

Filed May 18, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case Nos. 12-O-12013 (12-O-18202)
)	
ILUGBEKHAI JOHN OZEKHOME,)	OPINION
)	
A Member of the State Bar, No. 272470.)	
_____)	

Respondent Ilugbekhai John Ozekhome committed misconduct one year after his 2010 admission to the Bar. Most of his wrongdoing arises from an oral agreement he made with a terminally ill attorney to substitute in as counsel in two cases, and to collect and distribute the clients' settlement funds. However, the substitutions and settlements had occurred without the clients' knowledge or consent, and the funds were misappropriated by third parties when Ozekhome failed to supervise the staff who handled the cases.

The Office of the Chief Trial Counsel for the State Bar (OCTC) charged Ozekhome with 15 counts of misconduct involving four clients. These included two counts of moral turpitude for misappropriation by gross negligence, one count for commingling, and 12 counts for failures to perform competently, communicate, notify clients of receipt of client funds, pay client funds promptly, account, and maintain client funds in trust.

The hearing judge found Ozekhome culpable as charged based largely on an extensive stipulation of facts. The judge assigned aggravation for four factors (multiple acts, client harm, indifference, and failure to make restitution), and mitigation for three factors (cooperation, good character, and pro bono activity). The judge recommended discipline that included a two-year

actual suspension continuing until Ozekhome pays restitution and proves his rehabilitation and fitness to practice law.

OCTC seeks review, urging additional aggravation for dishonesty and that Ozekhome be disbarred. Ozekhome contends disbarment is too harsh because he has no discipline record, paid \$15,500 in restitution of the nearly \$24,000 he owes to four clients, and did not intentionally misappropriate client funds. He concedes culpability and accepts the recommended discipline as “an exhibition of his deep sorrow and regret for his violations.”

On independent review (Cal. Rules of Court, rule 9.12), we find Ozekhome culpable of 11 counts of misconduct and dismiss four counts as duplicative. We assign additional aggravation for his dishonesty, but decline to find indifference as an aggravating factor. Given OCTC’s concession that the misappropriations were not intentional and in view of the overall mitigating evidence, we agree with the hearing judge that disbarment is not warranted here. We affirm the recommended discipline, which requires Ozekhome to serve a two-year suspension, pay restitution, and prove his fitness to practice law in a formal reinstatement hearing before he is readmitted as a member of the Bar.

I. THE DARPINIAN MATTER (CASE NO. 12-O-12013)

A. Facts¹

In February 2010, Aaron Darpinian, his wife Anush, and adult son Arthur were involved in a serious car accident.² They hired attorney Henry Guzman to represent them in their personal injury actions. The Darpinians never met Guzman and communicated only with a woman in his office named Claudia. In May 2011, without the Darpinians’ knowledge, Guzman transferred

¹ Our factual, culpability, aggravation, and mitigation findings are based on the parties’ Stipulation as to Undisputed Facts and Admission of Exhibits (Stipulation), the hearing judge’s findings, and the trial evidence. Ozekhome does not challenge these findings except to argue in his responsive brief that we should not find aggravation for dishonesty.

² We refer to the Darpinians by their first names to avoid confusion.

their case to William Crader, another attorney. Aaron discovered this transfer in September 2011, and wrote to Crader informing him he was not their attorney and requesting the return of all case materials. Crader, who was gravely ill, did not respond.

That same month (September 2011), Crader entered into an oral agreement with Ozekhome regarding the Darpinians' matters. Crader told Ozekhome that the cases were settled and he (Ozekhome) would earn a one-third fee for collecting and depositing settlement monies into his client trust account (CTA), and then disbursing the appropriate amounts to the clients. Crader offered his paralegal, Claudia Wheelles, to assist with this process. When Crader died on November 9, 2011, the cases had, in fact, not been settled.

Sometime during November and December, 2011, an unknown person negotiated the Darpinians' settlement, forged their signatures on releases, and faxed the releases to the insurance company with a cover sheet from Ozekhome's office.³ On December 22, 2011, the insurance company issued three settlement drafts for Aaron, Anush, and Arthur Darpinian for \$6,800, \$6,600 and \$6,500, respectively. Ozekhome believed the Darpinians had endorsed the checks, but never contacted them to confirm signatures, discuss settlement terms, or obtain consent to the settlement or authorization to process the settlement drafts. On December 29, 2011, Ozekhome deposited the checks into his CTA and, on December 30, 2011, unilaterally paid himself fees of \$6,500 for the three Darpinian matters.

Also on December 30, 2011, Ozekhome issued two CTA checks for \$4,333.33 each to Arthur and Anush, and gave them to Wheelles to deliver; no check was issued to Aaron because Wheelles claimed she could not locate him. But Wheelles returned the two checks to Ozekhome, alleging the clients were upset about the property damage claim. In fact, the clients never rejected the checks.

³ The Stipulation references the person responsible as "someone," but the record did not establish that person's identity.

On January 12, 2012, the Darpinians contacted the insurance company and discovered for the first time that their cases had been settled and the settlement checks were sent to Ozekhome. In February 2012, the Darpinians filed a complaint with the State Bar alleging that Ozekhome failed to pay them their settlement funds. On April 10, 2012, Ozekhome received a letter from a State Bar investigator about the complaint. The same month, he issued three CTA checks to Aaron, Anush, and Arthur for \$4,533.33, \$4,400, and \$4,333.33, respectively, which he backdated to January 5, 2012. Ozekhome gave the checks to Wheelles to deliver to the Darpinians.

The following month, on May 8, 2012, a check-cashing store clerk called Ozekhome to report that three people purporting to be the Darpinians were trying to cash the CTA checks. When Ozekhome asked to speak to them, the three fled. That day, Ozekhome responded to the State Bar's April 10, 2012 letter, providing copies of the three checks dated January 5, 2012, and informing the investigator: "I have checked my monthly statements from December 2011 to the present. The three checks I wrote out to be given to the clients have never been cashed. I don't know why." Ozekhome never mentioned the backdated checks or the check-cashing incident in his letter, nor did he follow up with the Darpinians regarding the checks. On June 26, 2012, the checks were fraudulently cashed by persons other than the Darpinians.⁴

Thereafter, Ozekhome met with the Darpinians, and explained that what happened in their cases was not his fault, that people had lied to him, and that he was sorry. Between May and October 2013, Ozekhome made payments to the Darpinians totaling \$4,500 each, but he did not return the \$6,500 he collected as fees. He testified the Darpinians authorized him to keep the fees, but the hearing judge found he was not credible because Aaron and Anush denied giving

⁴ These checks totaled \$13,266.66.

such authorization.⁵ At trial, Ozekhome testified: “If the Court asks me to return it [the fees], I’ll be happy to return it. . . . You know, because I didn’t steal any money. I believe[ed] I was taking the portion of attorney’s fees that was to go to Crader. So if it’s – I mean if I have to return it, I will return it. But I didn’t know – it didn’t occur to me I was taking clients’ money wrongly.”

During March and April 2012, Ozekhome issued the following CTA checks for personal expenses unrelated to any client cases: (1) \$5,000 to Keyes Lexus for a personal car expense; (2) \$495 to Valley Executive Suites for office rent; and (3) \$2,000 to Lexus Financial Services for a personal expense. At trial, Ozekhome admitted he commingled funds by making these payments from his CTA, but insisted he was ignorant of the rules prohibiting it. In his responsive brief on review, however, he “accepts full responsibility for this lapse.”

B. Uncontested Culpability

We affirm the hearing judge’s uncontested culpability findings in five of the seven charges in the Darpinian matters, and for the single commingling charge. The record and the Stipulation support our findings.

Count One — Failure to Perform Competently [Rule 3-110(A)]

Ozekhome recklessly and repeatedly failed to perform legal services with competence, in willful violation of the Rules of Professional Conduct, rule 3-100(A).⁶ He did not properly supervise Wheelles, and he disbursed the Darpinians’ settlement funds without communicating with them.

⁵ The hearing judge generally found the Darpinians believable and Ozekhome to lack credibility, noting his testimony was “riddled with inconsistencies when compared to the evidence,” about whether: (1) the Darpinians were his clients; (2) there was a retainer agreement; and (3) Wheelles was his employee.

⁶ All further references to rules are to the Rules of Professional Conduct of the State Bar unless otherwise noted.

Count Two — Failure to Communicate [Section 6068, Subdivision (m)]

Ozekhome did not inform the clients of significant developments in their case, in willful violation of Business and Professions Code section 6068, subdivision (m).⁷ He failed to tell the Darpinians that he had agreed to represent them in Crader's stead and that he paid himself fees from their settlement funds. We find this count duplicative because it is premised on the same facts we considered to find culpability in Count One. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any purpose is served by duplicative counts of misconduct in State Bar proceedings].)⁸

Count Three — Failure to Notify Client of Receipt of Client Property [Rule 4-100(B)(1)]

Ozekhome willfully violated rule 4-100(B)(1). He failed to inform the Darpinians that he received settlement funds on their behalf. This count is also duplicative of Count One.

Count Four — Failure to Account [Rule 4-100(B)(3)]

Ozekhome willfully violated rule 4-100(B)(3). He failed to provide the Darpinians with an accounting of the settlement funds he received.

Count Five — Failure to Promptly Pay/Deliver Client Funds [Rule 4-100(B)(4)]

Ozekhome failed to promptly deliver client funds, in willful violation of rule 4-100(B)(4). He did not pay the Darpinians any portion of their settlement funds for approximately 18 months after he received the money.

Count Six — Failure to Maintain Client Funds in Trust [Rule 4-100(A)]

Ozekhome willfully violated rule 4-100(A). He failed to maintain the Darpinians' funds in his CTA. However, we assign no additional weight to this culpability finding to determine the proper discipline because the misconduct underlying the section 6106 violation in Count Seven

⁷ All further references to sections are to the Business and Professions Code.

⁸ We dismiss all duplicative counts with prejudice.

is the same and supports identical or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

Count Seven — Moral Turpitude [Section 6106]

Ozekhome committed acts involving dishonesty, moral turpitude, or corruption, in violation of section 6106. He unilaterally paid himself \$6,500 in fees without the Darpinians' consent, and he allowed the misappropriation of \$13,266.66 of the clients' funds through his grossly negligent conduct, including: (1) twice giving the Darpinians' checks to Wheelles to deliver without contacting the clients or obtaining their authorization to do so; (2) failing to confirm that the Darpinians received their funds; (3) failing to contact the Darpinians about the May 8, 2012 check-cashing incident; and (4) neglecting to stop payment on the checks to prevent them from being cashed on June 26, 2012. (See *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409-411 [misappropriations in two client matters for not properly supervising CTA for nine months constituted moral turpitude by gross negligence].)

Count Eight — Commingling [Rule 4-100(A)]

Ozekhome willfully violated rule 4-100(A) by commingling when he improperly used his CTA on March 15, April 3, and April 9, 2012, to pay personal expenses totaling \$7,495.

II. THE HERNANDEZ MATTER (CASE NO. 12-O-12013)

A. Facts

In June 2010, Jose Hernandez was involved in a serious accident wherein he was struck by an automobile while riding his bicycle. Shortly thereafter, he hired Guzman to represent him in his personal injury case. Hernandez was treated for his injuries at North Valley Health Center, which obtained a medical lien on his recovery.

Without informing Hernandez, Guzman transferred the case to Crader, who told Ozekhome it had settled. As in the Darpinian matters, Crader and Ozekhome orally agreed that

Ozekhome would collect and deposit the settlement funds into his CTA, and disburse the appropriate amounts to Hernandez and North Valley. Ozekhome was to receive a one-third fee and Wheelles was to assist him in processing the settlement. Ozekhome did not communicate with Hernandez, and the case was not settled by November 9, 2011, when Crader died.

From November through December, 2011, an unknown person negotiated a settlement for Hernandez and faxed a letter from Ozekhome's office to the insurance company, informing it that Ozekhome represented Hernandez. The insurance company issued a settlement draft for \$6,000 payable to Hernandez and Ozekhome. Ozekhome believed Hernandez had endorsed the check, but never contacted him to confirm his signature, discuss settlement terms, or obtain his consent to the settlement or authorization to process the settlement draft. On December 14, 2011, after depositing the check into his CTA, Ozekhome paid himself \$2,000 as fees. He also issued two CTA checks for \$2,000 each to North Valley and Hernandez, and gave them to Wheelles to deliver. On December 22, 2011, the check issued to Hernandez was fraudulently cashed by someone else.

In December 2012, Hernandez filed a complaint with the State Bar that he had not received his settlement funds. The following month, Ozekhome issued a check for \$2,000 from his personal account to Hernandez, but did not pay the \$2,000 in fees he collected without authorization. In January 2013, Hernandez cashed the check.

B. Uncontested Culpability

We affirm the hearing judge's uncontested culpability findings in five of the seven charges in the Hernandez matter. The record and the Stipulation support our findings.

Count Nine — Failure to Perform Competently [Rule 3-110(A)]

Ozekhome recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-100(A). He failed to properly supervise Wheelles, and deposited

Hernandez's settlement check without communicating with him or taking steps to confirm his approval of the settlement.

Count Ten — Failure to Communicate [Section 6068, Subdivision (m)]

Ozekhome did not inform the client of significant developments in his case, in willful violation of section 6068, subdivision (m). He failed to inform Hernandez that he had agreed to represent him, he would be receiving the settlement funds, and he was going to, and did, pay himself fees from those funds. This count is duplicative of Count Nine.

Count Eleven — Failure to Notify Client of Receipt of Client Property [Rule 4-100(B)(1)]

Ozekhome willfully violated rule 4-100(B)(1). He failed to inform Hernandez that he had received settlement funds on his behalf. This count is also duplicative of Count Nine.

Count Twelve — Failure to Account [Rule 4-100(B)(3)]

Ozekhome willfully violated rule 4-100(B)(3). He failed to provide an accounting to Hernandez of the settlement funds he received on his behalf.

Count Thirteen — Failure to Promptly Pay/Deliver Client Funds [Rule 4-100(B)(4)]

Ozekhome willfully violated rule 4-100(B)(4). He failed to pay Hernandez any settlement funds for approximately 13 months after he received them.

Count Fourteen — Failure to Maintain Client Funds in Trust [Rule 4-100(A)]

Ozekhome willfully violated rule 4-100(A) by failing to maintain Hernandez's settlement funds in his CTA. However, we assign no additional weight to this culpability finding to determine the proper discipline because the misconduct underlying the section 6106 violation in Count Fifteen supports identical or greater discipline. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

Count Fifteen — Moral Turpitude [Section 6106]

Ozekhome committed an act involving dishonesty, moral turpitude, or corruption, in violation of section 6106. He unilaterally paid himself \$2,000 in fees without Hernandez's authorization, and was grossly negligent in allowing the misappropriation of \$2,000.

III. AGGRAVATION AND MITIGATION

The appropriate discipline is determined in light of the relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828 [aggravating and mitigating factors may demonstrate need for greater or lesser degree of sanction].)

Ozekhome must establish mitigation by clear and convincing evidence⁹ while OCTC has the same burden to prove aggravation (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5).¹⁰

A. Serious Aggravation

The hearing judge found that four factors warrant consideration in aggravation: multiple acts, significant harm, indifference, and failure to make restitution. The record does not support indifference, but we find an additional aggravating factor for dishonesty to the State Bar.

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

Ozekhome is culpable of 11 counts of misconduct involving four clients, which is an aggravating factor.

2. Significant Harm to Client (Std. 1.5(f))

The hearing judge found Ozekhome's misconduct caused significant harm to Hernandez and the Darpinians because they were deprived of settlement funds for personal injuries over an

⁹ Clear and convincing evidence must leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

¹⁰ All further references to standards are to this source.

extended period of time. We agree. (See *Bates v. State Bar*, *supra*, 51 Cal.3d at pp. 1060-1061 [misappropriation of personal injury settlement “especially harmful” to client because intended to reimburse for injuries]; *In the Matter of Blum*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 409, 413 [significant harm for six-month delay in distributing \$5,618 medical malpractice settlement].)

3. Indifference (Std. 1.5(g))

The hearing judge found Ozekhome displayed indifference toward rectification or atonement for the consequences of his misconduct because he: (1) blindly trusted Wheelles to distribute the settlement checks; (2) failed to investigate the suspicious check-cashing attempt in the Darpinian matter; and (3) failed to monitor the Darpinians’ settlement distribution after he was contacted by a State Bar investigator. Ozekhome argues these acts do not prove he was indifferent because, at the time, he misunderstood his ethical obligations to contact clients, failed to suspect wrongdoing by others, and made a costly mistake for which he accepts full responsibility.

We decline to assign aggravation for indifference because Ozekhome has clearly expressed his genuine remorse for his wrongdoing and, importantly, he has not challenged his culpability or the recommended discipline on review. Further, we have already considered his blind trust of Wheelles and his failures regarding the Darpinians’ settlement checks in finding him culpable of moral turpitude by grossly negligent misappropriation. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to find culpability, it is improper to consider again in aggravation].)

4. Failure to Make Restitution (Std. 1.5(i))

The hearing judge found that Ozekhome has paid \$15,500 in restitution to the clients, but still owes \$6,500 to the Darpinians and \$2,000 to Hernandez — the unauthorized fees he paid himself. Ozekhome was not entitled to collect fees because the clients never hired him. His

failure to pay full restitution “suggests both a distressing lack of appreciation of the seriousness of his misconduct and an absence of remorse for a substantial violation of his fiduciary obligations in trust account matters. [Citations.]” (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1036-1037.) We find aggravation for Ozekhome’s ongoing failure to make restitution, but acknowledge that he testified he would pay it in full if ordered by the court.

5. Additional Aggravation: Bad Faith, Dishonesty, Concealment (Std. 1.5(d))

Although the hearing judge did not find aggravation for dishonesty to the State Bar, OCTC argues it was proved and requests that we assign it significant aggravating weight. We find that the record establishes Ozekhome was dishonest during the State Bar investigation, as detailed below.

In his May 8, 2012 letter to the State Bar investigator, Ozekhome falsely represented that he had issued three checks to the Darpinians in January 2012, and did not know why they had never been cashed (\$4,533.33 [Aaron], \$4,400 [Anush], and \$4,333.33 [Arthur]). Per the Stipulation, Ozekhome actually issued the checks in April 2012.

Ozekhome argues OCTC may not raise this aggravating factor on review because he was never questioned at trial about the January checks and his May 8, 2012 letter to the State Bar investigator. Thus, he asserts, they were not “part of the adversary proceeding.” However, Ozekhome stipulated that he issued the checks in April 2012 (not January 2012), and the checks and his letter were admitted into evidence. While these documents established Ozekhome’s dishonesty to the State Bar, we diminish the aggravating weight slightly because OCTC did not raise the issue at trial, giving Ozekhome no opportunity to respond to it or present contrary evidence. Even so, we acknowledge the serious nature of dishonesty to the State Bar.¹¹

¹¹ See *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200 (attorney’s deceit strongly condemned by Supreme Court; six-month suspension for failure to provide status report and respond to inquiries accompanied by false representations and fabricated evidence submitted to

B. Limited Mitigation

The hearing judge assigned limited weight to each of three factors in mitigation: candor and cooperation, good character, and pro bono activity. The judge also determined that Ozekhome's lack of discipline for one year of practice and his emotional distress were not mitigating factors. We agree with these findings.

1. Spontaneous Candor and Cooperation to Victims or State Bar (Std. 1.6(e))

The hearing judge assigned mitigation for Ozekhome's Stipulation, but "significantly reduced" it because his trial testimony lacked credibility. We agree, noting that the Stipulation did not establish culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more mitigating weight accorded when culpability as well as facts admitted].)

2. Good Character (Std. 1.6(f))

The hearing judge correctly assigned "somewhat limited" mitigation for good character evidence. Standard 1.6(f) authorizes credit for an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities *who are aware* of the full extent of the member's misconduct. Ozekhome presented the testimony and/or declarations of eight witnesses — friends or clients and four attorneys — who each attested to his good character. Most witnesses expressed surprise about the charges and believed Ozekhome to be an honest and dedicated attorney. While we give serious consideration to the testimony of 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), many of the character witnesses were not aware of the full extent of Ozekhome's misconduct.

State Bar); *Cain v. State Bar* (1979) 25 Cal.3d 956 (misrepresentation to State Bar may constitute greater offense than misappropriation; disbarment for misappropriation, other misconduct, false testimony in discipline proceeding, and substantial discipline record).

3. Community and Pro Bono Activity

Pro bono work and community service are mitigating factors. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned “some” mitigation credit for Ozekhome’s supervision of a free legal clinic and his service to a charity serving the needy in Nigeria. We agree he is entitled to mitigation for his commendable public service.

4. No Mitigation for Lack of Prior Discipline Record (Std. 1.6(a)) or Extreme Emotional Difficulties (Std. 1.6(d))

The hearing judge correctly gave no mitigation for Ozekhome’s lack of a disciplinary record because he practiced law for only a year in California before he committed misconduct. He is not entitled to mitigation for this short period of discipline-free practice. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 222 [three-year blemish-free record is relatively short duration and entitled to little mitigative weight].)

The hearing judge also did not assign mitigation for extreme emotional difficulties for family problems that Ozekhome experienced in early January 2014, after the trial began. We agree because these difficulties occurred well after Ozekhome committed his misconduct, and they were not directly responsible for it, as required by the standard. (Std. 1.6(d) [emotional problems mitigating if established as directly responsible for misconduct].)

IV. DISCIPLINE

Our primary purpose in recommending discipline is to protect the public, the courts, and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession. (Std. 1.1.) We begin our analysis with the standards and, although they are not binding, we give them great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

Standard 2.15 is the most applicable and calls for the most severe discipline. (Std. 1.7 [where multiple standards apply, must impose most severe].) It provides that disbarment or actual suspension is appropriate discipline for misappropriation involving gross negligence.

Given this broad range of discipline, we look to case law for guidance. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [decisional law appropriate as guidance when standards provide range of discipline].) Since no cases have discussed standard 2.1(b), which became effective in 2014, we examine past cases addressing grossly negligent misappropriations under the former standard.¹²

To begin, an attorney has a personal and non-delegable obligation of reasonable care to comply with the critically important rules of safekeeping and disposition of client funds. (See *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795; *Coppock v. State Bar* (1988) 44 Cal.3d 665, 680.) For grossly negligent misappropriations, the Supreme Court has generally imposed a suspension of one to two years, even where the attorney has committed other misconduct.¹³ The Court has noted a clear distinction between intentional and grossly negligent misappropriation, concluding that an “attorney who deliberately takes a client’s funds, intending to keep them permanently . . . is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) The new standard reflects this distinction by providing that an actual suspension is “appropriate” for grossly negligent misappropriation without mandating disbarment. (Std. 2.15.)

¹² Former standard 2.2(a) called for disbarment for *any* misappropriation absent compelling mitigation that clearly predominates.

¹³ See, e.g., *Gassman v. State Bar* (1976) 18 Cal.3d 125 (one-year suspension for grossly negligent misappropriation where attorney failed to supervise secretary plus other misconduct including false representations to clients; emotional distress and diligence toward clients in mitigation); *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1368 (two-year suspension for misappropriation of \$1,355.75 that was “technically willful but founded in negligence and inexperience” and misrepresentation to client; mitigated by marital problems and restitution paid after client threatened complaint to State Bar); see also *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627 (18-month suspension for failing to properly supervise CTA, which enabled non-attorney staff to steal \$1.7 million over one and a half years).

The hearing judge recommended a two-year actual suspension believing that Ozekhome's "inexperience" played a significant role in his misconduct. The judge also felt that the misconduct "could have been prevented through diligence and professional office protocols regarding client communication, trust account reconciliation, and non-attorney supervision." While the judge noted concern about Ozekhome's "lack of judgment" in deferring to Wheelles or other non-attorneys, he concluded that the grossly negligent misappropriations did not warrant disbarment under the new standard. For the reasons provided below, we agree.

Ozekhome's misconduct, including the aggravating and mitigating circumstances, does not place him at the highest end of the discipline range (disbarment) under standard 2.1(b). The grossly negligent misappropriations occurred primarily because he failed to supervise Wheelles and he did not communicate directly with the clients — not because he acted intentionally or sought to permanently deprive the clients of their funds. In fact, he paid significant partial restitution, presented mitigation, and fully accepts the hearing judge's culpability findings and discipline recommendation. Finally, we have dismissed four of the 15 charges as duplicative. That said, Ozekhome's lack of knowledge about his fundamental ethical responsibilities requires a lengthy suspension, probation, and proof of rehabilitation.¹⁴

Balancing all the relevant factors, the hearing judge's recommended discipline of a two-year actual suspension, continuing until Ozekhome has paid restitution and establishes his rehabilitation and fitness to practice law, will protect the public, the courts, and the legal profession. This discipline should impress on Ozekhome the "high degree of care and fiduciary duty he owes to those he represents." (*Stuart v. State Bar* (1985) 40 Cal.3d 838, 847.)

¹⁴ At trial, the hearing judge told Ozekhome: "I've heard three days of you blaming everybody else. . . . I don't know if you know your ethical duties about anything. You just seem lost on this stuff."

V. RECOMMENDATION

For the foregoing reasons, we recommend that Ilugbekhai John Ozekhome 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 four years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of his probation, and remain suspended until the following conditions are satisfied:
 - a. He makes restitution to Aaron Darpinian of \$2,300 (\$6,800 settlement less \$4,500 restitution paid), Anush Darpinian of \$2,100 (\$6,600 settlement less \$4,500 restitution paid), and Arthur Darpinian for \$2,000 (\$6,500 less \$4,500 restitution paid) plus 10 percent interest per annum from December 30, 2011 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the Darpinians, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles;
 - b. He makes restitution to Jose Hernandez in the amount of \$2,000 plus 10 percent interest per annum from December 14, 2011 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Jose Hernandez, 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,
 - c. 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. 1.2(c)(1).)
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. 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.

6. 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 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.
7. 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 and Client Trust Accounting Schools. (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 he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We recommend that Ozekhome be ordered 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 proceeding 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).)

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We recommend that Ozekhome 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.

VIII. COSTS

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

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

McELROY, J.*

*Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.