PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

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

This disciplinary proceeding arises from Nicholas K. Cameron's failure to provide an accounting to his client for distribution of a $1.3 million personal injury settlement. The hearing judge found Cameron culpable for a single count of failing to provide a proper accounting of the funds and failing to maintain appropriate accounting records. Emphasizing the serious aggravating circumstances, however, the judge recommended significant discipline for the misconduct—that Cameron be suspended for one year, stayed, with an actual suspension of six months to continue until he pays restitution.

Cameron appeals and seeks a dismissal. He argues that he provided an accounting, but it was among financial records that were stolen from him. And he maintains that the judge's reliance on uncharged misconduct (collection of unconscionable fees) as an aggravating factor violated his due process rights. Alternatively, he seeks discipline that does not include a period of actual suspension or a restitution requirement.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that Cameron failed to account to his client for the $1.3 million in settlement funds. We do not affirm the hearing judge's finding of uncharged misconduct as an aggravating factor, but agree with the judge's other aggravation findings. We also find additional aggravation—most

seriously, that Cameron overreached in his dealings with a vulnerable client. Taken together, the misconduct and serious aggravation justify a three-month actual suspension. Because we do not find that Cameron collected an unconscionable fee, however, we lack a basis to order restitution, or to determine the appropriate amount, and do not affirm the hearing judge's restitution order.

I. PROCEDURAL BACKGROUND

On November 4, 2014, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed a one-count Notice of Disciplinary Charges (NDC) alleging that Cameron violated rule 4-100(B)(3) of the Rules of Professional Conduct,[1] by: (1) failing to maintain proper accounting records, including a client ledger, a written account journal for his client trust account (CTA), and monthly reconciliations of his CTA, for a $1.3 million settlement he received on behalf of his client, Fatima Arroyo; and (2) failing to account for distribution of the funds to Arroyo or to anyone on her behalf. On March 11, 2015, the parties filed a Partial Stipulation as to Facts and Admission of Documents. Trial was held on March 18, 2015. After trial, the judge found Cameron culpable of violating rule 4-100(B)(3). We adopt the hearing judge's culpability findings as supported by the record.

II. FACTUAL BACKGROUND[2]

Cameron was admitted to the practice of law in California on June 2, 2005, and has no prior record of discipline. He represented Arroyo in a personal injury matter following an automobile accident that seriously injured her. He obtained a $1.3 million settlement but did not

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[1] All further references to rules are to this source, unless otherwise noted. Under rule 4-100(B)(3), a member shall "[m]aintain complete records of all funds, securities, and other properties of a client . . . and render appropriate accounts to the client regarding them . . . ."

[2] We base the factual background on the pretrial Partial Stipulation as to Facts and Admission of Documents, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) In particular, we give considerable weight to the judge's credibility evaluations. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand. [Citation.]"].)

provide any accounting to his client for the distribution of those funds. He also failed to maintain appropriate accounting records. Cameron testified that his accounting records were stolen by Veronica Perez, his then-wife and office assistant.[3] We adopt the hearing judge's finding that "much of [Cameron's] testimony lacked credibility and sincerity," including, specifically, the claim that Perez stole his records. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032.)

A. The Accident and Cameron's Representation of Arroyo

On July 9, 2008, Arroyo, who was 16 at the time, and her brother Jesus, also a minor, were walking on a sidewalk in Anaheim, California, when they were struck by a vehicle driven by Linda Arias. The force of the impact threw Arroyo into the street where she was hit by another vehicle driven by Larry McDavid. She sustained life-threatening and crippling injuries, including severe traumatic brain injury, laceration and dissection of the aorta, a left orbital blowout fracture, and multiple leg fractures. Even before the accident, Arroyo had difficulty walking due to pre-existing injuries. As a result of the accident, Arroyo lost her ability to walk without assistance. She underwent several major surgeries, was hospitalized for at least three months, and then was a patient in Hyland Nursing Home for over a year.

Cameron went to Arroyo's home the day after the accident, and told her mother, Yolanda Aguirre, that he wanted to help Arroyo and her family with the personal injury case. Following this meeting, Cameron and Aguirre entered into a retainer agreement (First Retainer Agreement), which the hearing judge found provided for a 25 percent contingency fee.[4] On September 23,

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[3] Cameron also claimed that Perez stole Arroyo's case files. Despite this claim, Cameron was able to produce selected documents at trial, including a retainer agreement and a cost sheet.

[4] Rule 368 of the Local Rules of the Superior Court of the County of Orange applies to attorney fees in cases involving minors and persons who are not competent. It states in relevant part that "[o]n 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 percent of the gross proceeds of the settlement, less costs of litigation."

2009, approximately three weeks after Arroyo's 18th birthday, Cameron presented her with a different retainer agreement (Second Retainer Agreement), which provided that Cameron would be paid "up to 55%" of the automobile accident settlement. Arroyo testified that she did not recognize or sign this agreement. The parties stipulated, however, that the Second Retainer Agreement was the operative agreement for this disciplinary proceeding.

The Second Retainer Agreement provided that Cameron would be paid for services that included, in addition to the personal injury matter: (1) defense and prosecution of all actions arising from liens by medical providers or insurance companies; (2) work on Arroyo's matter in the Orange County Juvenile Court; (3) managing Arroyo's matters with Orange County Social Services and the school district; and (4) handling all other legal and administrative matters arising from events until and including the end of the year 2011. The agreement stated that Cameron would pay any medical liens from his share of the recoveries.[5] It did not provide an hourly rate or any other information regarding calculation of attorney fees, nor did it specify a set percentage for his fee for the personal injury case.

On June 3, 2009, Cameron filed a complaint for damages against McDavid in Orange County Superior Court. The complaint identified Arroyo's aunt, Marina Cano,[6] as guardian ad litem for Arroyo, instead of Arroyo's mother, who was very ill at the time.[7] On September 9, 2009, Cameron wrote a letter to Safeco Insurance Company demanding McDavid's policy limits

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[5] In the Second Retainer Agreement, Cameron listed outstanding medical liens that totaled over $2.5 million. As noted below, the only lien Cameron paid was to Medi-Cal, which he satisfied for $153,632.98.

[6] Cano lived with Arroyo and her mother from the time Arroyo was born until Cano married. After moving out, Cano still saw Arroyo at least once a week. In 2010, Cano moved back into the house with Arroyo and Aguirre because of Aguirre's deteriorating health. Aguirre passed away on May 8, 2014. Cano has lived with Arroyo since then.

[7] The lawsuit also named Arias and sought damages for her role in the accident. Cameron separately settled the claims against Arias with her insurance company for $24,650. The distribution of this money is not at issue in this disciplinary proceeding.

of $1.3 million. Safeco agreed to settle the claim for the policy limits, which Cameron confirmed in an October 21, 2009 letter. He filed a request to dismiss the lawsuit on October 27, 2009.

On January 27, 2010, Safeco issued two checks payable to the Law Offices of Nicholas Cameron, Fatima Arroyo, and Medi-Cal: one for $300,000 and another for $1 million. Cameron deposited the two checks into his CTA on February 25, 2010, and instructed Perez to notify Aguirre that the settlement funds were available. Due to Aguirre's poor health, Cano took Arroyo to Cameron's office to pick up the funds. On March 20, 2010, Cameron issued a check to Arroyo from his CTA in the amount of $430,692.70, and accompanied her and Cano to the bank to deposit it. On the same day, he also issued a check to himself for $5,281.26 as reimbursement for costs. The check to Arroyo included a notation stating "Client's Share of Settlement (Pending Medi Cal lien)" and "Partial Payment." On March 30, 2010, Cameron wrote four separate checks to himself totaling $433,333, each with the notation "Attorney Fees" and "Fatima Arroyo." Cano called Cameron sometime between March and July 2010 to ask about additional settlement money for Arroyo due to the notation of "Partial Payment" on the check to Arroyo. Cameron told Cano that there was no more money.

Cameron did not provide Arroyo or Cano with an accounting on the day he gave them the check. He testified that he explained the accounting when he met alone with Arroyo before they went to the bank, but Arroyo and Cano both testified that Cameron never spoke privately to Arroyo nor did he explain his distribution of the $1.3 million settlement. We adopt the hearing judge's finding that Cameron's testimony on this issue is not credible and was contradicted by the other witnesses' credible testimony. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032 [great weight given to hearing judge's findings on credibility].)

On May 20, 2010, Cameron paid the California Department of Health Care Services $153,632.98 to satisfy the Medi-Cal lien referenced on Arroyo's settlement check. This was the only medical payment Cameron made on behalf of Arroyo. After satisfying this lien, his work on the accident case effectively ended. However, from April 2010 through September 2011, Cameron withdrew the rest of the $1.3 million settlement for his own benefit, writing eight checks and making at least 14 cash withdrawals. He did not provide any accounting or other supporting documentation regarding these transactions. In total, Cameron received $715,000 of the $1.3 million settlement.

Cameron stated that he withdrew the additional money as compensation for other services he provided Arroyo pursuant to the terms of the Second Retainer Agreement. But the record does not establish that Cameron performed any substantial work in the juvenile court matter, for Orange County Social Services, or related to Arroyo's Individualized Education Program (IEP) meetings. The hearing judge found that Cameron did not attend any IEP meetings for Arroyo, and we adopt this finding. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032.)[8] Besides failing to produce any accounting for the funds he withdrew, Cameron was also unable to provide additional testimony or other evidence explaining the means by which he calculated his fees.

Cameron did perform work for Arroyo between August and December 2010 in a criminal shoplifting case, making several court appearances on her behalf. Arroyo was cited when she was shopping with an older woman who accompanied her to several stores, took merchandise, and placed it in Arroyo's wheelchair. After Arroyo was arrested, Cano called Cameron to ask him to handle the case. No separate retainer agreement for the criminal case was signed, and Cameron did not account for any fees that he withdrew from the settlement funds to compensate

[8] These meetings were attended regularly by Cano, who never saw Cameron at any of them, and occasionally by Perez, who testified that she attended two IEP meetings as a friend of the family.

himself for services rendered in this matter.[9] The criminal case was dismissed pursuant to a settlement on December 8, 2010.

B. Arroyo Is an Extremely Vulnerable Client

At the time of the accident, Arroyo was 16 years old and suffered from learning and physical disabilities. From the age of five, she was in a special education program with an IEP. Her most recent IEP based on testing before her accident indicated that her "performance is very low in reading and written language" and that her oral, expressive, and receptive language skills are also very low compared to others her age. Cano attended all of Arroyo's IEP meetings. According to Cano, Arroyo functioned from a third-grade to a fifth-grade level. Her IEP also indicated that she suffered from orthopedic impairments that limited her ability to walk.

Arroyo is both a client and an employee of the San Gabriel Valley/Pomona Regional Center, which provides services for people with developmental disabilities. Her job includes stacking and assembling screws. Arroyo testified that her wages are $120 every two weeks.

Based on the trial exhibits in evidence and her observations of Arroyo's testimony, the hearing judge determined that Arroyo is intellectually disabled. The judge noticed that Arroyo had difficulty communicating orally and frequently struggled to understand questions and to provide answers, even when very simple language was used. For example, the hearing judge noted that Arroyo clearly did not understand the word "accounting" even after it was explained to her.

III. CAMERON IS CULPABLE OF VIOLATING RULE 4-100(B)(3)

We adopt the hearing judge's finding that Cameron violated rule 4-100(B)(3) by failing to provide Arroyo with an accounting of the disbursements of the $1.3 million settlement and by

[9] The hearing judge concluded that Cameron took at least $35,000 from his 55 percent share of the personal injury settlement funds to reimburse himself for work on the criminal matter.

failing to maintain appropriate accounting records for his CTA. An accounting was particularly important with a fee agreement such as Cameron's, which involved an extremely vulnerable client, provided potential attorney fees for multiple categories of work, and stated that Cameron would satisfy millions of dollars' in medical liens from his settlement share. (*Clark v. State Bar* (1952) 39 Cal.2d 161, 174 [purpose of keeping proper records is to have proof of honesty and fair dealing of attorneys and is part of duty to clients].) Cameron's claims that he is not culpable lack merit.

According to Cameron, the only accounting he was required to provide was "who gets how much." Of the total $1.3 million settlement, Cameron stated that Arroyo received about $430,000, Medi-Cal received more than $153,000, and he received the balance. Cameron stated that he explained this distribution to Arroyo, claiming that he therefore satisfied his duty to account. He also testified that he took the full 55 percent provided by the Second Retainer Agreement for a total of $715,000, stating "[t]hose fees were mine to begin with, and I took them." Cameron misunderstands the requirements of a proper accounting.

Rule 4-100(B)(3) demands more than a general oral summary of disbursements. It requires members to both: (1) maintain and keep complete records of all client funds received by the attorney or law firm for at least five years after final distribution of such funds; and (2) render appropriate accounts to the client regarding these records. Cameron failed to satisfy either requirement. Viewing the "render appropriate accounts" requirement of rule 4-100(B)(3) as part of the entirety of trust fund regulations, we hold that, at a minimum, an appropriate accounting would reflect: any trust account balance owed the client; any interim deposits of trust funds; deductions of any interim payments identified by nature; and the remaining or interim closing balance. (The State Bar of Cal., Handbook on Client Trust Accounting for Cal. Attorneys (2013)

§ II, p. 3 (hereafter Handbook).)[10] Since Cameron represented Arroyo, he was a fiduciary to her and owed her the utmost duty of good faith and fidelity. (E.g., *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) Given Arroyo's disabilities, an accounting should be particularly clear to ensure that she understood it. Thus, Cameron should have provided her with at least a written accounting at regular intervals as he withdrew the remaining settlement funds for himself. He was also required to keep an account journal tracking all deposits into and withdrawals from his CTA, all bank statements and cancelled checks, and a monthly reconciliation of client finances. (Handbook, § II, p. 3.) And, contrary to his contention, he was required to maintain an accounting whether or not Arroyo requested one. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

Further, even if Cameron's claim that he verbally provided Arroyo with an accounting in a private meeting is true, an oral accounting of a $1.3 million settlement is not an "appropriate" accounting pursuant to rule 4-100(B)(3). Nor would it explain the basis for his many withdrawals for his own benefit after the sole initial distribution to Arroyo. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 103-104 [failure to provide accounting on request violated rule 4-100(B)(3)—later invoices that did not capture all fees taken by attorney were inadequate to cure violation]; see also *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757-758 [attorney required to maintain appropriate accounting of fees drawn against $5,000 advance and periodic payments from clients]; *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 854 [attorney who failed to

[10] In addition, since 1993, the State Bar Board of Trustees (formerly Board of Governors) has required that attorneys handling trust funds maintain specific records in specific forms, including a written ledger for each client specifying the date, amount, and source of all funds received, the date, amount, payee, and purpose of each disbursement made, as well as the current trust balance for each client. (Trust Account Record Keeping Standards, adopted by the Board on July 11, 1992.) Keeping these records would enable attorneys to timely provide appropriate accountings to clients.

disclose to client that attorney had previously collected costs and attorney fee sanctions awarded by court in personal injury matter violated rule 4-100(B)(3)]; *Brody v. State Bar* (1974) 11 Cal.3d 347, 350, fn. 5 ["It is well settled that an attorney may not unilaterally determine his own fee and withhold trust funds to satisfy it even though he may be entitled to reimbursement for his services. [Citations.]"].)

IV. SIGNIFICANT AGGRAVATION AND NO MITIGATION

The hearing judge found multiple factors in aggravation (uncharged misconduct for an unconscionable fee, overreaching, refusal or inability to account for entrusted funds, indifference toward rectification, lack of candor/cooperation, and failure to make restitution). The judge also determined that Cameron failed to establish any mitigating factors by clear and convincing evidence.[11] We do not find aggravation for uncharged misconduct, failure to make restitution, or refusal to account for entrusted funds, but agree with the judge's other aggravation findings. We affirm the judge's finding that mitigation was not warranted, and specifically note that Cameron is not entitled to mitigation credit for his lack of prior discipline over only four years of practice. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [four years' practice prior to misconduct insufficient for mitigation credit].)

A. No Uncharged Misconduct for Unconscionable Fee (Std. 1.5(h))[12]

The hearing judge found aggravation based on an uncharged violation of rule 4-200(A), which prohibits members from entering into an agreement for, charging, or collecting an

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[11] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. All further references to standards are to this source. Under standard 1.6, Cameron is required to meet the same burden to prove mitigation.

[12] Effective July 1, 2015, the standards were revised and renumbered. Because this request for review was submitted for ruling after that effective date, we apply the revised version of the standards.

unconscionable fee. Cameron objects to this finding, arguing that including this uncharged misconduct as aggravation violates his due process rights because OCTC did not charge this violation in the NDC.

OCTC concedes that this allegation was not in the NDC and that it never sought to amend the NDC to conform to proof. (See Rules Proc. of State Bar, rule 5.44(C) [court may permit amendment to include matters proven, but respondent must have reasonable time to respond and to prepare defense if he objects].) OCTC repeatedly stated during the trial that it was only pursuing the single count set forth in the NDC and did not raise the issue of unconscionable fees in either its pretrial statement or closing trial brief. Consequently, Cameron did not have an opportunity to prepare a defense to such a charge, which requires analysis of 11 separate factors to prove. We decline to find additional aggravation based on the uncharged misconduct because OCTC had ample opportunity but failed to move to amend the NDC to include additional charges. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [attorney may not be disciplined for violation not alleged in NDC]; *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 260.) While *Edwards* provides that allegations not set forth in the NDC may be considered for other purposes, it requires that the proof of the allegations is based on Cameron's own testimony, "elicited for the relevant purpose of inquiring into the cause of the charged misconduct." (*Id.* at p. 36.) These requirements are not met here given Cameron's multiple objections to OCTC eliciting evidence beyond that which was necessary to prove the one count charged in the NDC.

B. Overreaching (Std. 1.5(g)); High Level of Vulnerability of Victim (Std. 1.5(n))

The hearing judge found overreaching in Cameron's handling of Arroyo's shoplifting matter, and we agree. We also find overreaching for his failure to account to Arroyo, an

extremely vulnerable client, for distribution of funds pursuant to a complicated retainer agreement, as detailed below.

Shortly after Arroyo turned 18, Cameron replaced his First Retainer Agreement with Arroyo's mother, which contained a 25 percent contingency fee, with the Second Retainer Agreement that provided him with "up to 55%" of the personal injury settlement. He was also to be compensated for work other than on the accident case, but the agreement did not provide any hourly fee or other means of calculating his fee. Cameron withdrew a full 55 percent of the $1.3 million settlement for his own benefit without providing any basis for determining how he earned the money, and claimed that Arroyo never asked for an accounting. Arroyo was not a sophisticated client capable of understanding the terms of the agreement or knowing that she was entitled to an accounting for the distribution of the funds beyond the $430,692.70 that she received from Cameron. Because of Cameron's failure to account, she was never told that he ultimately took $715,000 of the total settlement. As a result, she was unable to question the fees he received under the unusual fee structure set forth in the Second Retainer Agreement. (See Bus. & Prof. Code, §§ 6147, 6148 [contingency fee agreement shall include fee rate agreed upon, agreement other than contingency fee shall contain basis of compensation].) Cameron's failure to account was made much more serious by his listing, in the Second Retainer Agreement, of over $2.5 million in claimed medical liens (for which he agreed to hold Arroyo harmless). By not accounting to Arroyo, he never disclosed that he actually paid only $153,632.98 to Medi-Cal,[13] and kept the remainder for himself.

" ' "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that

[13] The hearing judge rejected Cameron's claim that he handled other liens on behalf of Arroyo. We adopt this finding based on Cameron's inability to produce any evidence that he negotiated other liens.

trust and confidence is in a superior position to exert unique influence over the dependent party. [Citations.]" ' " (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 243-244.) The Supreme Court has long recognized that the right to practice law "is not a license to mulct the unfortunate." (*Recht v. State Bar* (1933) 218 Cal. 352, 355; see also *McKnight v. State Bar*, *supra*, 53 Cal.3d at pp. 1037-1038.) We find Cameron's overreaching involving a vulnerable client to be a substantial aggravating factor.

C. Indifference Toward Rectification or Atonement for Consequences of Misconduct (Std. 1.5(k))

The hearing judge found aggravation based on Cameron's indifference toward rectification or atonement for the consequences of his misconduct. We agree and assign substantial weight to this factor. Cameron consistently maintained that his client was not vulnerable or intellectually disabled, that he did provide her with a breakdown of disbursements, and that he clearly was entitled to collect 55 percent of the total personal injury settlement. He flatly refused the hearing judge's request that he participate in fee arbitration. And he blames Perez for stealing the records he is required to provide. While Cameron is entitled to defend himself, his conduct goes beyond this, demonstrating no understanding of his wrongdoing. (*In re Morse* (1995) 11 Cal.4th 184, 209 [rejecting defense where attorney failed to even consider appropriateness or merit of his legal analysis, moving "beyond tenacity to truculence"].) Cameron's lack of insight is particularly troubling because it suggests that his misconduct could recur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

D. Lack of Candor and Cooperation to Victims/State Bar (Std. 1.5(l))

The hearing judge found that Cameron's lack of candor throughout most of his testimony was a factor in aggravation. We agree with the judge's finding and assign it significant weight. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [great weight given to hearing judge's findings on candor]; see also *Chang v. State Bar* (1989) 49 Cal.3d 114,

128 [fraudulent and contrived misrepresentations to State Bar may constitute greater offense than charged discipline].) Specifically, the judge found that Cameron lacked candor in refusing to acknowledge Arroyo's learning disabilities. Despite the evidence that Arroyo has difficulty reading and communicating, has a history of low academic performance, and is a client of the San Gabriel Valley/Pomona Regional Center, Cameron insisted that she is smart, independent, and capable of signing her own retainer agreement. He downplayed Cano's role and assistance in Arroyo's life. Cano was a surrogate caretaker when Arroyo's mother's illness rendered her unavailable, and she lived with the family for most of Arroyo's life. But Cameron described her as merely "the driver." Further, the IEP reports belie his claim that Arroyo does not suffer from any intellectual disability.

The hearing judge also did not believe Cameron's excuse that he could not provide records or an accounting because Perez stole all of Arroyo's client files and all of Cameron's accounting records. The judge credited Perez's testimony that she took only personal business records, mainly tax records, but no client files.

Finally, Cameron failed to cooperate by refusing to produce any of his bank records, instead forcing the State Bar to subpoena them.

E. No Refusal to Account for Entrusted Funds Because Duplicative of Charged Misconduct (Std. 1.5(i))

The hearing judge found aggravation based on Cameron's failure to account for entrusted funds. We decline to find aggravation under standard 1.5(i) because the same underlying facts were relied on to establish culpability for the violation of rule 4-100(B)(3). (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little purpose served by duplicative charges of misconduct].)

F. No Aggravation for Failure to Make Restitution (Std. 1.5(m))

We decline to adopt the hearing judge's finding of aggravation for failure to make restitution. While we agree that restitution is an appropriate condition of probation in the

abstract (see *Coppock v. State Bar* (1988) 44 Cal.3d 665, 684-685), we have no basis to order it here. We have not affirmed the hearing judge's finding of uncharged misconduct for charging an unconscionable fee, and no charges or findings of misappropriation were made.

V. A THREE-MONTH ACTUAL SUSPENSION IS APPROPRIATE TO PROTECT THE PUBLIC AND PRESERVE PUBLIC CONFIDENCE IN THE PROFESSION

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.) No fixed formula exists for determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Our disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) While not strictly bound by the standards, we recommend sanctions falling within the range they provide unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline.[14] Standard 2.2 is the applicable standard for trust account violations, including failure to maintain appropriate records of client funds and failure to render accountings to the client. Standard 2.2(b) provides that suspension or reproval is the

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[14] Standard 1.7(b) provides: "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 confirm to ethical responsibilities." Standard 1.7(c) provides: "On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future."

presumed sanction for these violations of rule 4-100(B)(3). The hearing judge recommended a six-month actual suspension, but based it on significantly more aggravation than we have found.

To determine the proper discipline, we look to cases involving failure to account, and note that a stayed suspension is typically imposed. (E.g., *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128 [six-month stayed suspension for failures to account and to communicate]; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [two-month stayed suspension for failures to account and to notify client of receipt of funds].) Here, we recommend a three-month actual suspension because of the serious nature of Cameron's failure to account and the weight of the aggravation.

As noted above, Cameron provided no accounting to Arroyo, a developmentally disabled client who suffered grievous injuries in an automobile accident. Cameron did not explain his distribution of a $1.3 million personal injury settlement of which he ultimately kept $715,000. He also failed to maintain any accounting records. Overall, we find that this is a particularly serious violation of rule 4-100(B)(3). Because we find significant aggravation, though less than the hearing judge found, discipline in the mid-range specified by standard 2.2(b) is appropriate. (Std. 1.7(b); stds., Part B [presumed sanction is starting point for imposition of discipline; may be adjusted up or down depending on mitigating and aggravating circumstances]; see *In the Matter of Fonte*, *supra*, 2 Cal. State Bar Ct. Rptr. 752 [60-day actual suspension for failure to render appropriate accounting, acquisition of adverse interest and representation of clients with adverse interests without adequate disclosure and informed written consent, with substantial mitigation and aggravation including overreaching, uncharged misconduct, and indifference].)

The hearing judge also ordered that Cameron remain actually suspended until he makes restitution to Arroyo based on the finding that Cameron collected unconscionable fees. Since we

did not affirm the uncharged misconduct finding and the record lacks sufficient evidence on which to base a restitution recommendation, we do not impose this condition.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Nicholas K. Cameron be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first three months of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

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

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

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

6. He must comply with the following reporting requirements:

    a. If he possesses client funds at any time during the period covered by a required quarterly report, he shall file with each required report a certificate from him certifying that:

        i. He has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and

ii. He has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Trustees pursuant to rule 4-100(C) of the Rules of Professional Conduct.

b. If he does not possess any client funds, property or securities during the entire period covered by a report, he must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, he need not file the certificate described above.

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

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Cameron 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. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. RULE 9.20

We further recommend that Cameron 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.

IX. COSTS

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

HONN, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme 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. 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 Los Angeles, on November 15, 2016, I deposited a true copy of the following document(s):

OPINION FILED NOVEMBER 15, 2016

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID A. CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

BRANDON K. TADY, Enforcement, Los Angeles

KIMBERLY G. ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 15, 2016.

Jasmine Guladzhyan
Case Administrator
State Bar Court