PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **DRAGO CHARLES BARIC,** Member No. 105383 A Member of the State Bar.	)	No. **07-O-13120** **OPINION**

A State Bar Court hearing judge found respondent, Drago C. Baric, culpable of sixteen counts of misconduct in five separate matters and recommended, inter alia, actual suspension for one-year. Baric seeks review, arguing that the hearing judge's procedural rulings deprived him of a fair hearing and that the evidence did not support his culpability findings in each of the five matters. The State Bar urges us to affirm the hearing judge's decision and to adopt his discipline recommendations as "within the appropriate range of discipline."

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find clear and convincing evidence to support the hearing judge's culpability determinations. We adopt the hearing judge's discipline recommendation of one year of actual suspension as being consistent with the standards and the decisional law.

I. PROCEDURAL BACKGROUND AND CONTENTIONS

Baric was admitted to practice law in California in December 1982. He has no record of prior discipline.

On November 6, 2008, the State Bar commenced these proceedings when it filed a Notice of Disciplinary Charges (NDC) in five separate matters. In the aggregate, Baric was charged

with 19 counts of professional misconduct involving five clients, including multiple counts of failing to perform competently, to promptly refund unearned fees, to respond to client status inquiries and to cooperate in the investigation of this matter. He also was charged with mismanagement of his trust account.

Baric did not file a timely answer to the NDC, nor did he appear at the initial status conference in December 2008. He belatedly responded to the charges after the State Bar filed a motion for entry of default. He failed to appear again at a second status conference on January 28, 2009, despite a telephonic reminder from the State Bar's deputy trial counsel on January 6, 2009, and written notice of the conference served by the court on January 9, 2009. At the status conference, the hearing judge set the pretrial conference for June 30, 2009, ordered the parties to file pretrial statements no later than June 23, 2009, and set the trial date for July 7, 2009. On February 3, 2009, the hearing department served Baric and the State Bar with a written order confirming these dates.

Baric did not file a written pretrial statement as ordered. As a result, at the June 30, 2009, pretrial conference, the hearing judge issued an order precluding Baric from calling witnesses on his behalf or submitting documents into evidence pursuant to rule 211(f) of the Rules of Procedure of the State Bar.

At the beginning of trial, Baric and the State Bar filed a Joint Stipulation as to Facts and Admission of Documents, wherein Baric stipulated to many key facts as well as to the admissibility of the State Bar's exhibits.[1] The hearing judge denied Baric's request for relief from his earlier exclusion order and granted the State Bar's motion to dismiss count 16, alleging

[1]Since the exhibits were admitted without objection, we may consider hearsay statements contained in them for the truth of the matters asserted therein. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 523, fn. 32.) However, we have assigned our own weight to this evidence as required upon our de novo review.

moral turpitude. Baric testified in his own behalf as to culpability and mitigation, but the hearing judge found that his testimony "at times lacked credibility." We give great weight to the hearing judge's assessment of the credibility of witnesses. (Rules Proc. of State Bar, rule 305(a).)[2] The hearing judge filed his decision on December 2, 2009, finding culpability for 16 counts of misconduct. Baric filed a request for review on February 12, 2010.

Baric contends that the hearing judge abused his discretion in excluding his witnesses and exhibits. We conclude that the exclusionary order was neither arbitrary nor capricious (*In re Cortez* (1971) 6 Cal.3d 78, 85), nor did it exceed the bounds of reason. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) Indeed, under rule 211(f) of the Rules of Procedure of the State Bar, the hearing judge was expressly authorized to order the exclusion of the evidence since Baric failed to file a pretrial statement.[3] Accordingly, we reject Baric's claim of abuse of discretion. (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 37-39 [hearing judge did not abuse discretion by issuing sanction order prohibiting respondent from calling witnesses or introducing exhibits for failure to submit acceptable pretrial statement].)

Baric further argues that even if the hearing judge were entitled to exclude his witnesses in chief pursuant to rule 211(f) of the Rules of Procedure of the State Bar, the judge abused his discretion in excluding Baric's rebuttal and impeachment witnesses because under rule 1223(g) of the Rules of Practice of the State Bar Court, the pretrial statement does not require disclosure of those witnesses. The record reveals that, with one exception, Baric made no offer of proof for the witnesses he intended to call as rebuttal or impeachment witnesses. We thus have no basis on which to assess the harm caused him, if any, by the exclusion of these witnesses. Gerardo

[2]Further supporting the hearing judge's credibility assessment throughout the trial was Baric's inability to remember basic facts about his client communications.

[3]Rule 211(f) states: "Failure to file a pretrial statement in compliance with this rule may constitute grounds for such orders as the Court deems proper, including but not limited to the exclusion of evidence or witnesses."

Castillo was the only witness whose testimony was specifically offered to rebut the allegations that Robert Flores engaged Baric to represent his son, Robert Lindberg. As discussed below, due to lack of evidence, the hearing judge dismissed the charge of incompetency for Baric's alleged inadequate representation of Lindberg. Therefore, Baric has not demonstrated harm resulting from the exclusion of Castillo's testimony. Accordingly, we reject his claim of error on this ground.

Baric also contends that – after the close of trial, but while the matter was still under submission – the hearing judge applied for the position of State Bar Chief Trial Counsel, which created an "appearance of conflict" in this matter. However, Baric has offered no specific information showing lack of impartiality on the part of the hearing judge, nor did he challenge the judge prior to the filing of the decision. While his application for the Chief Trial Counsel position was pending, the hearing judge took a leave of absence. He did not file his decision until after he returned from his leave when he was advised that he had not been appointed to the Chief Trial Counsel position. Therefore, Baric's claim lacks merit, and we reject it.

Baric correctly argues that the hearing judge improperly allowed the telephonic testimony of a complaining witness, Curtis Higgins, over Baric's objection. The State Bar concedes this point on appeal. Accordingly, in determining culpability for counts 12, 13 and 14, we have not considered Higgins' testimony. Nevertheless, as we discuss below, the State Bar presented sufficient evidence, independent of Higgins' testimony, to establish Baric's culpability as charged in the Higgins matter.

II. CULPABILITY

A. THE GAMBOA-OSMA MATTER (COUNTS 1-5)

In May 2006, Deysy Gamboa-Osma hired Baric to represent her in a marriage dissolution action and paid him $1,000 in advanced fees. Two days later, Baric filed a superior court

petition to dissolve Gamboa-Osma's marriage. The superior court ordered Gamboa-Osma's spouse, Jose Tapia, to pay her $500 per month as spousal support.

In January 2007, Tapia's attorney contacted Baric with an offer to settle the case, which Baric communicated to Gamboa-Osma. She told him that she wanted to settle the matter quickly and would waive future spousal support payments if Tapia paid the past-due support and allowed her to keep her car.

Between January and March 2007, Gamboa-Osma made repeated telephone calls to Baric about the status of the case but he did not return her calls. When she stopped by Baric's office a few times, no one answered the door. During this same period, Tapia's counsel sent Baric four letters proposing a settlement offer and also sent a proposed judgment requiring Gamboa-Osma's signature. Baric failed to reply to these letters.

Gamboa-Osma's dissolution case was set for a mandatory settlement conference on June 6, 2007. Baric neither told his client about the settlement conference nor did he attend. However, he was in the courthouse for another matter on June 6th when Tapia's counsel saw him and asked him about the status of the settlement. Tapia's counsel then learned that Gamboa-Osma would settle the case if Tapia brought his past unpaid support current. The next day, frustrated by the delay, Gamboa-Osma spoke directly to Tapia and they agreed to settle the matter for $3,000.

On June 8, 2007, Tapia's counsel wrote to Baric requesting that Gamboa-Osma execute the settlement documents and enclosed a $3,000 check. Baric denied that he received the letter and check, although they were not returned to Tapia's attorney. The hearing judge found that Baric received them and we adopt this finding. Gamboa-Osma was unaware that the check had been sent to Baric. After considerable effort and with court assistance, she finally decided to substitute in for Baric in pro per. Gamboa-Osma was then able to settle the matter directly with

Tapia, who reissued the $3,000 settlement check.[4] Gamboa-Osma testified that she suffered harm in the form of stress over the considerable time and effort required of her to finally resolve this matter and that her case was prejudiced by Baric's inaction.

The hearing judge correctly found that Baric willfully violated rule 3-110(A) of the Rules of Professional Conduct[5] by failing repeatedly to communicate his client's settlement position to opposing counsel over an extended period of time, failing to reply to opposing counsel's letters and failing to give Gamboa-Osma the $3,000 settlement check and the judgment for her to sign to resolve the dissolution. The hearing judge also correctly found that Baric willfully violated: (1) section 6068, subdivision (m),[6] by failing to respond to Gamboa-Osma's many requests for status updates; (2) rule 4-100(B)(1) by failing to notify her of the receipt of Tapia's $3,000 settlement check; (3) section 6068, subdivision (m), by failing to inform her of the June 7, 2007 settlement conference and that he had received a proposed judgment for her signature; (4) and section 6068, subdivision (i), by failing to cooperate with the State Bar investigation by not replying to the investigator's inquiry letter, which had been mailed to Baric at his official address and was not returned to the State Bar.

Baric's claim of a lack of clear and convincing evidence to support the hearing judge's findings is clearly at odds with the record in this matter. We accordingly adopt the hearing judge's culpability determinations as fully supported by the evidence.

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[4]The first $3,000 check sent to Baric was never located.

[5]Unless otherwise noted, all further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

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

B. MISUSE OF TRUST ACCOUNT (COUNTS 6-8)

From late January 2007 to the end of May 2007, Baric deposited $5,190 of personal funds into his client trust account (CTA) at the Bank of America. These deposits were in the form of eight checks from Baric's spouse, Susan. From January 22, 2007, to June 25, 2007, he issued 47 checks from this CTA to pay for personal expenses, totaling $44,205. All but eight of the checks were payable to Susan Baric.[7]

On October 19, 2007, a State Bar investigator followed up on a report from the bank about the insufficient funds activity in Baric's CTA and wrote to him requesting that he reply to specific charges of mismanagement of the CTA. This letter was mailed to Baric at his official address and was not returned to the State Bar. Baric did not reply.

Baric stipulated to all of the substantive facts regarding his misuse of his trust account, except for two facts that concerned only his receipt of the State Bar investigator's letter about the misuse and his own failure to reply to the investigator.

The hearing judge found that Baric willfully violated rule 4-100(A) by commingling personal funds with trust funds and by repeatedly using his trust account to pay personal expenses. The judge also found that Baric willfully violated section 6068, subdivision (i), by failing to reply to the State Bar investigator's letter. Baric contends that he did not receive the investigator's letter and his failure to reply was not willful. However, a copy of the October 19, 2007, letter in evidence shows that the investigator sent it to Baric at his official address, and the State Bar investigator testified that the letter was not returned. Baric stipulated that he did not

[7]The record does not establish Susan Baric's role, if any, in Baric's office or the reason these personal funds were deposited into his CTA. Nor does it reveal the purpose of the CTA disbursements to her. The hearing judge found that Baric disbursed $44,650 for personal reasons, although the stipulation established this amount as $44,205. We consider this to be a de minimus discrepancy.

reply to that letter. We therefore adopt the hearing judge's culpability findings in this matter, including the willful violation of section 6068, subdivision (i).

C. THE MILLER MATTER (COUNTS 9-11)

Leonard and Maria Miller owned an apartment building, and in late June 2007, a tenant was delinquent in paying rent. The Millers retained Baric to represent them in an unlawful detainer action and paid an advanced fee of $800. By early July 2007, the Millers had resolved this matter without Baric's help. He provided the Millers no legal services of any value.

On July 12, 2007, the Millers' son, an attorney, wrote to Baric asking him to contact the Millers and to return the $800 fee. Baric replied a week later, explaining that he had been out of town for two weeks and his secretary had been out due to illness. Yet he did not refund the fee until July 3, 2009 – four days before Baric's trial in this disciplinary proceeding. Baric never provided an accounting of the funds, even though he held the $800 for two years.

In January and February 2008, a State Bar investigator sent Baric letters asking him to respond to questions about the Miller matter. On February 22 and 29, 2008, Baric asked for successive one-week extensions to reply to the letters. In Baric's February 22 letter, he advised that the $800 was not a retainer but a flat fee. However, Baric did not provide any further information about the nature of the agreed upon services to be performed for the Millers or whether he intended to return any portion of the fee.

Baric stipulated to most of the material facts underlying culpability, except for those supporting his failure to reply to the State Bar investigator's inquiries.

Baric claims that his failure to refund the unearned fees for two years and his failure to account to the Millers was not willful because there was no evidence showing that he had the Millers' contact information prior to July 3, 2009. We reject his argument as frivolous at best and disingenuous at worst. Baric had the Millers' contact information when they hired him in

June 2007 because their address was listed on the $800 check used to pay his fee. Moreover, in July 2007, the Millers' son provided his parents' telephone number and listed his own telephone number and work address when he e-mailed Baric. Baric responded to his e-mail, confirming he had received it. The hearing judge correctly found that Baric willfully violated rule 3-700 (D)(2) by failing to promptly refund unearned fees. Baric also violated rule 4-100(B)(3) by failing to account to the Millers during the two-year period he retained the unearned fee. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [culpability established for failure to account despite lack of formal demand for accounting].) Finally, Baric is culpable of willfully violating section 6068, subdivision (i), by failing to provide a complete response to the State Bar investigator's letter. We reject Baric's claim that he believed he had adequately responded. His response was minimal and addressed only two of the 11 issues raised in the letter. Baric never replied to the serious and substantive concerns of the investigator, including the failure to refund the unearned fees promptly and the failure to account to the Millers.

We adopt the hearing judge's findings as they are supported by clear and convincing evidence.

D. THE HIGGINS MATTER (COUNTS 12-14)

On about September 4, 2007, Curtis Higgins hired Baric to bring an unlawful detainer action as soon as possible to evict a tenant who had previously been served with a 60-day notice. Higgins paid a $500 advanced fee and told Baric that he would be away on a 10-day vacation. Upon his return, Higgins left telephone messages for Baric seeking status updates. Baric never filed the unlawful detainer action and failed to respond to Higgins's inquiries. Frustrated with Baric's inaction, in November 2007, Higgins hired another attorney with extensive unlawful detainer experience. The new attorney, Dominic Trutanich, filed the unlawful detainer complaint the day after he was hired by Higgins.

On December 3, 2007, Higgins sent a letter to Baric complaining that Baric had accepted the $500 fee but had not filed the unlawful detainer action. Higgins further complained that he had lost an additional $1,000 because the tenant continued to reside in the premises for two months without paying the $500 rent. He also informed Baric that he was planning to file a complaint with the State Bar, but was delaying doing so at the request of his lawyer, Mr. Trutanich. On December 7, 2007, Baric refunded Higgins's $500 fee.

In May and June 2008, a State Bar investigator sent two letters about the Higgins matter to Baric at his address of record, requesting a reply by June 11, 2008. Baric received these letters but failed to reply to either of them.

Based on this record,[8] we adopt the hearing judge's finding that Baric willfully violated rule 3-110(A) by failing to file the unlawful detainer action Higgins had requested and providing no legal services of any value. We reject as not credible Baric's testimony that he had taken preliminary steps before filing the action, including ascertaining whether the tenant still occupied the premises and whether or not the unit rented to the tenant was a legal unit that could be rented. His explanations were not credible and, in any event, Higgins had not authorized Baric to take these steps. Higgins's only instruction was that Baric file the action as soon as possible. We observe that Higgins's new attorney was able to serve the complaint on the tenant the day after he was hired. We also adopt the judge's findings that Baric willfully violated section 6068, subdivision (m), by failing to reply to Higgins's many phone calls, and section 6068, subdivision (i), by failing to respond to the two letters from the State Bar investigator.

[8]As noted *ante*, in determining culpability, we have only considered evidence independent of Higgins's testimony.

E. THE FLORES/LINDBERG MATTER (COUNTS 15-19)

Robert Lindberg was incarcerated for a felony conviction. His father, Robert Flores, hired Baric on September 1, 2006, to represent Lindberg before the California Court of Appeal. Baric agreed to this representation for a fee of $10,000. Between September 6 and October 15, 2006, Flores gave Baric $6,000 as partial payment. Baric told Flores that he would promptly notify Lindberg about his representation. However, on November 1, 2006, the Court of Appeal appointed Alan C. Stern to represent Lindberg.

In early January 2007, Baric wrote to Stern to inform him that he had been retained to represent Lindberg. A few days later, Stern called Baric and told him that he would send Baric his case file as soon as Baric obtained a court order relieving Stern as counsel for Lindberg. Baric never obtained a court order or initiated any substitution to relieve Stern of responsibility in the case. The docket of the criminal appeal shows no appearance by Baric nor any motion or filing in the court by him. Since Stern remained counsel of record for Lindberg, he filed opening, supplemental, and reply briefs in December 2006, March 2007, and September 2007, respectively. Before oral argument, Stern requested to be relieved of his appointment. The Court of Appeal granted his request and appointed counsel with the California Appellate Project (CAP) to represent Lindberg for the rest of the appeal process. Baric claims that he wrote two letters to Lindberg without receiving a reply. He never visited Lindberg in custody. When asked if he did any work of value for Lindberg, Baric testified that he "attempted" to do so by sending Lindberg the two letters and communicating with appointed counsel Stern.

In October 2007, Flores sued Baric in small claims court seeking the refund of the $6,000 fee since Baric provided no service of value to Lindberg. In April 2008, judgment was entered against Baric for $6,000 plus $75 in costs, which Baric did not pay. Finally, on July 7, 2009, the first day of the trial in this disciplinary proceeding, Baric refunded $6,000 to Flores.

In May 2008, a State Bar investigator wrote to Baric asking that he respond to certain questions about the Flores/Lindberg matter and provide specified documentation. The response was due on May 30, 2008. A second letter was sent on June 4, 2008, requesting the same information. Baric received the May 2008 letter, although the June letter was returned. Baric failed to reply to the investigator.

The hearing judge found no clear and convincing evidence to establish that Baric failed to competently represent Lindberg in violation of rule 3-110(A). We agree as the State Bar failed to prove the existence of an attorney/client relationship between Baric and Lindberg. Even though Baric performed no services of value to Lindberg, Lindberg's interests during the appeal were entirely represented by Stern and subsequently by appointed counsel with the CAP. There is no evidence that Lindberg retained Baric as his attorney or even knew of his existence or of his father's efforts to hire Baric. However, the hearing judge correctly found that Baric willfully failed to promptly refund the $6,000 of unearned fees in violation of rule 3-700(D)(2), and willfully failed to cooperate in the State Bar investigation, thereby violating section 6068, subdivision (i).

We reject Baric's argument that he did not willfully violate rule 3-700(D)(2) because he returned Flores's $6,000 at trial. The rule requires that Baric *promptly* refund any unearned fees. Clearly, he did not satisfy his professional responsibilities under the rule because he refunded the fee nearly two years after the fact and then only on the eve of his discipline trial and after Flores received a judgment from small claims court. Baric also argues that there was insufficient evidence that he received the State Bar investigator's letters. The testimony of the investigator at trial and the admission of the May 16, 2008 letter addressed to Baric at his official address convincingly rebut this argument.

III. DISCIPLINE DISCUSSION

A. MITIGATION

We adopt as evidence in mitigation the finding of the hearing judge that Baric had no prior discipline in 24 years of practice. We agree that it is a significant mitigating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i);[9] *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225.)

We also give considerable mitigating credit to Baric's belated but important cooperation in this proceeding. At trial, he entered into a comprehensive stipulation as to facts and admission of documents, many of which were material to the culpability findings. (Std. 1.2(e)(v); *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable].)

Baric testified that he regularly performed services as a pro tem judge for the courts in Long Beach, Torrance, San Pedro, and once on Catalina Island, and had done so for many years. We accord some mitigative consideration for his efforts, as did the hearing judge. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126.) We also agree with the judge that Baric is not entitled to additional weight in mitigation for his pro bono work on behalf of clients. His very brief testimonial description of his services did not constitute clear and convincing evidence, which he was required to produce. (Std. 1.2(e).)

B. AGGRAVATION

As to factors in aggravation, we adopt the hearing judge's finding that Baric's misconduct involved multiple acts and was directed toward multiple clients. (Std. 1.2(b)(ii).)

We find two additional aggravating factors: (1) Gamboa-Osma suffered significant harm from Baric's acts due to delay and the stress arising from her efforts to represent herself to

[9] Unless otherwise noted, all further references to "standard(s)" are to this source.

finalize her own marriage dissolution (std. 1.2 (b)(iv)); and (2) Baric demonstrated indifference toward rectifying his misconduct by failing to repay Flores the $6,000 in unearned fees for more than a year after Flores obtained a judgment against him. (Std. 1.2(b)(v).)

IV. DEGREE OF DISCIPLINE

In determining the appropriate level of discipline, we look to the applicable standards and case law for guidance. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Although the standards are not binding, they are to be afforded great weight because "'they promote the consistent and uniform application of disciplinary measures.' [Citation.]" (*In re Silverton* (2005) 36 Cal.4th 81, 91.) The applicable standards are: 2.2(b) based on Baric's willful violation of rule 4-100(A) for the misuse of his CTA; 2.6(a) based on his many violations of section 6068, subdivisions (i) and (m); and 2.10 based on his willful violations of rule 3-110(A) and 3-700(D)(2) arising from his competency violations and failures to promptly refund unearned fees. These standards suggest a range of discipline, from reproval under standard 2.10 to possible disbarment under standard 2.6(a), depending on the gravity of the offense or the harm, if any, to the victim(s). The sanction to be imposed shall be the most severe of the different applicable standards. (Std. 1.6(a).)

Given the wide range of discipline suggested by the standards, we look to similar cases for guidance. In particular, we consider cases involving the repeated failure to competently perform services as offering relevant guidance. The failure to perform services for four or more clients ordinarily results in actual suspensions from one to two years, depending on whether other misconduct is involved or if the attorney has a prior record of discipline. (*Martin v. State Bar* (1978) 20 Cal.3d 717 [one-year actual suspension where attorney had no priors but failed to perform in six client matters, plus failed to communicate to clients and knowingly misrepresented case status constituting serious pattern of misconduct]; *In the Matter of Lantz*

(Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126 [one-year actual suspension for misconduct in four client matters involving reckless incompetence, failure to promptly return unearned fees, withholding illegal fee and misappropriation of funds, aggravated by multiple acts, significant client harm, overreaching and bad faith, indifference and lack of candor, but mitigated by seven years of discipline-free practice and strong character evidence]; *Bernstein v. State Bar* (1990) 50 Cal.3d 221 [two years' actual suspension and until restitution paid due to attorney's failure to perform, respond to clients or return files and refund unearned fees to five clients in three separate matters, aggravated by prior discipline, failure to cooperate, lack of candor and indifference]; *Pineda v. State* Bar (1989) 49 Cal.3d 753 [two years' actual suspension for misconduct in seven client matters, including failure to communicate, perform, forward clients' files, and refund unearned fees, misrepresentations to client and opposing party and misappropriation of client funds, aggravated by "common pattern" of client abandonment and mitigated by remorse, cooperation and law office reforms].)

Reviewing the key findings in this case, we note the serious and repetitive nature of Baric's misconduct. In three client matters, Baric willfully failed repeatedly to perform legal services competently. In three matters, he also failed to promptly refund to clients advanced fees he had not earned. In one matter, he did not account to the client for services to justify retaining the client's fees for two years. In another client matter, he failed to report the receipt of trust funds and in several matters, he failed to respond to client inquiries. In addition, he mismanaged his CTA repeatedly in 2007, by commingling personal and trust funds and by using the CTA to pay personal expenses. Finally, in all five matters, Baric failed to cooperate in the State Bar investigations.

The misconduct here was wide-ranging, and, if it were not for Baric's 24 years of practice without discipline, his cooperation in the trial of this matter and his community service,

a greater level of discipline would be warranted than that recommended by the hearing judge. However, given the decisional law and the standards, we adopt the hearing judge's discipline recommendations, including a one-year actual suspension.

V. RECOMMENDATION

We recommend that respondent, Drago Charles Baric, be suspended from the practice of law in California for two years, that execution of that suspension be stayed, and that he be placed on probation for three years, on the following conditions:

1. He must be suspended from the practice of law for the first year of the period of probation.

2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Baric must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

6. Within one year of the effective date of the discipline herein, Baric must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and Baric shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School.

7. The period of probation shall commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

We also recommend that Baric be required to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation.

We also recommend that Baric be ordered to comply with 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, from the effective date of the Supreme Court order. Failure to do so, may result in disbarment or suspension.

Finally, we 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 accordance with section 6140.7 of that code and as a money judgment.

EPSTEIN, J.

We concur:

REMKE, P. J.

PURCELL, J.