. We deny her motion, and decline to consider any of these documents[11] because respondent is misguided in her reliance on *Estate of Stephens* (2002) 28 Cal.4th 665 to show that her conduct as a notary public was proper. To the contrary, that case holds that a deed of trust signed by an amanuensis is valid for the purpose of transferring title to realty (*id.* at pp. 674-78), but in no way condones the conduct of a notary public who knowingly falsely acknowledges documents.

Whether or not respondent acted in good faith may be considered in determining the appropriate degree of discipline. However, "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held *and* reasonable. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653, italics added.) To conclude otherwise would reward an attorney for his unreasonable beliefs and "for his ignorance of his ethical responsibilities." (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427.) We find no basis in this record to conclude that respondent's conduct was reasonable. Competent evidence corroborating her purported state of mind should have been admitted, and the hearing judge erred in excluding such

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[11]Similarly, respondent's request that certain documents be judicially noticed is denied.

evidence. But no prejudice resulted from the hearing judge's error. Even if respondent were able to establish that Brian owned the property in question or that he acted with Raymond's authorization in executing the loan documents, it is still not reasonable for respondent to believe that she could falsely acknowledge signatures. As such, she would not have been entitled to good faith mitigation. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 975-976.)

## V. DISCIPLINE

We have found respondent culpable of failing to properly maintain client funds in trust and committing acts involving moral turpitude by knowingly acknowledging false signatures on loan documents in her capacity as a notary public. Respondent's misconduct is somewhat mitigated by her evidence of good character but aggravated by multiple acts of misconduct, client harm, uncharged misconduct and a lack of candor.

Rather than punish attorneys, the purpose of attorney discipline is the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.) In determining the appropriate level of discipline, we afford "great weight" to the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) Nevertheless, we are " 'not bound to follow the standards in talismanic fashion. [W]e are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' [Citations.]" (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) We also consider relevant decisional law. (See *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, the level of discipline must be determined based on the facts of each case after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.)

The standards applicable to respondent's misconduct provide for sanctions ranging from actual suspension to disbarment. (See stds. 2.2(b) and 2.3.) We consider standard 2.3 to be controlling since it authorizes the most severe sanction of disbarment.[12]

In reaching a discipline recommendation, the hearing judge relied on *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 in which we recommended a two-year actual suspension for an attorney who failed to maintain client funds in trust, failed to account for those funds, and violated section 6106 by intentionally misappropriating $29,875.89 and separately misappropriating $50,000 through gross negligence. The misconduct was aggravated by client harm, overreaching, and indifference toward atonement, and uncharged misconduct involving multiple conflicts of interest. In mitigation, we were impressed with the strength of the attorney's good character testimony, his extensive community service, and the fact that more than five years had elapsed without any evidence of additional misconduct. Because we find in the instant case that respondent's failure to maintain funds in trust does not constitute moral turpitude, it is not as egregious as the misconduct in *Davis* where the misappropriations were both intentional and the result of gross negligence. Although *Davis* instructs us in our analysis of the appropriate level of discipline to recommend, we do not consider it determinative, as did the hearing judge.

Standing alone, respondent's failure to maintain funds in trust or dishonest acts would warrant at least 30 days' actual suspension. (See *Sternlieb v. State Bar* (1990) 52 Cal.3d 317 [30-day actual suspension for attorney who failed to account, failed to promptly pay client funds, and failed to maintain approximately $4000 in trust constituting misappropriation without moral

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[12]This standard provides that "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

turpitude]; *Drociak v. State Bar* (1991) 52 Cal.3d 1085 [30-day actual suspension appropriate for attorney who committed act of moral turpitude and misled a court by submitting discovery responses with verifications that were pre-signed by a client who was deceased at the time the responses were filed].)

We also consider relevant *In re Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456 (*Hertz*) where we recommended, and the Supreme Court approved, a two-year actual suspension for an attorney who, after only four years of practice, failed to maintain client funds in trust and thereafter deceived opposing counsel and the superior court that the funds remained intact. Specifically, Hertz held $15,000 in trust in a family law matter while representing the husband. Without the knowledge or consent of opposing counsel or the client's wife, Hertz distributed $10,000 to his client for payment of community debts and took the remaining $5,000 as attorney fees. Although Hertz believed that his client authorized him to take $5,000 in fees, Hertz returned this amount to his trust account two years later but before its absence was discovered by opposing counsel or the client's wife. Thereafter, Hertz misrepresented to opposing counsel, his client's wife, and the superior court that he still held the entire $15,000 in trust. Hertz then extended his deceit to the court of appeal and a State Bar investigator.

Although we recognized that Hertz cooperated with the State Bar by stipulating to the charges, credited Hertz for his substantial community service and pro bono activities, and afforded significant mitigating weight to his character evidence, we were gravely concerned with Hertz's conduct after his improper withdrawal of funds, which consisted of nine acts of deceit over a five-year period to forestall discovery of his breach of trust. (*Id.* at p. 471.) Had the only charge been the premature withdrawal of trust funds, and had Hertz been honest, we doubted that an extensive period of actual suspension would have been appropriate given the strength of Hertz's character witnesses. In assessing the appropriate discipline, we believed the gravamen of the case to be the prolonged deceit Hertz perpetuated on opposing counsel and the courts.

As in *Hertz,* respondent practiced for only a short duration before mishandling entrusted funds and committing acts involving moral turpitude. Also as in *Hertz,* respondent's misconduct is mitigated by a strong showing of good character. Unlike *Hertz*, the gravamen of this matter is not a pattern of deception over a prolonged period of time since respondent's acts of moral turpitude occurred within a 10-day period and did not delay discovery of her mishandling of entrusted client funds. We therefore believe respondent's misconduct warrants a period of actual suspension less severe than those imposed in *Davis* and *Hertz,* and recommend that respondent be actually suspended for a period of 18 months.

## VI. RECOMMENDATION

We recommend that respondent LISA J. JACKSON be suspended from the practice of law in the State of California for three years and until she provides proof satisfactory to the California State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of said suspension be stayed, and that respondent be placed on probation for three years on the conditions recommended by the Hearing Department of the State Bar Court in its Decision filed April 5, 2007, except that respondent is to be actually suspended from the practice of law in the State of California for the first 18 months of her probation and respondent will not be required to provide proof of compliance with standard 1.4(c)(ii) in order to terminate her period of actual suspension. At the expiration of the period of probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending her from the practice of law for three years will be satisfied and the suspension will be terminated.

## VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We 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 her 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.

## VIII. RULE 9.20

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

## IX. COSTS

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

WATAI, J.

We concur:

REMKE, P. J.

EPSTEIN, J.

# CERTIFICATE OF SERVICE
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 25, 2008, I deposited a true copy of the following document(s):

**OPINION ON REVIEW FILED APRIL 25, 2008**

in a sealed envelope for collection and mailing on that date as follows:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LISA J. JACKSON**
**LAW OFC LISA J JACKSON**
**15215 FRIENDS ST**
**PACIFIC PALISADES, CA 90272**

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**KIMBERLY G. ANDERSON, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 25, 2008**.

**Rosalie Ruiz**
Case Administrator
State Bar Court