

Filed September 24, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 11-O-19379
)	
JOSE ALBERTO VELASCO,)	OPINION
)	
A Member of the State Bar, No. 94407.)	
_____)	

Respondent Jose Alberto Velasco had practiced law for more than 30 years without discipline when he misappropriated \$5,560, which was intended for a client’s medical providers. He also grossly mismanaged his law firm’s operating account, resorting to the use of over 140 checks drawn against insufficient funds (NSF checks) over an eight-month period to finance his law practice. Velasco relied on an informal relationship with a bank manager to cover the NSF checks, but the arrangement was not without its shortcomings, and one-third of the checks were dishonored by the bank.

The Office of the Chief Trial Counsel of the State Bar (State Bar) requests review of a hearing judge’s decision finding Velasco culpable of mishandling his client trust account (CTA) and misappropriation due to his gross negligence of entrusted settlement funds. The State Bar argues that Velasco’s misappropriation was intentional rather than grossly negligent, and that he is culpable of moral turpitude due to his numerous NSF checks. Lastly, it contends the evidence establishes more aggravation and less mitigation than the hearing judge found. Accordingly, the State Bar urges disbarment rather than the 90-day period of actual suspension recommended by the hearing judge. Velasco asks that we affirm the hearing judge’s culpability findings and recommended discipline.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we uphold the hearing judge's culpability finding as to trust account mismanagement. But contrary to the hearing judge's other culpability findings, we find Velasco's misappropriation was intentional, not grossly negligent, and that he committed acts of moral turpitude by issuing a multitude of NSF checks. Nonetheless, Velasco's overall mitigation is compelling and justifies a departure from the presumptive discipline of disbarment provided by the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 2.2(a).¹ In light of our additional findings and considering the relevant decisional law, we conclude that Velasco should be actually suspended for two years and until he proves his rehabilitation and fitness to practice law. (Std. 1.4(c)(ii).)

I. FACTUAL AND PROCEDURAL BACKGROUND

Velasco was admitted to the practice of law in December 1980 and has no prior record of discipline. He was born in Tijuana, Mexico, and raised in Los Angeles. He graduated from Loyola Marymount University and then attended law school at the University of California, Los Angeles, where he was elected the first Hispanic president of the student bar. After an externship at the California Supreme Court, he joined a small boutique law firm in Beverly Hills and then became general counsel of an insurance underwriting company. After a number of years in that position, he left for private corporate practice so that he could serve the Hispanic community. In 2003, he founded Velasco & Associates.

In April 2010, Karim Alam, the son of a family friend, retained Velasco & Associates to represent him in a personal injury case arising from an automobile accident. Alam received treatment from Weiland Chiropractic, and Velasco signed a lien authorization agreeing to withhold settlement funds to pay the chiropractic fees within 30 days of receipt of the funds.

¹ All further references to standards are to this source.

After Velasco settled the case in early February 2011, he received a settlement check from the defendant's insurance company for \$8,750, payable to Velasco & Associates. On February 14, 2011, he deposited that check into his CTA at Banco Popular. He then distributed \$2,850 to his law firm as the contingency fee provided by his retainer agreement and \$340 to Alam.² On February 23, 2011, Velasco transferred \$5,560 from his CTA to his operating account, which also was at Banco Popular, ostensibly to pay the two outstanding medical bills for Alam's treatment – \$2,310 from Weiland Chiropractic and \$3,250 from a medical provider for magnetic resonance imaging (MRI) services. The \$5,560 check had the notation: "Settlement Funds Medical Liens."

The beginning balance for the operating account in February 2011 was -\$2,924.10 and the ending balance was -\$343.68. During that month, Velasco wrote 24 NSF checks against this account, including seven NSF checks totaling \$5,145, which were debited the day before he transferred the settlement funds, leaving a balance of -\$4,909.35. All of these NSF checks were issued by Velasco to pay for personal items, including rent, car repair, and payroll. When Velasco transferred the \$5,560 into his operating account on February 23, 2011, the funds were immediately applied against the -\$4,909.35, leaving a balance of \$650.65.

After the initial dip in the operating account on February 23, 2011, the account repeatedly dropped below the \$5,560 needed to cover Alam's medical bills. Velasco waited five months before he attempted to pay Weiland Chiropractic, after it complained to him about nonpayment. On July 28, 2011, he wrote a check for \$2,310, but it was dishonored by the bank due to insufficient funds. Velasco successfully issued a second check to Weiland on

² After Alam was paid an additional \$750 by the insurance company as reimbursement for property damage, he had received all of the monies due and owing to him from the insurance settlement.

September 25, 2011, thus paying Weiland all that it was owed from the Alam settlement.

However, Velasco did not prove that he paid the MRI provider.

As Velasco's firm began to struggle financially, he resorted to issuing NSF checks from his operating account on a regular basis as a means of underwriting his cash shortfalls. As he explained: "It's what I had to do to survive at that time." Although Velasco reviewed his bank statements on a monthly basis, he did not maintain a regular bookkeeping system. In fact, he described his bookkeeping during the past few years as "sort of been non-existing." But Velasco had an informal arrangement with Ruben Acevedo, the manager at Banco Popular, who regarded Velasco as a "very good friend," and who would call Velasco whenever the account was overdrawn to arrange for payment of the NSF checks. However, no one else at the bank was authorized to honor Velasco's NSF checks, and during Acevedo's periodic absences, more than 50 NSF checks were dishonored and returned as unpaid during a 10-month period. Nine of those checks were resubmitted and returned as unpaid a second time. Velasco testified without contradiction that all of the recipients of the NSF checks ultimately received their funds.

These proceedings commenced on May 1, 2012, when the State Bar filed a Notice of Disciplinary Charges (NDC) alleging three counts of misconduct: (1) failure to maintain client funds in his CTA, in violation of Rules of Professional Conduct, rule 4-100(A);³ (2) misappropriation of client funds constituting moral turpitude, in violation of Business and Professions Code section 6106;⁴ and (3) moral turpitude arising from repeated issuance of NSF checks from his operating account, in violation of section 6106.

³ All further references to rules are to the Rules of Professional Conduct.

⁴ All further references to sections are to the Business and Professions Code.

II. ANALYSIS

A. Count One: Failure to Maintain Client Funds in CTA (Rule 4-100(A))

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited and maintained in a CTA. We find Velasco culpable as charged in Count One because he transferred \$5,560 in settlement funds that were held in his CTA on behalf of Alam's medical providers to his operating account, in willful violation of rule 4-100(A). (*In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87, 92-93 [failure to maintain funds in CTA owed to client's physician violated trust account rule].)

B. Count Two: Moral Turpitude – Misappropriation (§ 6106)

The NDC alleges that Velasco “willfully or with gross negligence misappropriated \$5,549 of Alam's funds.” The hearing judge found that Velasco was culpable of misappropriating the \$2,310 owed to Weiland Chiropractic due to gross negligence because Weiland's check was returned for lack of sufficient funds. However, he further found that the State Bar failed to prove that Velasco misappropriated the \$3,250 owed to the MRI provider because it presented no evidence that the MRI provider did not receive payment.

We disagree. As detailed below, the circumstances surrounding the transfer of Alam's settlement funds from Velasco's CTA to his operating account compel the conclusion that he intentionally misappropriated the entire \$5,560 and used the funds to pay his personal obligations.

The day before Velasco transferred the funds from his CTA, seven checks totaling \$5,145 were debited from his operating account for personal expenses, causing the account to fall to \$-4,909.35. Most of these checks were written many days before they were actually debited, and one was dated January 21, 2011. Given the dates of the checks and Acevedo's testimony that he always notified Velasco whenever the bank was presented with NSF checks, Velasco would have

been well aware that his operating account was in a precarious situation at the time he transferred the settlement funds into that account. It strains credulity to believe that Velasco did not know that seven NSF checks totaling \$5,145 were debited the day before he deposited the \$5,560 from Alam's settlement or that the settlement funds would not have been immediately applied to cover the NSF checks.

Moreover, Velasco could not offer a logical reason for transferring the settlement funds out of the CTA. His explanation that he moved the funds to his operating account because he was "going to try to negotiate the [medical] lien down a bit" makes no sense since he could just as easily have accomplished this task if the money remained in his CTA. Furthermore, his accounting to Alam on March 23, 2011, stated that he had paid "discounted" fees, which totaled exactly the same amount as the sum he had transferred to the operating account on February 23, 2011. Finally, even after the transfer, Velasco waited five months to pay Weiland Chiropractic and did not prove that he ever paid the MRI provider. The totality of these circumstances supports our conclusion of intentional misappropriation. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032-1034 [circumstantial evidence established attorney misappropriated funds by withholding and withdrawing funds from trust account]; *Medoff v. State Bar* (1969) 71 Cal.2d 535, 551 [attorney's culpability need not be established by direct evidence, "[c]ircumstantial evidence is sufficient"].)

The hearing judge incorrectly placed the burden on the State Bar to produce evidence that the MRI provider had in fact been paid. The State Bar proved that immediately after deposit of the \$5,560 into the operating account, the balance of that account fell below the amount needed to reimburse Weiland and the MRI provider since most of it went to offset the -\$4,909.35. "The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation."

(*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474.) “The burden then shifts to [Velasco] to show that misappropriation did not occur.” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) It was therefore Velasco’s burden to prove that the \$3,250 MRI payment had been made, which he did not do. We thus find intentional misappropriation of \$5,560, which constitutes a willful violation of section 6106. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 618 [finding of dishonest misappropriation of trust funds for personal purposes established by numerous dips in CTA, delay in repayment to client, and lack of credible explanation for negligent management of trust account].)

C. Count Three: Moral Turpitude – Issuing NSF Checks (§ 6106)

The State Bar alleged in Count Three that Velasco’s issuance of approximately 140 NSF checks from his general account constituted moral turpitude. However, the hearing judge dismissed Count Three with prejudice, finding that Velasco had a “justifiable and reasonable belief” that his checks would be honored, which was a complete defense to the moral turpitude charge. Again, we disagree.

A reasonably certain belief that an NSF check will be paid may be a valid defense to a moral turpitude charge, but Velasco had no way of knowing whether his NSF checks would be honored. His informal arrangement was solely with Acevedo; no other bank employee had the authority to honor his NSF checks. (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 58 [informal agreement to honor NSF checks insufficient to justify reasonable reliance when limited to one bank officer with knowledge of arrangement].) As a consequence, between January and August 2011, approximately one-third of Velasco’s 140 NSF checks were returned as unpaid, and several were returned twice. Moreover, Velasco greatly mismanaged his operating account, resulting in Banco Popular assessing NSF check fees against his account more than 18 times per

month for 10 consecutive months. And in all but three of those 10 months, Velasco's operating account had a negative ending balance.

Under these circumstances, Velasco simply could not reasonably believe the bank would ensure payment of all of his NSF checks. (Compare *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 411-412 [attorney justifiably relied on informal agreement with bank whereby bank would give advance notice if NSF check would not be honored and bank in fact honored *all* 52 NSF checks issued by attorney].) Given the large number of checks that were dishonored by the bank, we find Velasco was grossly reckless in relying on his informal arrangement with the bank to ensure payment of his NSF checks. That grossly negligent conduct constitutes moral turpitude, in violation of section 6106. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169 [issuing NSF checks due to gross negligence in managing trust account constitutes moral turpitude].)

III. AGGRAVATION AND MITIGATION

The offering party bears the burden to prove aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)),⁵ while Velasco has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. AGGRAVATING FACTORS

1. One Aggravating Factor

We adopt the hearing judge's finding as an aggravating factor that Velasco engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).) Count Three involves the issuance of 140 NSF checks, which we consider as significant aggravation. (*In the Matter of Kueker* (Review Dept.

⁵ 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.)

1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [one count of moral turpitude where attorney made 11 misrepresentations over two years constituted multiple acts as aggravating factor].)

2. No Additional Aggravating Factors

The State Bar contends there is clear and convincing evidence of two additional aggravating factors: significant harm and misconduct involving dishonesty due to misrepresentations in Velasco's accounting to Alam. We decline to find additional aggravation for either factor.

Alam received full payment from Velasco, and the State Bar did not present specific evidence that the six-month delay in payment to Weiland Chiropractic resulted in significant harm or that the MRI provider had been harmed. The State Bar also did not present clear and convincing evidence that Velasco intentionally misrepresented that he had paid Weiland \$2,310 and \$3,250 for the MRI when he sent Alam an accounting on March 23, 2011, stating these payments had been made. Velasco testified without contradiction that he thought his assistant had paid the two providers when he sent the accounting. While it was negligent for Velasco to send the incorrect accounting statement without confirming that the checks had in fact been sent, in the absence of evidence contradicting his testimony, the State Bar did not establish that Velasco intentionally lied to his client.

B. FOUR MITIGATING FACTORS

The hearing judge found five mitigating factors: (1) no prior record of discipline; (2) cooperation with the State Bar; (3) candor; (4) good character; and (5) community service. We agree with these mitigating factors, although we find that Velasco's candor and cooperation comprise a single mitigating factor, not two.

1. No Prior Disciplinary Record (Std. 1.2(e)(i))

Velasco practiced law over 30 years before committing the misconduct in this matter. Standard 1.2(e)(i) provides for mitigation credit for a lengthy practice without prior discipline if the present misconduct “is not deemed serious.” Although Velasco’s misconduct is serious, the misappropriation and rule 4-100(A) trust account violation appear to be aberrational. There is no evidence of any other misappropriation or that his CTA was otherwise mismanaged. Nor is there evidence of any NSF checks having been issued against his CTA. The Supreme Court has found that a lengthy record of discipline-free practice may be considered as a “strong” mitigating factor where serious misconduct is found to be aberrational and therefore future misconduct unlikely. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

However, we do not view the issuance of the NSF checks from his operating account as aberrational, given that this was his customary means of financing his practice for several months. Nonetheless, Velasco has shown great remorse and is now “very diligent” about funds disbursed from his firm’s trust and operating accounts, having changed his banking practices and established procedures to ensure that his financial obligations are satisfied. We therefore believe that Velasco’s misconduct involving the issuance of NSF checks, as well as his misappropriation and trust account violation, is unlikely to recur. Accordingly, we assign significant mitigation to his 30 years of discipline-free practice. (*Friedman v. State Bar, supra*, 50 Cal.3d at p. 245.)

2. Candor and Cooperation (Std. 1.2(e)(v))

The hearing judge found that Velasco exhibited candor and cooperation during these proceedings. He was honest about the circumstances surrounding his misconduct and entered into a stipulation of facts that expedited the trial. Although many of the admissions were easily proved, they were material to a finding of culpability. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded

those who admit culpability as well as facts].) We thus accord mitigative weight to Velasco's candor and cooperation.

3. Good Character (Std. 1.2(e)(vi))

Velasco presented seven witnesses who testified about his good character. The witnesses consisted of Acevedo and two attorneys, a healthcare administrator, two former clients (one was a dentist), and a retired police officer. With the exception of one client who only knew Velasco six years, all of the witnesses had known him for more than a decade. They described him as a man who kept his word, one who was trustworthy, and one who could be counted on for advice and counsel. One attorney described Velasco as "very level-headed, very practical and very dependable," while the other attorney found him ethical and honest. If he ever needed an attorney, he "would turn to Jose" because of his character and expertise. We give significant consideration to attorney witnesses because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) All of the witnesses were aware of the allegations against Velasco yet maintained their opinion of his high moral character. We find Velasco provided clear and convincing evidence of "an extraordinary demonstration of good character . . . attested to by a wide range of references in the legal and general communities and who are aware of the full extent of [his] misconduct." (Std. 1.2(e)(vi).) We thus assign significant weight to Velasco's good character evidence.

4. Community Service

Velasco is also entitled to additional mitigating credit for his significant service activities on behalf of many community organizations. (*In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, 729 [attorney given credit for good character plus additional mitigation for pro bono and community service].) A partial list of his activities include his

service as a member of the board of San Fernando Valley Neighborhood Legal Assistance and the boards of the Orange County Boy Scout Council and SeniorServ, a nonprofit organization that provides meals for housebound seniors. He was an active member of the Mexican-American Bar Association, serving as its Treasurer, and received a Humanitarian award for his service to the Latin American Law Enforcement Association. Velasco is a member of the Anaheim Rotary Club and member of the Board of St. Anne's Maternity Home, a social service agency which offers programs for abused and neglected young girls in foster care or on probation where he volunteers twice a month. Finally, Velasco has generously provided pro bono services to many individuals within the Hispanic community including his work for Metallos Nieve, an organization of Hispanic business owners who offer programs to the Latino community.

IV. 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.) We begin our discipline analysis with the standards, which we give great weight to promote “the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal citation and quotations omitted.) However, the Supreme Court has advised that it is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

Several standards are applicable to Velasco's misconduct,⁶ although we focus on standard 2.2(a), which applies to willful misappropriations and provides for disbarment, unless the amount in question is insignificant or compelling mitigating circumstances clearly predominate, in which case a minimum one-year actual suspension is warranted. (Std. 1.6(a) [most severe sanction applies when multiple acts of misconduct suggest different sanctions].) Yet even after the adoption of the standards, the Supreme Court has often imposed a discipline less than disbarment for a misappropriation involving a significant amount of money, provided the attorney had no prior record of discipline and other mitigation.

For example, in *Boehme v. State Bar* (1988) 47 Cal.3d 448, the Court ordered an 18-month suspension for an attorney who intentionally misappropriated about \$3,300 from a personal injury settlement that was intended for a client and the client's doctor. The attorney lied to the client and eventually to the State Bar Court about his efforts at repayment. In aggravation, the attorney showed no remorse and failed to repay the client even after the hearing department emphasized the importance of restitution. The only significant mitigation was the attorney's many years of practice without discipline. Although the State Bar Court applied standard 2.2(a) and recommended disbarment, the Supreme Court declined to adopt this recommendation, noting that our court "failed to give adequate consideration to the absence of any other disciplinary proceedings or complaints in [the attorney's] 20-plus years of practice." (*Id.* at p. 454.) It thus concluded that "disbarment would be too harsh for [the attorney's] single instance of misconduct during his lengthy period of practice." (*Ibid.*)

⁶ Standard 2.2(b) imposes a three-month actual suspension for rule 4-100 violations not involving misappropriation, and standard 2.3 calls for actual suspension or disbarment for acts of moral turpitude, depending on the extent of harm, the magnitude of the act, and the degree to which it relates to the practice of law. Section 6106 also provides that an act of "moral turpitude . . . constitutes a cause for disbarment or suspension."

In *Lipson v. State Bar* (1991) 53 Cal.3d 1010, the Supreme Court suspended an attorney for two years and until he satisfied the requirements of standard 1.4(c)(ii) for misconduct involving two clients. In one matter, the attorney intentionally misappropriated \$12,400, which was intended for the client's lease expenses. The attorney later attempted to pay the client's lessor with an NSF check, which was dishonored. The attorney borrowed an additional \$7,000 from the same client, and failed to repay the borrowed funds. The attorney also borrowed \$10,750 from a second client and attempted to repay the loan with numerous NSF checks. The client was unable to collect on this debt. In deviating from standard 2.2(a), the Supreme Court focused on the attorney's 42 years of practice without discipline and his contrition. (*Id.* at p. 1021.)

Rhodes v. State Bar, supra, 49 Cal.3d 50, is most relevant to the instant case because it is factually similar. The attorney in *Rhodes* was culpable of misappropriation and issuing numerous NSF checks drawn against his business, trust, and personal accounts. He also was convicted of a misdemeanor for issuing an NSF check for payment of wages, in violation of Labor Code section 212. The attorney misused his CTA and operating account during a four-year period, including repeated commingling of client and personal funds. He also borrowed \$6,000 from a client, failed to repay the client after issuing two NSF checks that were dishonored, and refused to return entrusted funds to another client for six years. Most significantly, in aggravation, the attorney had a prior record of discipline for commingling and misappropriating client funds, for which he received a two-year stayed suspension.

In *Rhodes*, the Supreme Court did not expressly find the attorney engaged in acts of moral turpitude, but it did find his "taking money from clients and writing numerous bad checks over a four-year period represent[ed] a 'continuing course of serious professional misconduct.' [Citation.]" (*Rhodes, supra*, 49 Cal.3d at p. 59.) The Court further found the attorney's

misconduct was mitigated by domestic difficulties and family tragedy, remorse, modest evidence of good character and rehabilitation, and his eventual reimbursement of the misappropriated funds. The attorney had practiced for less than four years and therefore was not afforded mitigation for his discipline-free record. Although acknowledging that the attorney's misappropriation could lead to disbarment under standard 2.2(a), the Supreme Court nevertheless imposed a two-year suspension and required a showing under standard 1.4(c)(ii).

Velasco's misconduct is less serious in many respects than the misconduct in *Rhodes*. He was not convicted of a crime for his NSF check writing, and he has no prior discipline record. Velasco wrote NSF checks against his general operating account, whereas the attorney in *Rhodes* wrote them against his CTA as well as his other accounts. Finally, Velasco's mitigation is far more compelling as he has strong character evidence and more than 30 years of practice without discipline. But his compelling mitigation must be weighed against his intentional misappropriation, his failure to prove repayment of more than half of the misappropriated funds, and his issuance of 140 NSF checks to finance his law practice.

For a number of reasons, we find that the compelling mitigation in this case "demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in [standard 2.2(a)]." (Std. 1.2(e).) First, this is a single misappropriation involving one client, and while \$5,560 is a significant amount, Velasco partially repaid the misappropriated funds before he was aware of the State Bar complaint. Second, there is no evidence of other improper withdrawals or misappropriations from Velasco's CTA and no evidence that any recipient of an NSF check did not ultimately receive full payment. Third, Velasco has taken steps to minimize the likelihood of his misconduct recurring by establishing specific procedures to address the proper management of his operating and trust accounts. He has created both computer and back-up manual ledgers and now reconciles those

account ledgers with bank statements. Also, another attorney in his firm reviews all settlement distributions before they are made to ensure proper accounting and allocation of the funds.

(*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 [favorable consideration given for “taking steps to repair the damage done and to prevent its recurrence”].)

Furthermore, Velasco cooperated with the State Bar and displayed candor in these proceedings. He proved that he is remorseful, and is “truly trying to change the way I look at life.” His compelling mitigation clearly predominates in this case. As the hearing judge properly observed: “For more than four decades [Velasco] has been a valued member of his community, an inspirational role model for others, and a tireless supporter of many causes aiding the Latino community and others.” Looking to the Supreme Court discipline cases for guidance, we conclude that Velasco should be suspended for two years and until he has made full restitution and established the required showing under standard 1.4(c)(ii).

V. RECOMMENDATION

For the foregoing reasons, we recommend that Jose Alberto Velasco be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. Velasco must be suspended from the practice of law for a minimum of the first two years of the period of his probation, and remain suspended until the following conditions are satisfied:
 - a. He makes restitution to the MRI provider in the amount of \$3,250 plus 10 percent interest per annum from February 23, 2011 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the MRI provider, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,
 - b. He provides proof to the State Bar Court of his 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).)
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his 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 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 and the State Bar Office of Probation.
4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
5. 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 of the conditions of his 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. Velasco must comply with the following reporting requirements:
 - a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:
 - i. He 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. He 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 he does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he 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. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
8. Within one year after the effective date of the discipline herein, he 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 he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

9. 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 he 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 Jose Alberto Velasco be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his suspension and to provide satisfactory proof of 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 Jose Alberto Velasco 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 case. 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.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.