PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED NOVEMBER 4, 2011

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 06-O-12547 (08-O-14665);
	)	06-O-13727 (06-O-15190); 07-O-12540 (Cons.)
MERVYN HILLARD WOLF,	)	
	)	OPINION AND ORDER
A Member of the State Bar, No. 41639.	)	
	)	

This is respondent Mervyn Hillard Wolf's fourth disciplinary matter. In the proceedings below, the hearing judge found Wolf culpable of widespread misconduct in four client matters, including repeated misappropriations involving moral turpitude, an additional act of moral turpitude for making false statements in a declaration under penalty of perjury, collection of an illegal fee, failure to promptly pay client funds, failure to withdraw from employment and repeated failures to account to his clients.

Wolf is seeking review of the hearing judge's disbarment recommendation. He maintains that the Office of the Chief Trial Counsel of the State Bar (State Bar) did not prove his culpability and that his misconduct, both past and present, is the product of a Bipolar II Disorder that has been treated and is now well under control. Wolf believes that he has gained insight into his problems and he has been successfully rehabilitated through his participation in a State Bar-sponsored program to assist attorneys with mental health issues. Wolf also asserts that he was denied a fair trial because of prosecutorial misconduct. The State Bar requests that we adopt the hearing judge's findings and discipline recommendation.

Upon our independent record review (Cal. Rules of Court, rule 9.12), we find clear and convincing evidence to support most of the hearing judge's culpability determinations, and we find additional culpability. We also find that Wolf received a fair trial. Ultimately, we agree with the hearing judge that Wolf should be disbarred.

I. FACTUAL AND PROCEDURAL BACKGROUND

Wolf was admitted to practice law in California on January 5, 1968. He has three prior impositions of discipline, which we discuss in detail *post*. Wolf formed a partnership with Melvin Appell in 1987, after working for several law firms. Appell retired in 1992 and Wolf became a solo practitioner, focusing on workers' compensation and personal injury cases. Between 1992 and 2006, Wolf successively hired as many as 15 bookkeepers. Without providing any meaningful training or supervision, Wolf required the bookkeepers to make deposits to and withdrawals from his client trust account (CTA), disburse funds to his clients and review his bank statements. Even after his CTA checks were stolen, and despite having to repeatedly deposit personal funds into his trust account to cover shortfalls, Wolf still did not assume control over his CTA or his firm's financial affairs. He testified that "I didn't want to be overseeing these people. I didn't want the responsibility really." So instead, Wolf said that "for years and years and years [I] stuck my head in the sand. . .[and] allowed people to run rampant in my office because I wasn't on top of things."

In 2002, Wolf requested participation in the Pilot Program, a State Bar Court program to assist attorneys with substance abuse or mental health issues against whom formal disciplinary

proceedings have been initiated.[1] (Bus. & Prof. Code, § 6231 et seq.)[2] He remained under evaluation and court supervision until May 16, 2006, when he was formally accepted into the ADP. As a condition of his ADP participation, Wolf stipulated to misconduct in 18 pending matters and agreed to be placed on inactive status. He closed his office just prior to his suspension on July 10, 2006. He returned to active status on October 14, 2009, and began working for a law firm. Wolf graduated from the ADP on July 9, 2010.

In the meantime, the State Bar filed a series of Notices of Disciplinary Charges (NDC), commencing on May 29, 2008, charging Wolf in five additional client matters that were not included in his ADP participation. The hearing judge conducted a five-day trial beginning August 10, 2010.[3] Upon the judge's finding of culpability on 17 counts of alleged misconduct, Wolf appealed.[4]

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[1] The parties orally stipulated that the record of Wolf's participation in the Pilot Program and its successor, the Alternative Discipline Program (ADP), would be limited to the following facts: (1) when he was admitted into ADP; (2) when he received notice that he was going to be placed on inactive status; (3) when he became inactive; (4) when his inactive status terminated; and (5) when he graduated from ADP. During the trial, Wolf steadfastly asserted his right to confidentiality under Business and Professions Code section 6234, subdivision (a), thus limiting the evidence of the nature and extent of his ADP participation and rehabilitation.

[2] Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

[3] During trial, the hearing judge severed case number 07-O-12540 (Swisa) from the remaining matters after granting the State Bar's motion to dismiss the charges with prejudice due to witness unavailability.

[4] The Rules of Procedure of the State Bar were amended effective January 1, 2011. We apply the new rules since Wolf filed his request for review after the effective date. On appeal, Wolf requested the court to strike the State Bar's responsive brief as untimely. On May 19, 2011, the clerk served notice, pursuant to Rules of Procedure of the State Bar, rule 5.153(A), that the State Bar had five days from the date of service to file its responsive brief. Because the clerk served her notice by mail, the State Bar's deadline was May 29, 2011. The State Bar filed its responsive brief on May 26, 2011, well within the filing deadline. Finding no good cause, we deny Wolf's request.

II. PROSECUTORIAL MISCONDUCT/DUE PROCESS CLAIMS

Wolf contends that a "pattern of prosecutorial misconduct" violated his due process right to a fair trial. Specifically, he alleges that: (1) the State Bar intentionally withheld the investigation of two pending matters and the filing of the NDCs in order to prevent Wolf's admission into the ADP; (2) during the expert's cross-examination, the prosecutor referred to Wolf's pending criminal proceedings and asked whether Wolf had been tested for sexually transmitted diseases; (3) the State Bar inappropriately challenged Wolf's rehabilitative efforts despite knowing that they had been achieved through the ADP; and (4) during a recess in the direct examination of Wolf's expert witness, the State Bar's prosecutor made an offer to retain the witness in another matter, thereby tainting the witness's testimony in these proceedings.

We find the first three assertions of prosecutorial misconduct are without legal and/or evidentiary basis or are not material to the hearing judge's findings and conclusions. However, the prosecutor's communication with Wolf's witness, Dr. Pakier, causes us concern, and accordingly, we examine it more fully. Wolf called Dr. Pakier to establish that Wolf suffered from mental illness, which was directly responsible for his misconduct, and that his illness was presently under control. Wolf's attorney overheard the prosecutor talking to Dr. Pakier during a recess about retaining him for an unrelated State Bar case. Wolf's attorney did not object when Dr. Pakier resumed his testimony, but after Dr. Pakier finished testifying, Wolf's attorney objected based on the conversation he overheard at the recess. The hearing judge then questioned Dr. Pakier and the prosecutor about the conversation and sternly admonished the prosecutor. The hearing judge relied only on Dr. Pakier's testimony elicited before the recess. In denying Wolf's motion to dismiss, the hearing judge expressly found that the prosecutor's "conduct had no prejudicial effect on the trial itself, on this court, or on this court's ultimate decision."

Wolf has not demonstrated any specific, cognizable harm since the judge's remedial action rectified any potential prejudice from the prosecutor's conversation with Dr. Pakier. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361; see *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 396.) In the absence of such a showing, Wolf's claim of prosecutorial misconduct must fail. (*In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 649.)

Nevertheless, we do not take the prosecutor's impropriety lightly, and we impose the additional sanction of striking all testimony from Dr. Pakier adverse to Wolf, while considering all testimony that corroborates Wolf's assertions in his own defense. The State Bar's prosecutor is held to the same ethical standards that regulate the legal profession as a whole. (*In the Matter of Chen* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 571, 580.) Indeed, "[the State Bar] should hold itself up as an example to others . . . ." (*Id*. at p. 578.) Although there is no evidence that the prosecutor acted in bad faith or intended to prejudice the expert's testimony, his conduct demonstrated a lack of good judgment. It also eroded Wolf's perception of the fundamental fairness of these proceedings.

III. DISCUSSION

A. Case No. 06-O-12547 (Madrid)

In February 2004, Virginia Madrid employed Wolf to represent her in a medical malpractice lawsuit. He settled her case in June 2005 for $225,000 and deposited the settlement check in his CTA. Wolf was entitled to retain $67,915 as his fee under the Medical Injury Compensation Reform Act (MICRA). (Bus. & Prof. Code, § 6146, subd. (a).) Instead, he took $90,000, or 40% of the entire settlement. By September 2005, Wolf had distributed $104,000 to Madrid and $1,900 to a lienholder. The remaining $29,100 should have been held in trust, but as of September 6, 2005, Wolf's CTA had a balance of minus $1,344.20.

Madrid repeatedly complained to Wolf that she had not received her full share of the settlement, and he responded by giving her several more payments totaling $18,345. He enclosed an itemized accounting with one of these payments, but it overstated his permissible attorney fee and failed to account for a payment of $8,410 to one of Madrid's lienholders. As of June 2006, Wolf still owed Madrid about $15,740. She subsequently sued him for malpractice and the lawsuit settled for $70,000.

Count 1 – Failure to Maintain Client Funds in Trust (rule 4-100(A))[5]
Count 2 – Moral Turpitude Misappropriation (§ 6106)[6]
Count 3 – Failure to Account (rule 4-100(B)(3))[7]
Count 4 – Illegal Fee (rule 4-200(A))[8]

The hearing judge found Wolf culpable of the misconduct alleged in Counts 1 through 4 and we agree. Wolf violated rule 4-100(A) as alleged in Count 1 because his CTA had a negative balance in September 2005 when it should have held $29,100 for Madrid. Wolf contends the misappropriation resulted from mere negligence, but the fact that Wolf's CTA fell below the required minimum establishes his violation of rule 4-100(A). (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474.) Moreover, Wolf's misappropriation was reckless because of his failure to supervise his staff's handling of client funds, review his bank statements or otherwise manage his CTA. This grossly negligent conduct clearly constitutes moral turpitude in violation of section 6106 as alleged in Count 2. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795-796 [finding of moral turpitude due to grossly negligent lapses in office procedures resulting in

[5] Rule 4-100(A) requires an attorney to deposit and maintain in trust "[a]ll funds received or held for the benefit of clients. . . ." Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

[6] Section 6106 makes it a cause for disbarment or suspension for an attorney to commit "any act involving moral turpitude, dishonesty, or corruption . . . ."

[7] Rule 4-100(B)(3) requires an attorney to "render appropriate accounts to the client regarding" all client funds in the attorney's possession.

[8] Rule 4-200(A) prohibits an attorney from collecting "an illegal or unconscionable fee."

misappropriation of client funds].) Although Wolf violated both rule 4-100(A) and section 6106, for discipline analysis, we assign no additional weight to the rule violation because the misconduct underlying the section 6106 violation supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

Wolf also violated rule 4-100(B)(3) because he failed to render an accounting for over ten months after he settled Madrid's lawsuit and even then, he did not provide an accurate account of her settlement proceeds. Finally, we adopt the hearing judge's determination that Wolf violated rule 4-200(A) because he collected an illegal fee that was over the maximum amount legally permitted under MICRA.

B. Case No. 08-O-14665 (Hatter)

In 1992, Ziad Hatter retained Wolf to represent him in a personal injury matter and related workers' compensation claim. Wolf settled the personal injury matter in October 1995 for $90,000 and deposited the settlement check in his CTA ending in the numbers 1525 (CTA No. 1525). Hatter was entitled to $51,037.50 after paying attorney's fees. Wolf notified Hatter that he had received the settlement funds, but he told him that the funds would not be distributed until after Wolf had resolved the issue of a workers' compensation carrier's lien. Wolf tried to obtain the lien waiver for two to three months but was unsuccessful, so he directed his bookkeeper to distribute Hatter's settlement share to him. Wolf continued to represent Hatter in the workers' compensation matter until attorney Marc Appell, his former partner's son, took over when Wolf was suspended in July 2006. According to Wolf, Appell informed him for the first

time in late 2007 or early 2008 that Hatter's portion of the $90,000 settlement had never been distributed.[9]

Hatter testified to a different version of the facts. He said that he called Wolf's office "many times" over the 13 years to inquire about the status of his settlement distribution but he did not press the matter because he considered Wolf a friend. After Appell notified Wolf in 2007 and 2008 about the missing settlement funds, Hatter called several more times to request them. Each time, Wolf told him he would not pay Hatter until he located his file. Wolf could find no record of the payment to Hatter, and after several more months of delay, Hatter complained to the State Bar. Wolf finally paid Hatter $51,037.50 in June 2009, almost 18 months after Appell contacted Wolf and nearly 14 years after Wolf's receipt of the settlement proceeds.

Count 5 – Failure to Maintain Client Funds in Trust (rule 4-100(A))
Count 6 – Moral Turpitude Misappropriation (§ 6106)
Count 7 – Failure to Promptly Pay Client Funds (rule 4-100(B)(4))[10]
Count 8 – Failure to Account (rule 4-100(B)(3))

The hearing judge found Wolf culpable of failing to maintain client funds and moral turpitude, as alleged in Counts 5 and 6, respectively. The State Bar alleged, and Wolf admitted, that Hatter's $90,000 settlement was deposited into CTA No. 1525, but the State Bar properly concedes on appeal that it offered no evidence at trial that Wolf failed to maintain Hatter's settlement share in this trust account.[11] We therefore do not adopt the hearing judge's culpability finding with respect to Count 5 because there is not clear and convincing evidence that Wolf

[9] In the course of the workers' compensation case, the attorney for State Compensation Insurance Fund learned, and advised Appell, that Hatter had not received any of the 1995 personal injury settlement funds. Appell immediately contacted Wolf.

[10] This rule requires an attorney to "Promptly pay or deliver, as requested by the client, any funds . . . which the client is entitled to receive."

[11] Wolf testified that he maintained "multiple" CTAs.

failed to maintain Hatter's funds in trust in violation of rule 4-100(A). We accordingly dismiss Count 5 with prejudice.

Nevertheless, we find Wolf culpable of moral turpitude as charged in Count 6. His failure to distribute the $90,000 settlement to Hatter for almost 14 years constitutes, at best, grossly negligent misappropriation and, at worst, conversion of client funds, both of which are acts of moral turpitude within the meaning of section 6106. (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 377 [conversion of client funds and misappropriation involving gross negligence constitute moral turpitude].)

We also agree with the hearing judge that Wolf is culpable of failing to promptly pay client funds and to account as alleged in Counts 7 and 8, respectively. His 13-year delay in paying Hatter is clear and convincing evidence of Wolf's violation of rule 4-100(B)(4). (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [six-week delay sufficient for culpability].) Moreover, Wolf is culpable of violating rule 4-100(B)(3) under Count 8 for failing to account until nearly 14 years after the settlement of Hatter's case. Without a timely accounting, Hatter had no basis upon which to question the long delay in the distribution or to calculate the amount of the distribution owing to him.

C. Case Number 06-O-13727 (Lorenz)

In May 2004, Scott Lorenz retained Wolf to represent him in a personal injury matter. Wolf settled the case in April 2005 for $47,500, which he deposited into his CTA in May 2005. According to the retainer agreement, Lorenz was entitled to 60 percent of the settlement, or $28,500, less any outstanding medical bills, and Wolf was entitled to a contingency fee of 40 percent, or $19,000. One year later, in June 2006, Lorenz faxed a letter to Wolf asking for an accounting because he had not received any of the settlement proceeds. Lorenz acknowledged that he had previously received an itemized list of medical liens totaling $6,698.33, but he

advised Wolf not to pay them, except for a $26.29 charge, because they were either invalid or had already been paid.

As of June 6, 2006, Wolf should have maintained nearly $28,500 in trust for Lorenz and the prospective lienholders, but his CTA balance fell to about $8,981. On June 12th, Wolf deposited $20,000 of borrowed money into his CTA. He paid Lorenz approximately $19,650 on June 28 and another $2,550 in July 2006, after confirming that Lorenz had paid a doctor's lien. That was the last payment Lorenz received. At that point, Wolf's CTA should have held almost $6,300 in trust for Lorenz or the medical providers, but it fell to $3.22 on September 30, 2006, where it remained until February 2008. Wolf never provided the accounting Lorenz requested or any records confirming that he had paid the medical providers. Lorenz received $6,297.83 from the Client Security Fund (CSF) in 2009. Prior to trial, Wolf reimbursed the CSF but he still owes interest and costs.

Count 1 – Moral Turpitude – Misappropriation (§ 6106)
Count 2 – Failure to Maintain Client Funds in Trust (rule 4-100(A))
Count 3 – Moral Turpitude – Misappropriation (§ 6106)
Count 4 – Failure to Maintain Client Funds in Trust (rule 4-100(A))
Count 5 – Commingling (rule 4-100(A))[12]
Count 6 – Failure to Account (rule 4-100(B)(3))
Count 7 – Failure to Promptly Pay Client Funds (rule 4-100(B)(4))

We agree with the hearing judge that Wolf is culpable of failing to maintain client funds as alleged in Counts 2 and 4 because: (1) Wolf had to replenish misappropriated funds in his CTA in order to pay Lorenz approximately $22,000 in June and July of 2006; and (2) after paying the $22,000, he failed to maintain $6,294 in settlement proceeds still owing to Lorenz.

We also adopt the hearing judge's findings of moral turpitude as alleged in Counts 1 and 3 for Wolf's grossly negligent failure to supervise his staff and to properly manage his CTA, resulting in these two instances of misappropriation. However, as noted, *ante*, we assign no

[12] This rule prohibits attorneys from depositing personal funds into their CTAs.

additional weight to the rule 4-100(A) violations in Counts 2 and 4 because the same misconduct underlies the section 6106 violations, which support the same or greater discipline. (*In the Matter of Sampson, supra,* 3 Cal. State Bar Ct. Rptr. at p. 127.)

The hearing judge dismissed Count 5 with prejudice for lack of evidence and we agree. Wolf deposited approximately $94,000 in personal funds (borrowed from his wife and father-in-law) into his CTA to restore misappropriated funds. His replacement of wrongfully withdrawn funds does not constitute commingling. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978-979.)

We adopt the hearing judge's finding that Wolf violated rule 4-100(B)(3) as alleged in Count 6 because he never accounted to Lorenz for the settlement proceeds. We further agree with the hearing judge that Wolf violated rule 4-100(B)(4) under Count 7 because he delayed payment of the $22,000 portion of the settlement for well over a year and also failed to distribute approximately $6,300, which had been set aside for the disputed medical liens. We do not agree with the hearing judge that Count 7 is duplicative of the moral turpitude-misappropriation charges. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 617-618 [where attorney failed to pay excess fee upon client's demand, attorney culpable of moral turpitude-misappropriation as well as failing to promptly pay client funds].)

D. Case Number 06-O-15190 (Zometa)

In December 2004, Wolf represented Jorge Zometa in a wrongful death lawsuit filed in the Los Angeles Superior Court. Just before Wolf became inactive in July 2006, he closed down his office and transferred all of his files to Marc Appell. Appell agreed to take over the workers' compensation cases, but advised Wolf that he would review the personal injury matters on a case-by-case basis to determine if he would assume representation. Wolf testified that he called all of his clients to notify them that he could no longer practice law and that Appell would be

their attorney if they so chose. But he took no further action to ensure that Appell had substituted into the cases or that Zometa's interests were properly represented.

After Appell informed Wolf that he would not accept the Zometa case, Wolf talked to several other attorneys about taking the case. In the meantime, Wolf remained counsel of record, causing confusion among the court and the parties regarding Zometa's representation, including proper service. The trial judge ordered Wolf to appear at a November 9, 2006, hearing to clarify the situation, and advised Wolf that he might dismiss the case if Zometa was not represented by the following month. Wolf finally filed a formal withdrawal on April 27, 2007, but eight months earlier, he filed a rule 955[13] Compliance Declaration with the State Bar Court as a condition of his third disciplinary proceeding. In the Declaration, he attested under penalty of perjury that: (1) "As of the date upon which the order to comply with rule 955 was filed, I had no clients;" and (2) "As of the date upon which the order to comply with 955 was filed, I did not represent any clients in pending matters."

Count 8 – Failure to Withdraw (rule 3-700(B)(2))[14]
Count 9 – Moral Turpitude – False Statements (§ 6106)

We adopt the hearing judge's culpability finding that Wolf failed to properly withdraw from the Zometa case in violation of rule 3-700(B)(2) as alleged in Count 8. Wolf knew he was prohibited from representing Zometa once his inactive enrollment became effective on July 10, 2006. He was grossly negligent in failing to ensure that Zometa was properly represented. When Appell advised Wolf that he would not accept the Zometa case, Wolf remained attorney of record and did nothing to ensure that Zometa had proper representation.

[13] Effective January 1, 2007, rule 955 of the California Rules of Court was renumbered as rule 9.20. Further references to rule 955 are to this source.

[14] This rule requires an attorney to withdraw from employment if continued employment will result in violation of the Rules of Professional Conduct or the State Bar Act.

We also adopt the hearing judge's finding that Wolf violated section 6106 as charged in Count 9 because Wolf attested in his rule 955 declaration that he had no clients when he still was the attorney of record in the Zometa case. In fact, he did not formally withdraw from that case until eight months after he filed his rule 955 declaration. Wolf claims that he had an honest, good faith belief that Appell had substituted in as counsel of record in the Zometa matter and therefore Wolf's statement that he had no clients or pending matters was accurate. However, the hearing judge found that Wolf's testimony that Appell had agreed to become counsel of record to be not credible. He further found that Wolf's testimony was contradicted by Appell's credible testimony that he never told Wolf he was willing to take over the Zometa matter. Wolf's good faith assertion also is belied by the fact that he made no effort to confirm whether Appell had assumed responsibility for the Zometa case in order to ensure the accuracy of his statements in his declaration. Accordingly, Wolf's gross negligence in making false statements on his rule 955 Compliance Declaration constitutes acts of moral turpitude in violation of section 6106.

IV. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence, while Wolf has the same burden of proving mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)[15]

A. Aggravation

1. Prior Discipline (Std. 1.2(b)(i))

Wolf has three prior discipline records involving extensive misconduct. The first matter involved three client matters, and his misconduct occurred between January 1991 and January 1994. Wolf was culpable of failing to: respond to client inquiries, maintain client funds in trust,

[15] Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

promptly pay client funds, and communicate a settlement offer. He had no prior discipline and received mitigative credit for his pro bono activities. Wolf's difficulty in acquiring a competent bookkeeper also was considered as a mitigating circumstance, as was his acceptance of "full responsibility for the office management problems which he experienced prior to November 1993. . . ." As a probation condition, Wolf was required to complete the State Bar Client Trust Accounting School and have a certified public accountant (CPA) certify that he properly maintained client funds in trust. In October 1995, the Supreme Court ordered Wolf suspended for one year, stayed, on the condition of a three-year probationary period.

The second case arose out of Wolf's misconduct while he was on probation from his first discipline. He failed to provide certification by a CPA that he was properly maintaining his CTA, he failed to promptly refund unearned fees to a client, and he failed to file several quarterly reports. In December 1997, the Supreme Court ordered Wolf actually suspended for 45 days.

Wolf's third disciplinary case is the most serious aggravation.[16] He stipulated to culpability in 18 matters and his misconduct occurred over more than a decade between February 1995 and November 2005. During this period Wolf failed to: (1) maintain client funds in trust in 11 matters; (2) promptly pay client funds in nine matters, (3) account in two matters; (4) communicate in five matters; (5) perform competently in five matters; and (6) release client files in three matters. Additionally, he committed acts of moral turpitude by misappropriating client funds in 14 matters as well as repeatedly issuing checks on insufficient funds in another matter. Wolf's misconduct was aggravated by his two prior disciplines and significant harm.

[16] We take judicial notice of the official court record of Wolf's third discipline proceeding filed with the State Bar Court. (Rules Proc. of State Bar, rule 5.156 (B) [Review Dept. on its own motion may take judicial notice of orders or decisions of State Bar Court involving respondent subject to current proceeding]; Evid. Code, § 452, subd. (d)(1) [records of any court of this state may be judicially noticed]; Rules Proc. of State Bar, rule 5.388(A) [any orders or pleadings filed in ADP proceeding will be public].) This is a public record and is not subject to the confidentiality provisions of Business and Professions Code section 6234.

His successful completion of ADP was considered mitigating. In January 2011, the Supreme Court ordered Wolf suspended for four years, stayed, on the condition of a four-year probationary period, including one year of suspension with credit given for his inactive status while in the ADP.

2. Pattern of Misconduct (Std. 1.2(b)(ii))

The hearing judge found that Wolf committed multiple acts of misconduct. We find that Wolf's behavior goes well beyond multiple acts and constitutes a pattern of serious misconduct over a prolonged period of time. Since 1991, Wolf has habitually abdicated responsibility for managing his law practice and supervising his staff, which has resulted in repeated failures to maintain client funds and to promptly pay client funds. Wolf's office management problems are serious, endemic and persistent. We consider this continuing course of misconduct as significant aggravation. (*Read v. State Bar* (1991) 53 Cal.3d 394, 423 [pattern of misconduct established where attorney committed wide range of misconduct involving dishonesty, concealment, misrepresentation, misappropriation and client abandonment]; *Simmons v. State Bar* (1970) 2 Cal.3d 719, 729-731 [pattern of misconduct established where attorney had two prior suspensions for misappropriating client funds and willfully abandoned three clients resulting in harm].)

3. Significant Client Harm (Std. 1.2(b)(iv))

We agree with the hearing judge's finding that Wolf's nearly 14-year delay in paying Hatter caused significant client harm.

4. Lack of Candor (Std. 1.2(b)(vi))

We agree with the hearing judge's finding that Wolf displayed a lack of candor. Wolf testified that his bookkeeper, whose name he could not recall, was primarily responsible for mismanaging his CTA and misappropriating client funds. Regardless, Wolf was well aware that

mismanagement of his CTA continued long after he terminated his staff and closed his office in July 2006. Despite his office closure, the misappropriations persisted and his CTA balance fell to $3.22 in September 2006, where it remained until February 2008. This was below the $6,300 Wolf was required to maintain for Lorenz, and the $51,000 he should have held for Hatter, which was not paid until June 2009.

B. Mitigation

Wolf offered evidence in mitigation to prove that his misconduct "had a direct and proximate temporal nexus with a Bipolar II Disorder" and that for years this illness went untreated. (Std. 1.2(e)(iv).) Wolf began treatment with Dr. Pakier in 2002. Dr. Pakier testified in the hearing below that Wolf's bipolar disorder caused him to minimize the significance of his law practice problems or simply overlook them while he was in a manic state. In a depressed state, his problems appeared to be overwhelming and incapable of resolution. Pakier testified that he thinks Wolf has improved and that Wolf's moods have stabilized due to medication. Dr. Pakier's testimony supports Wolf's assertion of a nexus between his mental illness and his misconduct.

However, we cannot attribute significant mitigative weight to Wolf's extreme emotional difficulties merely based on Dr. Pakier's testimony because Wolf did not provide " 'clear and convincing evidence that he . . . no longer suffers from such difficulties . . . .' [Citations.]" (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527.) Wolf relies on his commitment to and successful completion of the ADP in July 2010 to establish he has overcome the difficulties associated with his bipolar disorder. However, due to the stipulation of the parties to limit the evidence about Wolf's ADP participation and rehabilitation efforts (see footnote 1, *ante*), we find scant evidence in the record of the nature and scope of his rehabilitation. We are unable to ascertain if his successful completion of the ADP bears any relationship to the misconduct at

issue in these proceedings. Indeed, all we can discern from this record, including the judicially noticed records, is that Wolf's serious misconduct continued well after he began his participation in the Pilot Program in 2002 and even after he closed his solo practice in 2006. The findings of the ongoing misconduct in the present proceeding, which occurred while Wolf was in ADP and under court supervision, seriously call into question the effectiveness of his rehabilitative efforts in addressing his underlying emotional difficulties. (See Rules Proc. of State Bar, former rule 804.5(a) [subsequent misconduct constitutes grounds for termination from ADP].) Thus, we afford little weight in mitigation for Wolf's emotional difficulties.

V. LEVEL OF DISCIPLINE

The primary purpose of disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856-857.) We first consider the applicable standards in recommending the appropriate degree of discipline. (E.g., *Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) Although a number of standards apply to this case,[17] standards 1.7(b) and 2.2(a) are the most relevant and prescribe the most severe discipline. (Std. 1.6(a).) Standard 1.7(b) provides that an attorney who has two or more prior disciplines shall be disbarred unless the most compelling mitigating circumstances clearly predominate. Standard 2.2(a) calls for disbarment when an attorney willfully misappropriates entrusted funds unless the amount is insignificantly small or the most compelling mitigating circumstances clearly predominate.

Wolf misappropriated trust account funds over a 16-year period, adversely affecting multiple clients. Many of the misappropriations occurred while he was under the supervision of this court, either through the Pilot Program or ADP, and most involved a significant amount of

[17] Standard 2.3 applies to acts of moral turpitude and calls for suspension or disbarment. Standard 2.10 calls for reproval or suspension when an attorney fails to account or fails to promptly pay client funds.

money. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 deemed significant].) The mismanagement of his CTA resulted from the complete abdication of his responsibility to supervise his staff's handling of client funds and because, in his own words, he "stuck his head in the sand."

We are encouraged by Wolf's progress with his mental health issues. He has also made a significant positive change by closing his solo practice and ceding management of client funds to another attorney. But this evidence is not sufficient to persuade us that the long-standing and pervasive pattern of neglect of his fiduciary responsibilities to his clients will not recur. Given the magnitude of his misconduct, we find that Wolf's mitigation is outweighed by serious aggravation. On this record, we can find no reasonable basis to deviate from the disbarment recommendations of standards 1.7(b) and 2.2(a) and the relevant supporting case law. (See *Chang v. State Bar* (1989) 49 Cal.3d 114 [where attorney misappropriated $7,898.44, disbarment warranted because risk of further professional misconduct sufficiently high]; *McMorris v. State Bar* (1983) 35 Cal.3d 77, 85 [attorney's habitual disregard of client interests warrants disbarment].) We thus conclude that public protection will be best served if Wolf is disbarred.

VI. RECOMMENDATION

We recommend that Mervyn Hillard Wolf, State Bar number 41639, be disbarred and that his name be stricken from the roll of attorneys.

VII. RULE 9.20

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

VIII. COSTS

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

IX. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered Wolf's involuntary enrollment as an inactive member of the State Bar as required under section 6007, subdivision (c)(4). The order of involuntary inactive enrollment became effective on November 26, 2010, and Wolf has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.