

Filed August 13, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-16351 (11-O-18737)
	)	
LINDA CAROLINE JOVICH,	)	OPINION
	)	
A Member of the State Bar, No. 170900.	)	
_____	)	

I. SUMMARY

Linda Caroline Jovich was found culpable of seven counts of misconduct in two client matters. In the first matter, the hearing judge found that she failed to act competently, failed to communicate, improperly withdrew from employment, and failed to cooperate with the State Bar. In the second matter, the hearing judge determined that she committed three client trust account (CTA) violations: (1) failure to maintain client funds in trust; (2) misappropriation by gross negligence; and (2) commingling. At trial, the State Bar requested a three-year suspension, restitution, and an order that Jovich establish her rehabilitation and fitness to practice law before her reinstatement. The hearing judge gave significant weight to Jovich's 18 years of discipline-free practice and her emotional difficulties. The judge recommended that she be suspended for 18 months and until she pays restitution, but did not require a reinstatement hearing.

The Office of the Chief Trial Counsel (State Bar) seeks review. It argues that Jovich's misappropriation was intentional, not negligent, and that the hearing judge improperly assigned mitigation credit for emotional problems. The State Bar renews its request for discipline including a three-year suspension and, alternatively, asks for disbarment if we find the misappropriation was intentional. Jovich did not appeal but, in response, admits the CTA

violations and denies culpability only for incompetence and improperly withdrawing from employment. She requests discipline no greater than the hearing judge recommended.

Upon independent review (California Rules of Court, rule 9.12), we find less culpability due to duplicative counts and less aggravation and mitigation than the hearing judge found. We agree with the hearing judge that the misappropriation was due to Jovich's gross negligence. But significantly, Jovich has never properly resolved her clients' cases or paid restitution to them. We therefore recommend increasing the discipline proposed by the hearing judge to include a three-year actual suspension, as requested by the State Bar. We also recommend that Jovich pay restitution and prove her rehabilitation and fitness to practice law before she is reinstated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(2)(iv).)¹

II. CASE NUMBER 11-O-16351 – MAGLEBY MATTER

A. FACTUAL BACKGROUND

In September 2006, Beryl Magleby retained Jovich to represent her in a personal injury matter. Magleby suffered a shoulder injury when she tripped over a hose at Lumbermen's, a home improvement store. In June 2008, Jovich filed a civil complaint against the store on Magleby's behalf.

During the litigation, Jovich failed to respond to discovery requests. Philip Emmons, defense counsel for Lumbermen's, served three discovery requests on Jovich from June through October 2009. Jovich failed to respond to each. Emmons filed a motion to compel and requested \$518.50 in sanctions. The superior court granted the unopposed motion. At her discipline trial, Jovich testified she did not respond to Emmons' discovery requests because she had been overwhelmed with personal problems, namely, the death of her pets, her husband's extramarital affair, her mother's back injury and Alzheimer's disease, and her own panic attacks.

¹ All further references to standards are to this source.

In early January 2010, the parties settled the *Lumbermen's* lawsuit for \$7,000. The case was continued to June 2010 to allow Jovich time to resolve Magleby's outstanding Medicare liens. Emmons would not release the settlement check until he knew the lien amounts by Medicare and the names of any supplemental insurance carriers. When Jovich failed to appear at the June hearing, the superior court scheduled an Order to Show Cause (OSC) hearing. Again, Jovich did not appear. The court dismissed the case without prejudice.²

Magleby and Jovich provided conflicting testimony about their contact after the settlement. Jovich claimed that she repeatedly asked Magleby for information about her Medicare and supplemental insurance, but received none. She produced three letters to Magleby from 2010 and one letter from 2011, all requesting the insurance information.

Magleby testified that she never received the letters and called Jovich several times between April and August 2010. She left messages inquiring about the status of her case but Jovich did not return her calls. Magleby explained that she recorded the times and dates of her calls on a calendar, and would have provided the insurance information if Jovich had asked because she wanted her settlement money. The hearing judge found Magleby's testimony credible.³

Eventually, Magleby filed a complaint with the State Bar. On January 11, 2012, an investigator asked Jovich to supply a written response. When she failed to do so by January 24,

² Jovich stipulated that "as of April 6, 2012 the *Lumbermens* [sic] settlement has not been finalized." Jovich never received the \$7,000 settlement check.

³ The record does not establish any reason why, by the time of the 2012 disciplinary trial, Jovich had not resolved the medical liens, finalized the settlement, or disbursed Magleby's portion of the settlement funds. The State Bar provided evidence of some payment when it filed a "Notification of Partial Payment Made in Complainant Beryl Magleby's Personal Injury Settlement" on May 8, 2013, a week before oral argument. The notice stated that Traveler's Insurance Company paid \$604.38 to Medicare on April 19, 2013, on the personal injury settlement of Beryl Magleby.

2012, the investigator emailed a second request. On February 1, 2012, Jovich left a message for the investigator that she was preparing a response, but ultimately never submitted one.

B. CULPABILITY

Count 1A – Failure to Perform with Competence (Rules Prof. Conduct, rule 3-110(A)⁴)

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The State Bar alleged that Jovich acted incompetently because she failed to respond to discovery, failed to finalize the settlement, and allowed the case to be dismissed. The hearing judge found her culpable. We agree.

“Under the State Bar Act and Rules of Professional Conduct clients have the right to expect that attorneys will reasonably supervise the progress of cases for which they accept responsibility. [Citations.]” (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 612.) Jovich did not respond to discovery, did not appear at the OSC re dismissal, and has yet to finalize the settlement or distribute any money to Magleby. These facts establish Jovich did not properly handle Magleby’s case.

In her defense, Jovich argues that Magleby prevented her from finalizing the settlement by not providing the Medicare information she had requested. But the hearing judge found that Jovich never asked for this information based on Magleby’s credible testimony. We give great weight to this finding (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280), and reject Jovich’s argument.

⁴ All further references to rules are to this source unless otherwise noted.

Count 1B – Failure to Respond to Client Inquiries (Bus. & Prof. Code, § 6068, subd. (m))⁵

Section 6068, subdivision (m), requires an attorney to “respond promptly to reasonable status inquiries of clients . . . in matters with regard to which the attorney has agreed to provide legal services.” The hearing judge found, and Jovich concedes, that she is culpable for not responding to Magleby’s requests for information about the status of the case. We agree.

Count 1C – Improper Withdrawal (Rule 3-700(A)(2))

Rule 3-700(A)(2) provides in relevant part: “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. . . .” The hearing judge found Jovich culpable because she did not communicate with Magleby and failed to finalize her settlement. We agree, but dismiss this charge with prejudice since the facts upon which it is based duplicate those that support culpability for counts 1A (performing incompetently) and 1B (failing to respond to client inquiries). (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [duplicate allegations of misconduct in State Bar proceedings may be dismissed as they serve little, if any, purpose].)

Count 1D – Failure to Cooperate (§ 6068, subd. (i))

Section 6068, subdivision (i), requires an attorney to “cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself.” Jovich admits that she violated this section by failing to respond to the State Bar investigator. The hearing judge found her culpable and we adopt that finding. (See *Bach v. State Bar* (1991) 52 Cal.3d 1201, 1208 [in absence of credible explanation, failure to respond to two successive investigator’s letters violated § 6068, subd. (i)].)⁶

⁵ All further references to sections are to this source.

⁶ The hearing judge found insufficient evidence to support Count 1E (Moral Turpitude – § 6106), and dismissed it with prejudice. The State Bar does not contest this dismissal, and we adopt it.

III. CASE NUMBER 11-O-18737 – CHAVEZ MATTER

A. FACTUAL BACKGROUND

In January 2006, Sylvia Chavez retained Jovich to pursue a personal injury claim on a contingency fee basis. Chavez had been a passenger in a car that was rear-ended by another vehicle. The accident aggravated Chavez's pre-existing neck injury.

Jovich settled the case for \$12,000. On April 15, 2010, the defendant's insurance carrier issued the settlement check to Sylvia Chavez and Law Office of Linda C. Jovich. Jovich received the check in May 2010, but delayed depositing it into her CTA until August 2010 because she wanted to first determine the amount of Chavez's Medi-Cal lien. In July 2010, Jovich paid Chavez an estimated partial settlement of \$2,000, using legal fees that she had earned in other cases but had not withdrawn from her CTA.

Under the contingency fee agreement, Jovich was required to, but did not, maintain at least \$2,994.88 in her CTA for Chavez.⁷ By April 15, 2011, her CTA balance dipped to a low of \$220.46, making the misappropriation \$2,774.42. Jovich stipulated to the misappropriation.⁸ She also admitted she failed to properly monitor her CTA but claimed that it was due to personal problems. After the trust account dipped, Jovich testified that she deposited \$1,000 or \$2,000 in personal funds "just to cover things to make sure that there was enough money in there for things to get paid, for clients, for Ms. Chavez, for anything." By the time of her discipline trial in June

⁷ This amount is calculated under Jovich's fee agreement as follows: \$12,000 less \$4,800 as Jovich's 40% contingency fee, less the \$2,000 advance paid from Jovich's personal funds, less \$1,833.09 for costs, less \$372.03 in liens paid. The hearing judge miscalculated the amount to be \$3,728.12.

⁸ The stipulation states that "for a period of time from late March 2011 to April 19, 2011, the balance in her [Jovich's] client trust account was below the amount that was required to be held in trust for the payment of liens in Ms. Chavez's matter and for the payment of the balance of the settlement funds to which Ms. Chavez was entitled to receive."

2012, Jovich had not attempted to pay or compromise the Medi-Cal lien, nor had she paid Chavez the amount she misappropriated.

B. CULPABILITY

Count 2B – Moral Turpitude – Misappropriation (§ 6106)⁹

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar alleged that Jovich committed an act of moral turpitude because she “either intentionally or with gross negligence misappropriated Chavez’s funds for her own use and benefit.” Jovich stipulated that she “misappropriated a portion of the settlement funds in the Chavez matter,” but claimed it was due to negligence in properly monitoring her CTA.

The hearing judge found Jovich culpable of misappropriation by gross negligence for two reasons. First, Jovich was coping with personal problems at the time of the misconduct that affected her ability to manage her CTA. Second, the fact that Jovich had received, but not deposited, the settlement check was “unlike a situation where the settlement check was deposited in a business account and the funds used for her personal benefit.”

The State Bar argues that Jovich intentionally misappropriated the money but we find no clear and convincing evidence to support this claim.¹⁰ The record establishes that although Jovich paid Chavez \$2,000 as a partial settlement, she failed to: (1) timely deposit the settlement check into her CTA for safekeeping; (2) retain in her CTA the settlement funds that she owed Chavez; (3) monitor her CTA, and (4) distribute the appropriate amount of settlement funds due to Chavez. Based on these facts, Jovich violated her “personal obligation of reasonable care to

⁹ In the Chavez matter, we consider Count 2B (moral turpitude) first since we find Count 2A (failure to maintain trust funds) to be duplicative.

¹⁰ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

comply with the critically important rules for the safekeeping and disposition of client funds. [Citations.]” (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.) Given Jovich’s reckless oversight of her CTA, we find her culpable of misappropriation by gross negligence in violation of section 6106. (See *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude finding proper for gross carelessness in failing to maintain trust account].)

Count 2A – Failure to Maintain Client Funds in Trust (Rule 4-100(A))

Rule 4-100(A) requires that “funds received or held for the benefit of clients” shall be deposited in a CTA. Jovich acknowledged she violated this rule, and the hearing judge correctly found her culpable. For discipline purposes, however, we do not consider her culpability because the underlying misconduct – misappropriation by gross negligence – was addressed in Count 2B (moral turpitude – misappropriation). (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) violation when same misconduct addressed by § 6106].)

Count 2C – Commingling Personal Funds in CTA (Rule 4-100(A))

The hearing judge found that Jovich commingled funds in violation of rule 4-100(A) when she advanced \$2,000 to Chavez from personal money she was improperly holding in her CTA. Jovich does not contest this finding, and we adopt it.

IV. AGGRAVATION AND MITIGATION

The standards provide that the party offering aggravation or mitigation evidence bears the burden of proof. The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) Jovich has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. THREE FACTORS IN AGGRAVATION

The hearing judge found five aggravating factors: (1) multiple acts; (2) misconduct surrounded by concealment; (3) significant client harm; (4) indifference; and (5) lack of candor. We assign aggravation only to the first three factors.

1. Multiple Acts of Misconduct (Std. 1.2(b)(ii))

Jovich committed five ethical violations in two client matters. Her misconduct began in 2009 in the *Lumbermen's* lawsuit and continued to 2012 when, at the time of her disciplinary trial, she still had not concluded her clients' cases. Jovich does not dispute this aggravating factor, and we assign it moderate weight.

2. Misconduct Surrounded by Concealment (Std. 1.2(b)(iii))

Standard 1.2(b)(iii) provides for aggravation if an attorney's misconduct is surrounded by concealment. The hearing judge found Jovich's misconduct in the Chavez matter was surrounded by concealment because she submitted a false accounting to the State Bar. We agree.

Jovich submitted an accounting to the State Bar stating that she paid \$1,118.89, as costs advanced, to ABI, a document company that gathered information about Chavez's medical liens. A representative from ABI credibly testified that Jovich paid only two of eight invoices – for \$72 and for \$300.03. ABI sent Jovich a fax regarding payment but she did not respond. ABI then submitted the invoices to a collection company which reported back that it “could not collect.” Jovich testified that she has now paid the ABI invoices. She also testified that when she submitted the accounting to the State Bar, she had not paid those invoices, although she mistakenly believed she had. The hearing judge found her testimony “disingenuous.” We give great weight to this finding. (*Prantil v. State Bar* (1979) 23 Cal.3d 243, 246 [judge who observed witness testify in best position to determine credibility].) At a minimum, Jovich should

have verified the payments. Her failure to do so resulted in the false accounting to the State Bar, which we consider as a significant aggravating factor.

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

The hearing judge found that Jovich caused harm to the public, her two clients, and the administration of justice. We find no evidence of harm to the public or the administration of justice, but agree the State Bar proved that Magleby and Chavez were significantly harmed.

The settlements in both cases were designed to compensate the clients for their serious personal injuries. Magleby suffered a shoulder injury and Chavez suffered aggravation of her prior neck injury. Chavez was on Medi-Cal and told Jovich she was worried that at least one physician might seek payment from her. Both clients were treated by medical providers who established liens on their settlement funds. In the end, Jovich did not receive or distribute any settlement money to Magleby and made only a partial payment to Chavez.

Generally, a mere failure to promptly disburse client funds does not necessarily establish *significant* client harm in aggravation. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 519-520 [loss of \$2,000 for six weeks is monetary loss albeit not grievous and \$750 loss for two years is genuine monetary injury although not severe].) But since the settlements here were intended to compensate Magleby and Chavez for serious personal injuries, Jovich's failure to promptly distribute them is particularly harmful. (See *Bates v. State Bar, supra*, 51 Cal.3d at pp. 1060-1061 [misappropriation of \$1,229.75 of personal injury settlement "was especially harmful" to client because amount significant and meant to reimburse for personal injuries]; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 413 [significant client harm for six-month delay in distributing \$5,618.25 in medical malpractice settlement proceeds].) We assign significant aggravation for the financial harm to Magleby and Chavez.

4. No Aggravation for Indifference Toward Rectification/Atonement (Std. 1.2(b)(v))

The hearing judge found that Jovich demonstrated indifference because she failed to finalize her clients' cases and, in her discipline proceedings, "she did not provide discovery responses or the back-up information for the costs she claimed." We have already considered most of these facts to prove Jovich's culpability in Count 1A (failing to perform) and her concealment as aggravation under standard 1.2(b)(iii). Additionally, the hearing judge addressed her failure to provide discovery responses with a sanctions order.¹¹ We do not rely on the same facts to prove indifference. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual finding used for culpability, improper to consider in aggravation].) Also, Jovich has expressed some remorse for her misconduct and stipulated to facts establishing her culpability. While this is insufficient evidence to support a finding of remorse in mitigation, it is enough to negate a finding of indifference in aggravation.

5. No Aggravation for Lack of Candor (Std. 1.2(b)(vi))

The hearing judge found Jovich lacked candor when she testified that: (1) she could not obtain Magleby's Medicare number; (2) she could not obtain Chavez's Medi-Cal number; and (3) she thought she paid the ABI liens (invoices) in the Chavez matter. We do not agree.

As to the first two statements, the hearing judge found only that Jovich's testimony was not "credible" or "believable," given other evidence to the contrary. But there is a distinction between credibility and candor. If the witness's testimony is not believable, it lacks credibility. If the witness lies, the testimony lacks candor. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar. Ct. Rptr. 269, 282.) Although we assign great weight to the hearing judge's candor and credibility findings, a lack of candor must be proved by clear and convincing evidence. (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 708.) This record does not clearly and

¹¹ The hearing judge sanctioned Jovich for not providing discovery responses by prohibiting her from introducing documentary evidence or witness testimony other than her own.

convincingly establish, nor did the hearing judge expressly find, that Jovich lied in her testimony regarding her efforts to obtain insurance information from her clients. (See *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [insufficient evidence of bad faith or dishonesty even where respondent's testimony was not credible].) As to Jovich's testimony that she thought she paid the ABI invoices, we have already assigned aggravation as concealment for her false accounting to the State Bar. (Std. 1.2(b)(iii).)

B. ONE FACTOR IN MITIGATION

The hearing judge found two factors in mitigation: no prior discipline and emotional difficulties. We assign nominal mitigating credit only to Jovich's discipline-free record.

1. No Prior Record of Discipline (Std. 1.2(e)(i))

Jovich practiced law for 18 years before she committed misconduct. Standard 1.2(e)(i) provides mitigation credit for a lengthy practice without discipline where the present misconduct is not serious. When the misconduct is serious, however, a discipline-free record is most relevant when the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.)

Jovich's overall misconduct in two client matters, including an act of moral turpitude by misappropriation, is serious. Given her ongoing failure to resolve her clients' cases, we find her misconduct is not aberrational such that a less severe discipline will adequately protect the public. Therefore, we assign very limited weight to her discipline-free record.

2. No Mitigation for Emotional Difficulties (Std. 1.2(e)(iv))

The hearing judge considered Jovich's emotional difficulties in mitigation. To receive mitigating credit under standard 1.2(e)(iv), an attorney who suffers from extreme emotional difficulties at the time of the misconduct must establish by expert testimony that (1) the difficulties were directly responsible for the misconduct, and (2) the attorney no longer suffers

from such difficulties. The State Bar argues that no credit should be assigned because Jovich did not prove this factor in mitigation. We agree.

Jovich testified that she was under extraordinary personal stress at the time of her misconduct, which her therapist diagnosed as post-traumatic stress disorder. Although no expert testified, the hearing judge accepted this un rebutted evidence, and correctly concluded that Jovich “engaged in misconduct at a time when she was coping with her mother’s failing health and her husband’s extramarital affair.” (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [Supreme Court considered lay testimony of emotional problems as mitigation].)

However, Jovich did not prove that she is fully rehabilitated. She offered only her own general testimony that “[t]hings have gotten much better,” although “[e]very once in a while, I still do have issues But now, I’m getting more on top of things.” This testimony falls far short of proving full rehabilitation.

V. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession and to maintain high professional standards for attorneys. (Std. 1.3.) The Supreme Court instructs us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We give them great weight to promote consistency (*In re Silverton* (2005) 36 Cal.4th 81, 91), but are not required to follow them in a “talismanic fashion.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) While many standards apply here, we focus on standard 2.2(a) because it directly addresses the most serious charge before us – willful misappropriation.¹²

¹² The applicable standards provide for discipline from reproof to disbarment: 1.6 (where multiple sanctions apply, most severe shall be imposed); 2.2(a) (disbarment for willful misappropriation of entrusted funds unless most compelling mitigation clearly predominates); 2.2(b) (violation of rule 4-100 shall result in minimum 90-day actual suspension); 2.3 (committing act involving moral turpitude shall result in actual suspension or disbarment)

Standard 2.2(a) calls for disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate. Jovich misappropriated \$2,774.42, a significant amount (*Lawhorn v. State Bar, supra*, 43 Cal.3d at pp. 1361, 1368 [\$1,355.75 is significant]), and her single factor in mitigation (limited weight for no prior record) is not compelling. Yet we are mindful that not every willful misappropriation is equally culpable. (*Id.* at p. 1367.) In fact, “the distinction between misappropriation arising from gross neglect and dishonest misappropriation can be very significant in determining the appropriate level of discipline. [Citation.]” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) We believe that strict reliance on standard 2.2(a) in this case would lead to an unjust recommendation because Jovich misappropriated Chavez’s funds by gross negligence.

The hearing judge found that Jovich did not intend to defraud Chavez, and we agree. She received the \$12,000 settlement check but negligently failed to deposit it in her CTA. And she paid Chavez \$2,000, albeit improperly, from her own funds as a partial settlement. Later, after her CTA dipped, she deposited additional personal funds to cover expenses. Further, during the time of her misconduct, Jovich established that she was under extraordinary personal stress. Although we do not assign mitigating weight to this fact, it is a relevant fact to our discipline analysis and one the hearing judge found to be significant.¹³ (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059 [each case decided on its own facts after balanced consideration of all relevant factors].) We conclude that while Jovich did not act with venal intention, she handled her CTA in an inexcusable and grossly negligent manner that caused the misappropriation.

depending on client harm); 2.4(b) (reproval or suspension imposed where attorney fails to perform or communicate); and 2.6 (disbarment or suspension imposed for violations of § 6068).

¹³ The hearing judge found: “In this matter, the court believes that two cases fell through the cracks due to events in respondent’s personal life.”

We look to relevant case law, in addition to the standards, to guide our disciplinary analysis. (*Snyder v. State Bar* (1980) 49 Cal.3d 1302, 1310-1311.) Our research reveals that the Supreme Court has generally imposed one to two years of actual suspension for a grossly negligent misappropriation even where the attorney has committed other misconduct. (See, e.g., *McKnight v. State Bar* (1991) 53 Cal.3d 1025 [one-year suspension for misappropriation by gross negligence from one client for withdrawing \$17,165 in clients funds without authority; aggravated by failure to pay restitution and mitigated by some good character, aberrational misconduct, and manic-depressive episode]; *Sugarman v. State Bar* (1990) 51 Cal.3d 609 [one-year suspension for \$15,317 misappropriation by gross negligence from one client and improper business transaction with another; mitigated by family problems and good faith efforts to improve office procedures]; *Lawhorn v. State Bar, supra*, 43 Cal.3d 1357 [two-year suspension for negligent misappropriation of \$1,355.75 combined with misrepresentation to client but mitigated by marital problems and restitution paid after client threatened to file complaint with State Bar].)

Jovich's overall misconduct is most similar to *Lawhorn* since both attorneys made misrepresentations – Lawhorn to his client and Jovich to the State Bar. As in *Lawhorn*, Jovich's most serious culpability finding is misappropriation by gross negligence. But her aggravation is greater than in *Lawhorn* and far outweighs her mitigation. We are extremely concerned that she has not resolved her clients' cases nor paid the personal injury settlements to which they are entitled. Therefore, guided by *Lawhorn*, we recommend three years' actual suspension, as requested by the State Bar. In addition, since Jovich has raised issues regarding her mental health in addition to her failure to pay restitution, we recommend that her actual suspension continue until she pays such restitution and satisfactorily proves to the State Bar Court her

rehabilitation, present fitness to practice, and present learning and ability in the general law in a standard 1.4(c)(ii) proceeding.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Linda Caroline Jovich be suspended from the practice of law for three years, that execution of that suspension be stayed, and that she be placed on probation for three years on the following conditions:

1. Jovich must be suspended from the practice of law for a minimum of the first three years of her probation, and remain suspended until the following conditions are satisfied:
 - a. She makes restitution to Silvia Chavez in the amount of \$2,774.42 plus 10 percent interest per annum from April 15, 2010 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Silvia Chavez, in accordance with Business and Professions Code § 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,
 - b. She provides proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)¹⁴
2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.
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 her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.
5. She 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, she must state whether she has complied with the State Bar Act, the Rules of Professional

¹⁴ We do not specifically recommend restitution to Beryl Magleby because there is insufficient evidence of the final settlement and remaining amount owed to the client. However, Jovich must immediately pay any outstanding amount in her possession and provide proof of payment as part of her reinstatement proceeding.

Conduct, and all of the conditions of her 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.

6. She must comply with the following reporting requirements:
 - a. If she possesses client funds at any time during the period covered by a required quarterly report, she shall file with each required report a certificate from her certifying that:
 - i. She has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and
 - ii. She has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.
 - b. If she does not possess any client funds, property or securities during the entire period covered by a report, she must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, she need not file the certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.

7. Within one year after the effective date of the discipline herein, she 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 (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Jovich has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Linda Caroline Jovich 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 in this matter and to provide

satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

RULE 9.20

We further recommend that Linda Caroline Jovich 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. Failure to do so may result in disbarment or suspension.

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

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.