

PUBLIC MATTER

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JUL 14 2015

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STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
) Case No.: 12-O-13067-PEM
NICHOLAS K. CAMERON,)
)
Member No. 236607,)
)
A Member of the State Bar.)

Introduction¹

Respondent **Nicholas K. Cameron** settled a serious personal injury case on behalf of a vulnerable young client for \$1.3 million and, to this date, he has failed to adequately explain to the court and his client what happened to all the money. In this contested disciplinary proceeding, he is charged with one count of failing to maintain proper accounting records and provide a proper accounting to his client or anyone on her behalf.

The court finds, by clear and convincing evidence, that respondent is culpable of the misconduct charged. In light of the serious nature and extent of respondent's misconduct, particularly the aggravating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for six months and until he makes restitution of \$186,395 to his client.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on November 4, 2014. On November 14, 2014, respondent filed a response to the NDC.

Trial was held on March 18, 19, and 20, 2015. The State Bar was represented by Senior Trial Counsel, Kimberly G. Anderson. Attorney Kevin Gerry represented respondent. On April 24, 2015, following post-trial briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 2005, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the evidence and testimony admitted at trial and the partial stipulation as to facts filed March 11, 2015. After carefully observing and considering respondent's testimony, including, among other things, his demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court finds that much of respondent's testimony lacked credibility and sincerity. (Evid. Code, § 780.) Other times, respondent's testimony appeared contrived.

For example, respondent's testimony, contradicted by other witnesses' testimonial evidence, lacked credibility when respondent testified that:

- (1) His ex-wife, Veronica Perez-Taghizadeh, had stolen the Arroyo files;
- (2) He communicated alone with his client, Fatima Arroyo, who is intellectually disabled, outside the presence of her mother or aunt;
- (3) He gave a breakdown of the settlement disbursements to Marina Cano or Arroyo;

(4) He defeated a \$500,000 lien on behalf of Arroyo; and

(5) He attended Individualized Education Program (IEP) meetings on behalf of Arroyo.

The State Bar's witnesses were credible and reliable.

Case No. 12-O-13067 - The Arroyo Matter

Facts

The Accident and Injuries Sustained

On July 9, 2008, Fatima Arroyo (Arroyo) and her brother Jesus, both minors, were walking alongside a sidewalk in Anaheim, California, when Linda Arias lost control of her vehicle. The vehicle went over the curb and into the sidewalk. While on the sidewalk, the vehicle struck Arroyo and Jesus. The force of the impact threw Arroyo into a lane of traffic where she was hit by another vehicle driven by Larry McDavid.

Arroyo sustained life-threatening and crippling injuries, including severe traumatic brain injury, laceration of the aorta and dissection with associated mediastinal hematoma, a left orbital blowout fracture, multiple fractures of her leg, and multiple lacerations. As a result of the accident, Arroyo lost her ability to walk.² She underwent several major surgeries such that after being hospitalized for at least three months, she went to Hyland Nursing Home for over a year.

Arroyo's Intellectual Capacity

Arroyo, at the time of the accident, was 17 years old and suffering from learning disabilities apart from any she might have sustained from the accident. She has been in special education with an Individualized Education Plan (IEP) since she was in the first grade because she is a slow learner. Her aunt, Marina Cano³ (Cano), attended all her IEP hearings. According

² Prior to the accident, Arroyo did not use a walker or a wheelchair. In this hearing, she was in a wheelchair.

³ Cano lived with Arroyo and Arroyo's mother, Yolanda Aguirre (Aguirre), since Arroyo's birth and until Cano married. Aguirre was Cano's sister. After Cano married, she saw

to Cano, Arroyo functions anywhere from a third grade to fifth grade level. She is currently a client of the San Gabriel Valley/Pomona Regional Center, which provides services for people with developmental disabilities. She is employed through the regional center. Her job includes stacking and assembling screws. For her work, Arroyo testified that she gets paid \$20 every two weeks.

When Arroyo testified in this hearing, the court observed Arroyo and came to the conclusion that she is intellectually disabled. It is clear that she did not even understand what was meant by the word "accounting." At one point in this hearing, Arroyo asked respondent's attorney what did "accounting" mean. He explained it to her. When he asked her again if she understood what "accounting" meant, she said, "No." She also had no idea of whether respondent received any money as the result of the settlement.

Respondent Was Hired

Respondent went to Aguirre's home the day after the accident. Present at the home were Cano, Aguirre, and Cano's father. Cano testified that none of them had ever met respondent before the accident. Respondent said that he came to help and that he wanted to take their case. In July 2008, Aguirre hired respondent to represent her two minor children, Arroyo and Jesus.

Respondent admits that Aguirre signed a contingent fee agreement (first fee agreement) at the time. But now, he claims that he could not find it because his bitter ex-wife, Veronica Perez-Taghizadeh (Perez), had stolen his Arroyo files. The percentage of the contingency fee was in question. At first, respondent could not recall whether this first contingency fee allowed him to receive 33.3% or 25% of the settlement funds. When questioned more extensively, he recalled that it was 33.3% prior to filing and 40% post filing of a lawsuit.

Arroyo at least once a week. In 2010, she moved into the house with Arroyo and Aguirre because Aguirre's health was deteriorating. Cano now lives with Arroyo since Aguirre's death on May 8, 2013.

However, respondent's ex-wife, Perez, testified that the only fee agreement she knew of called for a contingency fee of 25%. Also, at the time the first fee agreement was executed, Orange County Superior Court Local Rule 368 stated, in pertinent part, "On any application for approval of a compromise of a claim under the provisions of Section 3600 of the Probate Code, except for good cause shown, attorney's fees shall not exceed an amount equal to 25% of the gross proceeds of the settlement, less costs of litigation." Therefore, this court finds that the first fee agreement provided respondent with a contingency fee of 25%, not 33.3%, of the settlement funds.

Respondent Filed a Complaint

On June 3, 2009, respondent filed a complaint for damages entitled *Arroyo et al. v. Arias et al.*, case No. 30-2009-00124058, in Orange County Superior Court (Arroyo case). The complaint named Cano as the guardian ad litem for Arroyo, a minor. Arroyo's mother was not named as the guardian ad litem because, at the time, Arroyo's mother was gravely ill. Respondent never explained to Cano her duties as the guardian ad litem. The complaint was never served. At the time of the filing of the complaint, the person who worked on the Arroyo file in respondent's office was Perez (his then wife) who functioned as a paralegal in his law office.⁴ According to Perez, no depositions and interrogatories were ever taken in the Arroyo case. Respondent admits that other than taking pictures of the accident scene and gathering medical records, there was no formal discovery undertaken in the Arroyo matter.

Arroyo Turned 18 and the \$1.3 Million Settlement

On September 3, 2009, Arroyo turned 18, so she was no longer a minor. Within six days of Arroyo reaching legal adulthood, respondent wrote a September 9, 2009 demand letter to the

⁴ It is undisputed that Perez opened the file, requested the police reports, photographed the accident scene, interviewed witnesses, and requested medical files. Perez attended law school for a year. She also translated for Aguirre and Cano.

insurance company that was premised upon the insurance policy limit disclosure of October 14, 2008, of \$1.3 million. In that letter, respondent demanded the policy limit of \$1.3 million as full and final settlement of Arroyo's claims. Respondent also stated that the tendering of the policy limits was an infinitely reasonable outcome of the Arroyo case.

Respondent Executed a Second Fee Agreement After Arroyo Turned 18

Respondent claims that on September 23, 2009, Arroyo, as an adult, signed a new fee agreement that gave Arroyo one-third of the funds minus any advance costs or payments and gave respondent a percentage of the gross recoveries not to exceed 55% of total recoveries. Although Arroyo testified that she did not sign this second fee agreement, the parties have stipulated that this second fee agreement was the operative fee agreement in this matter.⁵

After this second fee agreement was executed, respondent wrote an October 21, 2009 letter to the insurance carrier acknowledging its acceptance of his demand for the insured's policy limit of \$1.3 million in settlement of all claims in this matter. Moreover, in this letter, respondent addressed the insurance carrier's concern that there had not been a Petition for Approval of a Minor's Pending Action (Minor's Compromise). He stated that such a petition could not be filed because Arroyo had turned 18 over a month ago.

On October 27, 2009, respondent filed a request for dismissal of the *Arroyo* matter. It is clear to this court that respondent knew, at least by June 2009, that this matter was likely to settle for the policy limits without a trial, as evidenced by his filing a lawsuit but not serving the lawsuit and the fact that formal discovery was never initiated in the matter.

⁵ Neither Cano nor Perez recalled a fee agreement where respondent was to get up to 55% of the total recoveries. Also, Cano did not believe that respondent ever met with Arroyo alone. This court likewise does not believe that respondent met with Arroyo alone. Moreover, if the court accepts that Arroyo signed the second fee agreement, the court questions whether Arroyo is capable of even understanding the contents of the fee agreement.

The Operative Second Contingent Fee Agreement

The parties have stipulated that the September 23, 2009 retainer agreement provided by respondent to the State Bar on June 7, 2012, was the operative retainer agreement for purposes of this hearing.⁶

The retainer agreement provided, in pertinent part:

Attorney's Compensation: For all matters and services enumerated in Paragraph 1, Attorney shall receive a percentage of the gross recoveries not to exceed fifty-five percent (55%) of total recoveries. To the extent that any liens remain payable and outstanding at any time, Attorney shall pay such liens from Attorney's share of the recoveries and shall hold Client Harmless therefrom.

The retainer agreement also contains the following pertinent provisions:

Paragraph 1. Client understands that given the nature of Client's multiple legal matters, the Client's inability to pay for Attorney's services, and Client's desire to collect the traditional one-third of any potential accident recoveries forthwith and without undue delay due to various statutory or contractual liens, Client has elected to retain Attorney to act as retained counsel for all client matters within Attorney's knowledge and ability that arise through the end of year 2011 which include, without limitation, the following matters: (1) vehicular accident causes of action arising from the vehicular accident of July 9, 2008; (2) defense and prosecution of all actions arising from statutory or contractual liens by the Department of Health Care Services, Physician Care Insurance Company's alleged Right of Reimbursement (currently over \$500,000), UCI Hospital (currently over 1.9 million dollars) and Western Medical Center Hospital (currently over 180 thousand dollars); (3) consultation and work on client's matter in the Orange County Juvenile Court; (4) Client's matters with the Orange County Social Services and the School District; and (5) all other legal and administrative matters that Client may face arising from events until and including the end of the year 2011.

Disbursements (August 2009 – July 2010)

Between August 12, 2009, and January 14, 2010, respondent advanced a total of \$4,000 to Cano for Arroyo from his business checking account, with the understanding that respondent

⁶ The September 23, 2009 fee agreement is a contingency fee contract. Business and Professions Code section 6147, subdivision (a), provides that "[a]n attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client...." Here, respondent did not provide a duplicate copy of the contract to Arroyo or Cano. If he had provided them with a duplicate copy, they would have had it in their possession. But neither Cano nor Arroyo had copies of the first fee agreement or this September 23, 2009 agreement.

would be reimbursed from the settlement with McDavid's insurance carrier.⁷ On February 9, 2010, respondent issued check No. 1677 made payable to himself from his Client Trust Account (CTA) in the amount of \$4,000. At the time he issued the check, respondent wrote on the memo portion of the check, "Repayment of Advance Loan to Client" and "Fatima Arroyo."

On February 9, 2010, respondent issued check No. 1676 made payable to himself from his CTA in the amount of \$6,807.41. At the time he issued the check, respondent wrote on the memo portion of the check, "Attorney Fees/Partial Costs/Re Fatima Arroyo Mercury Settlement." Respondent testified that this disbursement had nothing to do with the \$1.3 million settlement he received from McDavid on behalf of Arroyo, and therefore, these funds did not constitute any portion of the disbursement of the \$1.3 million.

On February 10, 2010, respondent issued check No. 1678 made payable to Arroyo from his CTA in the amount of \$4,921. At the time he issued the check, respondent wrote on the memo portion of the check the following statements, "Client's share/ DOI: 7/9/08," and "Medi Cal Lien Withheld - Mercury Settlement - Less Advance Loan of 4K." Respondent also testified that this disbursement had nothing to do with the \$1.3 million settlement he received from McDavid on behalf of Arroyo. Therefore, these funds did not constitute any portion of the disbursement of the \$1.3 million.

On February 25, 2010, respondent deposited two settlement drafts from McDavid's insurance carrier, Safeco Insurance Co. (Safeco), made payable to respondent, Arroyo and Medi-Cal in the amount of \$1,000,000 and \$300,000, respectively, into his CTA as settlement of Arroyo's claims. Upon depositing the settlement drafts totaling \$1,300,000 on March 20, 2010, Perez called Aguirre to tell her that the money was ready and that she should come and pick it

⁷ Cano stated that the \$4,000 was actually given to Aguirre. The checks were written to her because Aguirre did not have legal documentation. This court believes Cano.

up. Aguirre told Cano to go because she did not drive and was too sick to go. Cano drove Arroyo over to respondent's office. Upon their arrival, respondent suggested that he, Arroyo, Cano, and Perez walk over to the bank. Arroyo was always in the presence of Cano. She did not talk to respondent alone. The court does not find that respondent at any time communicated with Arroyo outside the presence of Cano. Nor does this court believe that respondent gave Arroyo and/or Cano a breakdown of his expenses.

Notwithstanding that respondent did not give Cano/Arroyo a breakdown of his expenses, respondent did make good on giving Arroyo "the traditional one-third of any potential recoveries" forthwith and without undue delay to various statutory liens. On March 20, 2010, respondent issued check No. 1690 made payable to Arroyo from his CTA in the amount of \$430,692.70. It is noteworthy that at the time respondent issued the check, respondent made notations on the check stating "Partial Payment" and "Client's Share of Settlement (Pending Medi Cal lien)." The fact that respondent put "Partial Payment" is consistent with the testimony of Cano that respondent told her at the time that there would probably be more money. It is also consistent with her testimony that from March 20, 2010, forward she would call him from time to time to ask him if Arroyo was going to see more money.

On May 20, 2010, respondent also issued check No. 1739 from his CTA in the amount of \$153,632.98 made payable to the California Department of Health Care Services (DHCS). DHCS had reduced the Medi-Cal lien from approximately \$205,688.98 to \$153,632.98. Respondent had some hope that he could reduce the Medi-Cal lien down to nothing.⁸

⁸ This court believes that respondent on May 20, 2010, knew that the Medi-Cal lien was at the most \$153,632.98, because the date on the check to Medi-Cal was May 20, 2010. Respondent had not paid any other medical bills for Arroyo. He claims he was able to defeat another lien of \$500,000, but he has no documentation to prove it. The court does not find that respondent defeated a \$500,000 lien. He claims to have notified Aguirre of his defeat of the lien. Again, the court does not believe respondent. If he had defeated a \$500,000 lien, he should be able to get proof of this independent of a "stolen file."

Furthermore, on March 20, 2010, respondent issued check No. 1689 made payable to himself from his CTA in the amount of \$5,281.26. At the time respondent issued the check, respondent made notations on the check stating, "Re: Fatima Arroyo," and "Reimbursement of Litigation/Legal Services Costs." At respondent's July 29, 2014 deposition, when asked specifically about this check, respondent said that he believed the check was for a portion of his costs and fees. However, for the first time, during the trial in this matter, respondent testified that he had an itemized costs statement signed by Arroyo reflecting the costs incurred in the amount of \$5,281.26.

On March 30, 2010, respondent issued check No. 1711 made payable to himself from his CTA in the amount of \$100,000. At the time respondent issued the check, he made notations on the check that stated, "Attorney's Fees/DOI: 7/9/08," and "Fatima Arroyo." Again, on March 30, 2010, respondent issued another check No. 1709 made payable to himself from his CTA in the amount of \$133,333.33. At the time respondent issued the check, he made notations on the check that stated, "Att Fees/Fatima Arroyo" and "DOI: 7/9/08."

And yet again, on March 30, 2010, respondent issued check No. 1710 made payable to himself from his CTA in the amount of \$100,000. At the time respondent issued the check, he made notations on the check that stated, "Attorney Fees/Fatima Arroyo" and "DOI: 7/9/08."

On March 30, 2010, respondent issued check No. 1712 made payable to himself from his CTA in the amount of \$100,000. At the time respondent issued the check, he made notations on the check that stated, "Attorney Fees/Fatima Arroyo" and "DOI: 7/9/08." In total, respondent paid himself \$433,333.33 as attorney fees in March 2010.

On April 20, 2010, respondent issued check No. 1728 made payable to himself from his CTA in the amount of \$8,920. At the time respondent issued the check, he made notations on the check that stated, "Cost Reimbursement/Arroyo, Lopez et al." Respondent did not know

what costs were involved, but he believed that the check was probably for fees and that this check only related to the Arroyo matter and not a case called Lopez. He could not explain the reason for the disbursement in relation to any work performed for Arroyo.

On July 20, 2010, respondent issued check No. 1762 made payable to himself from his CTA in the amount of \$20,000. At the time respondent issued the check, he made notations on the check that stated, "Att Fees/Arroyo," and "Costs." Again, respondent could not explain the notations on the check and what percentage was for fees and/or costs or how this disbursement related to any services performed for Arroyo. It is clear that by July there was nothing more to do on the Arroyo case as it related to the accident.⁹

Summary

The evidence established that respondent filed the lawsuit on behalf of Arroyo on June 3, 2009, naming Cano as the guardian ad litem, withheld service of the lawsuit pending a

⁹ Respondent claims that between March 2010 and the end of 2011, he handled Arroyo's matters with the school district, and more specifically her IEP, and that under the operative fee agreement, he was entitled to reimbursement. He even claims that he attended several meetings with the school officials and directors and that he corresponded with school agents and a counselor re: Arroyo's school issues. Even if, under the operative fee agreement, respondent were entitled to reimbursement, the court finds he did not deliver any IEP services to Arroyo.

Moreover, the court does not believe respondent had attended any IEP meetings for Arroyo. Cano attended all IEP meetings for Arroyo, and she never saw respondent at any IEP meetings. Perez attended an IEP meeting for Arroyo and did not see respondent there. She did not attend any IEP meetings as a representative of respondent's office. She signed in at an IEP meeting as a friend of Cano, as during the course of the Arroyo matter, she became friends with Cano. She also testified that she set up the Arroyo files and there was never an IEP file. More importantly, respondent has not produced one shred of documentation that he attended any IEP meetings on behalf of Arroyo. He again claims Perez stole Arroyo's IEP file, which the court does not believe. If the IEP file was stolen, respondent could have recreated at least some part of the IEP file.

Furthermore, throughout this hearing, respondent asserted that Arroyo was "pretty intelligent" and denied that she had any trouble with reading, writing, oral conversation, and basic arithmetic as evidenced by her November 2008 IEP. If he had attended an IEP meeting, he would have quickly come to the conclusion that Arroyo is intellectually disabled. Instead, he argues that there is no empirical evidence that she is intellectually disabled or developmentally delayed. Thus, the court rejects respondent's assertions.

\$1,300,000 policy limits demand to McDavid's insurance carrier, and then settled the case in October 2009 for the policy limits. Respondent did not have any experts as evidenced by his demand letter, his own testimony and the testimony of Perez. Also, all medical liens had been settled by March 20, 2010. Furthermore, Perez testified that the entire time she worked in his office, respondent never required a client to pay an additional fee to negotiate lien agreements.

On July 23, 2010, respondent issued check No. 1766 made payable to U.S. Bank from his CTA in the amount of \$71,200. At the time respondent issued the check, he made notations on the check that stated, "Re: Arroyo, F." and "Acc #8713." Respondent testified that the check was to pay off a personal loan of respondent's, and it related to fees he had earned on the Arroyo matter, but respondent could not explain how these fees related to any services he performed for Arroyo at the time on any of the matters allegedly covered by the September 23, 2009 retainer agreement. Respondent denied that he had commingled any funds, but he was unable to explain how these funds related to any attorney work for Arroyo that he had performed around July 23, 2010 that amounted to approximately \$71,200. Thus, the court finds that respondent paid himself in the amount of \$71,200 as fees.

Sometime between March and July 2010, Cano called respondent on several occasions and asked him if there was going to be any more money for Arroyo, as she understood respondent might be able to reduce/waive the Medi-Cal lien. Respondent told Cano that there was no more money and that he had not been able to reduce the lien. At that time, respondent did not give Cano or Arroyo an explanation of how he had disbursed the April and July checks he issued to himself from his CTA. Neither Cano nor Arroyo asked for an explanation because they did not know they were entitled to an explanation. Furthermore, respondent told them there was no more money and they believed him. Cano testified that they trusted respondent when he

said there was no more money owed them. This court believes that to their detriment, Cano and Arroyo trusted respondent and therefore believed him when he said there was no more money.

Legal Fees and Costs of \$35,000 in a Shoplifting Matter

On November 15, 2010, respondent issued check No. 1876 made payable to himself from his CTA in the amount of \$20,000. At the time respondent issued the check, he made notations on the check that stated, "Arroyo, F. Fees." Then, on December 8, 2010, respondent issued check No. 1895 made payable to himself from his CTA in the amount of \$5,000. At the time respondent issued the check, he made notations on the check that stated, "Arroyo/Costs Reimbursement." Again, on December 20, 2010, respondent issued check No. 1902 made payable to himself from his CTA in the amount of \$5,000. At the time respondent issued the check, he made notations on the check that stated that the payment was related to Arroyo's matter. Finally, on January 21, 2011, respondent issued check No. 1928 made payable to himself from his CTA in the amount of \$5,000. At the time he issued the check, respondent made notations on the check that it was for costs in the Arroyo matter.

As to these November, December and January CTA checks made payable to himself, respondent claims that these checks were reimbursement for the work he did on Arroyo's shoplifting case. Sometime in mid-August, Arroyo was cited for shoplifting with an older woman while she was in a wheelchair. Cano called respondent to ask him to handle the case.¹⁰ Respondent handled Arroyo's misdemeanor burglary case between August 13 and December 8, 2010. It was dismissed pursuant to a civil compromise on December 8, 2010. There is no evidence that the matter was ever charged as a felony as to Arroyo nor is there any evidence that

¹⁰ Cano recalls that she called respondent and told him that they did not have any money to pay him. He then told her he was not planning on charging her because he knew that Arroyo is a good girl and that she does not do things like this.

Arroyo spent any time in jail. Nevertheless, respondent collected a total of \$35,000 as legal fees and costs for this shoplifting matter.

Summary of Disbursements

In sum, the bank records show that between February 25, 2010, and January 21, 2011, respondent disbursed approximately \$1,173,788.98 of the \$1,300,000 settlement funds in the form of approximately 18 disbursements, leaving approximately \$126,211.02 unaccounted for. Of the monies disbursed, respondent disbursed \$430,692.70 to Arroyo, approximately \$51,008.67 to himself which he identified as "costs,"¹¹ according to the memo portions of his checks, approximately \$504,533.33 as fees, \$25,000 as payable to himself but not designated as costs or fees and for unknown purposes, \$4,000 to reimburse for the advanced loan to Arroyo's aunt, Cano, and \$153,632.98 to satisfy a Medi-Cal lien.

State Bar Investigation

After Arroyo filed a complaint with the State Bar regarding respondent, State Bar Investigator Susan Kim (Kim) sent correspondence to respondent on several occasions asking respondent for an accounting in order for respondent to show proof of honesty and fair dealing surrounding his handling of Arroyo's \$1,300,000 in settlement funds. Respondent provided the State Bar with a number of letters, but he never fully and properly accounted for the \$1.3 million. Respondent explained to this court that accounting to him only means telling who got what and he told the State Bar who got what. Respondent failed to produce a written account journal, a client ledger for Arroyo, monthly reconciliations, or his bank records. In fact, Kim had to subpoena his bank records.

¹¹ Respondent's claim of \$51,008.67 as costs is unsubstantiated.

Instead of providing a full and complete accounting for the funds, respondent has accused Perez¹² of stealing Arroyo's client files and all of his relevant bank records. Respondent claims that he filed a civil action against Perez, but his own records show that he did not file such a civil action or seek a restraining order against Perez until May 2012, after the State Bar Investigator had written to him about Arroyo's funds and more than one year after he had allegedly noticed the missing Arroyo client files and bank records. Respondent did not alert his client Arroyo to the alleged theft of her file by Perez until April 4, 2012, in a letter, also more than one year after he allegedly noticed Perez had taken Arroyo's files.¹³ The court dismissed the civil action, and respondent and Perez resolved the restraining order issue in the divorce case by way of a stipulation and order. Respondent also proffered letters from his divorce lawyer in which he accused Perez of taking his records. However, those letters do not reflect any complaint about the missing Arroyo files or respondent's client trust account records.

No Accounting for the \$1.3 Million Settlement Funds

Respondent maintained throughout the hearing in the matter that neither Arroyo nor Cano asked for an accounting and that they thought he did a wonderful job for them. While Arroyo and Cano admit that they never personally asked respondent for an accounting, it is clear that Arroyo was incapable of asking for an accounting because she does not know what an accounting is. But it is also clear that she wants to know where the money from the settlement went. As for Cano, she never asked for an accounting because she trusted that respondent was

¹² On February 1, 2011, respondent filed for divorce from Perez.

¹³ More than a year after respondent's alleged discovery that all his financial records, including all his client trust account records, bank records and client ledger/journals were allegedly missing, respondent wrote an April 4, 2012 letter to Arroyo memorializing his recent telephone conversations with Arroyo and Cano, claiming that his wife unlawfully removed their files from his office. He warned them that Perez was fabricating lies about him and asked them to contact him if they received any contact from Perez and that he might subpoena Arroyo as a witness.

dealing with her niece in a fair manner. She did not suspect that he was mishandling the settlement funds until he wrote that April 4, 2012 letter (see footnote 12 below).

To date, respondent has been unable or has refused to provide a full and complete accounting for the \$1.3 million settlement funds to the State Bar or to Arroyo.

Conclusions

Count One - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

The State Bar alleged that respondent failed to maintain proper accounting records for the \$1.3 million he received on behalf of Arroyo at all times between February 25, 2010, and the present, including but not limited to, a client ledger for Arroyo, a written account journal for his CTA, and monthly reconciliations of his CTA between February 25, 2010, and the present. The State Bar also alleged that respondent has not properly accounted for the funds to Arroyo or anyone on her behalf.

Respondent argued that he gave a breakdown of the disbursements to Arroyo and/or Cano, that Arroyo never asked for an accounting, and that she is smart and not credible. He also claimed that he explained the accounting to Arroyo and her mother at the time he disbursed the funds to Arroyo. The court rejects his assertions. An oral explanation of a \$1.3 million disbursements is absolutely inadequate, notwithstanding that the client was intellectually disabled and her mother and aunt were not sophisticated.

As the Supreme Court explained more than 40 years ago with respect to the duty of attorneys to keep adequate records of client funds, "[t]he purpose of keeping proper books of account, vouchers, receipts, and checks is to be prepared to make proof of the honesty and fair

dealing of attorneys when their actions are called into question, whether in litigation with their clients or in disciplinary proceedings and it is a part of their duty which accompanies the relation of attorney and client. The failure to keep proper books.., is in itself a suspicious circumstance." (*Clark v. State Bar* (1952) 39 Cal.2d 161,174.) And, as the Supreme Court explained more than 60 years ago with respect to keeping adequate financial records, it would be a distortion of justice to permit an attorney handling client funds to escape responsibility for his misconduct by the simple act of not keeping any record or data from which an accounting might be made and the misconduct proved. (*Bruns v. State Bar* (1941) 18 Cal.2d 667, 672.)

The obligation to render appropriate accounts to the client does not require as a predicate that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

Besides, the evidence in this hearing establishes the reasons Arroyo and Cano would not have requested an accounting. Both Arroyo and Cano thought that respondent was a good attorney and did a good job. Arroyo described the \$430,692.70 as "a lot of money" (Arroyo works and earns \$20 every two weeks) and Cano trusted respondent when he said in November 2010 that there was no more money owed to Arroyo.

At this hearing, both Arroyo and Cano came into this court and said that they wanted their case files and to know where all the money from the settlement proceeds went. Respondent was unable to provide them with the requested information.

And, when the State Bar asked for such an accounting during its investigation, respondent did not even produce his own general and client trust account records. The only reason the State Bar was able to glean some of what happened to the settlement proceeds is from its own effort at subpoenaing respondent's bank records.

To this date, respondent has failed to account for all the funds he disbursed. In fact, respondent maintains that he views an accounting under the terms of the September 2009 fee agreement as simply stating as “who got what.” And to this end, he accounted in his June 7, 2012 letter to the State Bar that he received \$715,000; Medi-Cal received \$153,632 and Arroyo received \$430,692.70. This court rejects respondent’s interpretation of accounting.

Respondent never gave a breakdown of the disbursements to Arroyo or to Cano. Therefore, by failing to provide Arroyo with an accounting of the \$1.3 million settlement funds, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession in willful violation of rule 4-100(B)(3).

Aggravation¹⁴

Respondent's misconduct is surrounded by five significant aggravating factors.

Intentional Misconduct, Bad Faith, Concealment, Dishonesty, Overreaching or Other Uncharged Violations of the Business and Professions Code/Rules of Professional Conduct (Std. 1.5(d).)

There is clear and convincing evidence that respondent's misconduct was surrounded by overreaching. His take of the settlement funds is evidence of his overreaching. Under the first fee agreement in July 2008, respondent was entitled to 25% of the recoveries. In September 2009, Arroyo, a vulnerable and intellectually disabled young woman with a dying mother, became a legal adult. Within days of her birthdate, respondent had her execute a second fee agreement in which he was entitled to 55% of the settlement. There is nothing to justify the

¹⁴ All references to standards (Std.) are to the former Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, that were effective January 1, 2014.

increase from 25% to now 55% other than greed. What he did was unconscionable, which leads to an uncharged violation of rule 4-200(A).¹⁵

Rule 4-200(A) provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee.

“[I]n general, the negotiation of a fee agreement is an arm’s-length transaction.” (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 913.) However, the right to practice law “is not a license to mulct the unfortunate.” (*Recht v. State Bar* (1933) 218 Cal. 352, 355.) Fees are not unethical or prohibited “simply because they are substantial in amount.” (*Baron v. Mare* (1975) 47 Cal.App.3d 304, 311.) “The test is whether the fee is ‘so exorbitant and wholly disproportionate to the services performed as to shock the conscience.’” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

After considering the 11 nonexclusive factors that are listed in rule 4-200(B) in determining the conscionability of a fee, including the amount of the fee in proportion to the value of the service performed, the sophistication of the parties, and the time and labor required, the court finds that respondent performed minimal work in Arroyo's personal injury matter and that the client, her mother, and her aunt were far from sophisticated. His services included filing a complaint but without serving it, negotiating a medical lien, gathering police and medical reports, and writing a demand letter. Here, in view of the facts and circumstances of the accident and the severity of Arroyo's injuries, there was no real risk of nonrecovery. Respondent was able to obtain the \$1.3 million insurance policy limit. The court finds that his compensation of 55% of the settlement funds was so disproportionate to the services performed as to "shock the

¹⁵ While respondent was not charged with collecting an unconscionable fee, there is clear and convincing evidence that such an uncharged violation is properly considered as a serious aggravating factor.

conscience." (*Swanson v. Hempstead* (1944) 64 Cal.App.2d 681 [contingent fee percentages exceeding 50% may be deemed excessive].)

Therefore, respondent collected an unconscionable fee of \$715,000 and thus committed an uncharged violation of rule 4-200(A), which constitutes an egregious aggravating factor.

Moreover, an attorney is not permitted to set his or her fees unilaterally. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1037.) In Arroyo's misdemeanor shoplifting matter, respondent told Cano that he was not charging any fees for his services. Yet, respondent unilaterally paid himself \$35,000 from the settlement funds for handling the misdemeanor matter. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 594.) This misconduct also evidenced an act of overreaching.

Refusal or Inability to Account for Entrusted Funds or Property (Std. 1.5(e).)

Respondent still believes that all an accounting entails under his contingent fee agreement is who got what. But he has not produced any back up information for costs. And, respondent has refused to explain how or why he took the funds as fees when he did, and what work, if any, he had done to justify the fees at those given times. Thus, his inability to account for the various disbursements paid to himself as attorney fees and costs is an aggravating factor.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent maintains that his client is not intellectually disabled, that he did provide her with a breakdown of the disbursements, and that he was entitled to the 55% of the gross recoveries. When this court asked respondent if he would be willing to go to fee arbitration, respondent flatly told this court that he would not. He still blames Perez for his missing files and records. He is unapologetic and has no recognition of or insight into his wrongdoing.

“The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

“[L]ike any attorney accused of misconduct, [respondent] had the right to defend himself vigorously.” (*In re Morse* (1995) 11 Cal.4th 184, 209.) But his conduct “reflects a seeming unwillingness even to consider the appropriateness of his [legal analysis] or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, [respondent] went beyond tenacity to truculence.” (*Ibid.*) His demonstrated lack of insight into the seriousness of his misconduct is particularly troubling to this court because it suggests that it may reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Accordingly, the evidence clearly establishes respondent’s failure to understand the nature of his wrongdoing, which is a serious aggravating factor.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.5(h.))

Respondent lacks candor in his testimony. The court does not believe him for the following reasons:

- *Arroyo's Disabilities*

Respondent never acknowledged that Arroyo has learning disabilities when it is clear that she is intellectually disabled. Prior to the accident and following the accident, Arroyo had learning and physical disabilities. She is a client of the San Gabriel Valley/Pomona Regional Center and she has difficulty reading. Arroyo experienced difficulty communicating orally and frequently had difficulty understanding questions and providing answers, except with very simple language. But respondent continued to assert that Arroyo is very “smart” and to deny that she has trouble with reading, writing, oral conversation, and basic arithmetic. This court also had the ability to observe Arroyo

at trial. Incredibly, respondent introduced a California Residential Purchase Agreement signed by Arroyo as proof that she was not intellectually disabled. At trial, she had no idea of what a Residential Purchase Agreement was and she could barely read the agreement.

- *Cano, Arroyo's Surrogate Mother*

In his testimony, he constantly downplayed the role Cano played in Arroyo's life. He referred to Cano as the driver. The evidence in this trial indicates that her role was more of a surrogate mother due to Arroyo's mother's serious illness. Cano now lives with Arroyo after Arroyo's mother's death.

- *IEP Meeting*

Respondent claimed that he attended IEP meetings for Arroyo. The court does not believe him because if he had attended IEP hearings, he would have reached the conclusion that Arroyo was intellectually disabled. Respondent also admitted during his testimony that he did not have any documentation showing that he attended IEP meetings, signed any sign-in sheets as Arroyo's attorney at any IEP meetings, or sent any letters of representation to school boards or requesting discovery.

- *Perez Did Not Steal the Records*

On February 2, 2011, respondent claims to have discovered that a briefcase containing all his financial records and 18 client files were taken by his ex-wife as she was angry about his initiation of divorce proceedings. According to him, all his files and financial records relating to the Arroyo matter were taken by Perez. Respondent did not file a police report. Respondent's claims that he could not locate his client ledger journal, client trust account records, bank records, and the Arroyo file because Perez stole them are not supported by the evidence and make no sense. Given his belief that he was entitled up to

55% of the settlement funds and that all an accounting means is who got what, it is unreasonable that he would not have a client ledger/journal for the Arroyo matter.

Arguably, even if Perez had stolen his client trust account records and bank records, he could have obtained copies of his own bank records. Instead, he made the State Bar subpoena his bank and client trust account records.

Perez credibly testified that she removed the briefcase from the office, which contained joint financial records that she was entitled to, tax documents from 1994-2010, business cards and vehicle documents, and she did so in contemplation of filing for divorce. She credibly denied taking any client trust account records or the Arroyo client files. Perez testified that she would have liked to have seen client ledgers for the Arroyo case and other cases. Perez would have had an interest in knowing how much money respondent was earning as attorney fees since issues in the marital dissolution proceeding involved spousal support and the valuation of the law practice.

Furthermore, it is suspect that respondent was able to selectively produce parts of the file – the second fee agreement but not the first fee agreement and a breakdown of his costs for the first time at trial.

- *No Accurate Accounting Was Maintained, Only Discrepancies*

Blaming Perez for stealing his only set of CTA records, respondent claimed that he was unable to recollect from memory any of the \$51,000 in costs incurred and to explain why he wrote "costs" on checks which he now claimed were for fees. Respondent also could not quantify how much he actually took of the 55% for fees, or why he did not take it all at one time. Despite having been repeatedly asked by the State Bar for accountings and additional information relating to his incomplete and partial accountings, respondent refused to even attempt to reconcile his records until the middle of the trial. Respondent

then admitted that he had the breakdown of expenses from the date he found the September 23, 2009 retainer agreement, but he declined to turn it over to the State Bar. Respondent then identified for the first time in his testimony additional cash disbursements without any supporting evidence, claiming they related to the Arroyo case. He also testified falsely to this court that check No. 1896 in the amount of \$4,000 was an additional disbursement for Arroyo. When the State Bar confronted him with the check, it actually stated in the memo portion, "Att Fees/Melinda Baragas." Respondent repeatedly contradicted the memos on his own checks where he had indicated he was withdrawing monies relating to the Arroyo case as "costs," but now claiming that they were not for costs, but were for fees.

- *No Other Medical Liens*

Respondent claimed that he had negotiated other medical liens, in addition to the Medi-Cal lien. But he has produced no documentary proof. He insisted that he did a lot of work for Arroyo on many matters and that Arroyo had large medical bills due to her significant injuries. But Arroyo was on Medi-Cal and there was only one medical bill that respondent had to pay. The evidence does show that respondent handled a burglary case for Arroyo, but there was no fee agreement. Although Respondent claimed he handled other matters, including liens, social services issues and school district issues, respondent's testimony and evidence in support of these matters was vague. All of the social services and lien issues were ancillary to the personal injury case. Perez testified that she was not aware of any other liens, except possibly for some medical equipment. Respondent never provided any evidence of any liens or that medical providers continued to pursue any liens or that he negotiated any liens independent of Medi-Cal. To this date,

both Arroyo and Cano testified that they are not aware of any other medical bills. Thus, the court rejects his claim that he handled other medical liens on behalf of Arroyo.

In summary, the court finds much of respondent's testimony incredulous.

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

Respondent argues that the court lacks jurisdiction to order him to submit to fee arbitration under section 6200 et seq. (Arbitration of Attorneys' Fees) as a probation condition.

On the contrary, the State Bar has been committed to achieve six goals for the operation of probation, which are: (1) the public protection; (2) the rehabilitation of the respondent ; (3) the integrity of the legal profession; (4) the enforcement of restitution orders; (5) an aid to future enforcement; and (6) the partial alleviation of discipline. (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 299.) The Review Department in *Marsh* noted that "[t]hose goals were to be realized through the use of conditions of probation which were 'innovative, individualized, rehabilitative and flexible.'" (*Ibid.*)

Hence, ordering respondent to submit to fee arbitration as a probation condition would serve to rehabilitate respondent and to enforce the restitution order. However, because respondent does not appear to be a good candidate for such a probation condition, the court declines to recommend it, notwithstanding that the client may choose to request for arbitration.

The evidence further demonstrated that respondent failed to pay Arroyo her proper share of the settlement funds. Although Cano had repeatedly asked respondent if Arroyo was going to see more money since the disbursement check had noted "Partial Payment," respondent convinced Cano that the \$430,692 was the final disbursement. Cano trusted and believed respondent.

The court's ability to calculate an accurate restitution amount is frustrated by respondent's failure to produce proper accounting records. Given the unconscionability of a 55% contingency

fee (\$715,000), the court hereby finds that respondent is entitled to 40% of the settlement funds (\$520,000) and that he must make restitution payment of \$186,395 to Arroyo, calculated as follows:

<i>Settlement Funds</i>	\$1,300,000
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Disbursements and Contingency Fees

Disbursement to Arroyo	\$430,692
Disbursement to DHCS	\$153,632
Costs ¹⁶	\$ 5,281
Loan	<u>\$ 4,000</u>
Disbursements Subtotal	(\$593,605)
40% Contingency Fees	<u>(\$520,000)</u>

<i>Disbursements and Contingency Fees</i>	<u>(\$1,113,605)</u>
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Total Restitution Owed to Arroyo	\$186,395
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Mitigation

Respondent did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Respondent's misconduct began in 2009, only four years after he was admitted to the practice of law. His lack of a prior record is not a mitigating factor. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456 [where attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating].)

Respondent's other claims of mitigating factors are rejected as not shown by clear and convincing evidence.

¹⁶ At trial, respondent admitted that a number of checks noted as "costs" (totaling \$51,008.67) were not for costs at all, but were for fees or unknown reasons. Thus, the court finds that the total of \$51,008.67 were paid to respondent himself as fees.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

Standard 2.2 provides that an actual suspension of three months is appropriate for commingling or failing to promptly pay out entrusted funds. While suspension or reproof is

appropriate for any other violation of rule 4-100. In this case, standard 2.2(b) provides sanctions ranging from reproof to actual suspension.

The State Bar urges that respondent be actually suspended for 90 days from the practice of law to impress upon respondent the non-delegable nature of his fiduciary obligations, citing *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, and *Coppock v. State Bar* (1988) 44 Cal.3d 665 in support of its recommendation.

Respondent maintains that he is not culpable of any misconduct, and argues that, if any culpability is found, a private reproof would be adequate.

The court rejects respondent's contentions. The gravamen of respondent's misconduct is not limited to his failure to render an accounting but more significantly, the aggravating circumstances surrounding his misconduct – overreaching, collecting an unconscionable fee, refusing to recognize his wrongdoing, and dishonesty – are troubling and are evidence of serious aggravation.

In *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, the attorney was actually suspended for 60 days for failure to render an accounting and failure to avoid adverse interests in two client matters. His misconduct was aggravated by overreaching, by additional uncharged misconduct including solicitation of a client and misleading a court, and by his failure to recognize his ethical accountability to clients. The court noted: "It is troubling that while holding himself blameless, he displayed such a controlling attitude toward these clients, two of whom were ill and elderly and thus more vulnerable." (*Id.* at p. 765.) *Fonte's* extensive public service and 25 years of practice without a prior record of discipline counterbalances misconduct that would otherwise warrant substantial discipline.

Here, respondent does not have any evidence in mitigation to counterbalance his misconduct or the substantial aggravating factors. Like the attorney in *Fonte*, he, too, held himself blameless while representing a vulnerable client whose mother was gravely ill. And at trial, he attacked the veracity and integrity of Arroyo, Cano, and Perez. Such an attack betrays his lack of understanding of his duties and obligations to his client.

Furthermore, respondent persisted that his share of 55% of the settlement funds was valid under the second fee agreement. But because the court finds that his take was so disproportionate to the services rendered that it shocks the conscience, respondent must make restitution to Arroyo for his unconscionable fees. (See *Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009 [purpose of restitution is to rehabilitate attorneys and protect public from future misconduct].)

While restitution is routinely required in cases of misappropriation of client funds (*Mephram v. State Bar* (1986) 42 Cal.3d 943), it does not follow, however, that restitution is appropriate only in such cases, or that, because respondent did not misappropriate client funds, he should not be required to pay restitution to the victim of his culpable acts. (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 684-685.)

"Although part of the rationale for requiring restitution may be to prevent an attorney from profiting from his wrongdoing, restitution is also intended to compensate the victim of the wrongdoing, and to discourage dishonest and unprofessional conduct." (*Coppock v. State Bar, supra*, 44 Cal.3d 665, 685.) The Supreme Court noted that "this court should have the power to impose discipline which encourages attorneys to act honestly and with integrity." (*Alberton v. State Bar* (1984) 37 Cal.3d 1, 7, fn. 4.) A requirement of restitution will not only protect the public, but also serve to further the integrity of the profession and encourage high professional standards of conduct.

Accordingly, in recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) In view of respondent's misconduct, the case law, the serious aggravating evidence, and the standards, the court concludes that placing respondent on an actual suspension for six months and until he makes restitution would be appropriate to protect the public and to preserve public confidence in the profession.

Recommendations

It is recommended that respondent **Nicholas K. Cameron**, State Bar Number 236607, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation¹⁷ for a period of two years subject to the following conditions:

1. Respondent Nicholas K. Cameron is suspended from the practice of law for a minimum of six months of probation, and respondent will remain suspended until the following requirement(s) are satisfied:
 - i. Respondent must make restitution to Fatima Arroyo in the amount of \$186,395 plus 10 percent interest per year from March 20, 2010 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Fatima Arroyo, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).
 - ii. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement(s), he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

¹⁷ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. 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 respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. Respondent 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, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's 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. Respondent must comply with the following reporting requirements:
 - a. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation certifying that:
 - i. Respondent 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. Respondent has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Governors (Board of Trustees) pursuant to rule 4-100(C) of the Rules of Professional Conduct.
 - b. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent 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, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
9. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Client Trust Accounting School and passage of the test given at the end of the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
10. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Exam

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

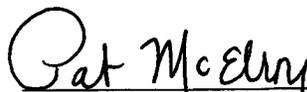
It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business

and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 14, 2015



PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On July 14, 2015, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 14, 2015.


Laurretta Cramer
Case Administrator
State Bar Court