

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 12-O-13556 (12-O-14216;
)	12-O-15710; 12-O-16124;
PHILIP LORIN MARCHIONDO,)	12-O-16669), 12-O-18103
)	(13-O-11227; 13-O-11672)-DFM
Member No. 129947,)	(Consolidated)
)	
A Member of the State Bar.)	DECISION
)	
)	
)	

INTRODUCTION

Respondent Philip Lorin Marchiondo (Respondent) is charged here with 34 counts of misconduct, involving seven different client matters. The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

On June 24, 2013, a Notice of Disciplinary Charges (NDC) was filed in five of the seven client matters by the State Bar of California. On July 17, 2013, Respondent filed his response to the NDC.

An initial status conference was held in the matter on August 5, 2013. At that time the case was given a trial date of October 8, 2013, with a five-day trial estimate.

On September 25, 2013, the parties filed a stipulation to continue the scheduled trial date due to the anticipation that the State Bar was going to file additional charges in several new matters. The parties asked that those new matters be consolidated with the pending cases and tried together.

On October 1, 2013, an order was issued vacating the existing pretrial and trial dates and abating the pending cases until the new charges were filed.

On November 13, 2013, the NDC was filed in three new cases, including charges related to complaints of two former clients (case Nos. 12-O-18103, 13-O-11227) and charges initiated by the State Bar (case No. 13-O-11672).

A status conference was held on December 9, 2013, at which time the earlier cases were unabated; the cases were consolidated; and a trial date of March 4, 2014, with a ten-day estimate, was scheduled.

Trial was commenced as scheduled on March 4, 2014, and completed on March 19, 2014, followed by a period of post-trial briefing. The State Bar was represented at trial by Senior Trial Counsel Kimberly G. Anderson and contract attorney Sherell N. McFarlane. Respondent was represented by Michael Gerner.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the stipulation of undisputed facts and conclusions of law previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

¹ As part of Respondent's post-trial brief, he filed a motion to dismiss. That motion is granted and denied as set forth below.

Jurisdiction

Respondent was admitted to the practice of law in California on June 12, 1995, and has been a member of the State Bar at all relevant times.

Background Information

Respondent is a long-time practitioner, handling various types of litigation matters out of an office in Los Angeles. In 2009, he was approached about the possibility of taking over a “pre-litigation” personal injury practice from another attorney, consisting of approximately 100 files. That practice was administered by a non-attorney, Alexander Kim; was conducted generally by other non-attorney staff who were employed by Kim; was located in office space leased by Kim on Wilshire Boulevard in Los Angeles; and utilized equipment (including office computers) owned by Kim. After receiving this overture, Respondent went to the Wilshire office, met with Kim, reviewed the quality of Kim’s staff’s handling of the existing files, and agreed to take over the business.

From the time that Respondent took over the office in 2009 until early 2012, Respondent divided his time between his two offices, although he was frequently out of both offices attending court and other client matters. The Wilshire office continued to be operated in the office space leased by Kim and with Kim’s employees and equipment, although Respondent had implemented quality control measures for those employees. Respondent did not, however, ever enter into a written contract with Kim regarding their respective rights and responsibilities in the relationship or in the event that the relationship was terminated.

From Respondent’s perspective, the office appeared to be running effectively and without significant problems until early 2012, when the Wilshire office began to generate a number of client complaints. On March 30, 2012, Respondent “closed” the Wilshire office by terminating

his relationship with Kim. As part of that termination, Respondent understood that he continued to be the attorney responsible for the many existing clients generated by the Wilshire office, and he sought to move the files of those clients to his other office, located on West Goldleaf Circle in the Ladera Heights area of Los Angeles. Unfortunately, because the employees, office space, computers, and other equipment at the Wilshire location were all controlled by Kim, Kim was able to greatly hinder Respondent's ability to have access to all of the records, especially the financial records, related to Respondent's prior practice at the Wilshire location.

Respondent's post-termination problems with Kim also extended to the funds held in Respondent's client trust account (CTA) for the Wilshire address. As a pre-litigation personal injury office, the firm largely served to evaluate, work up, and settle personal injury cases on a contingency fee basis prior to any litigation being filed. This practice meant that the firm had a very active client trust account, where money from settlements was deposited and then distributed to clients and various lienholders. Respondent had authorized Kim's office to do the bookkeeping for the office, including for the client trust account, and he had provided Kim with both the authority and the ability to issue checks on the CTA. The bulk of the records regarding client settlements, disbursements, and liens were maintained on computers belonging to Kim. When Respondent terminated his relationship with Kim, Kim proved to be quite unwilling to turn this financial information over to Respondent.

Making the situation even more difficult, shortly after Kim was advised of the termination of the relationship, Kim sought to transfer \$40,000 on April 9, 2012, out of both Respondent's general operating and client trust accounts at Citibank, using checks issued with Respondent's signature stamp purportedly on March 30, 2012. When the Citibank's fraud department contacted Respondent on April 11, 2012, about the checks, Respondent informed the

bank that the checks were unauthorized, and he was assured that they would not be honored by the bank. Respondent was also told that the then-existing operating and client trust accounts would be frozen and that Respondent should close down those accounts and open new ones. Respondent promptly did as he was advised, moving the funds from the old accounts into his new accounts. The withdrawal of the \$40,000 on April 9, 2012, in the original operating account was then reversed by the bank on April 11, 2012, an action recorded in the April 30, 2012 bank statement subsequently issued by Citibank for the account in May 2012. (Ex. B, p. 29.)

However, in June, 2012, when Respondent received his account statement for the new client trust account, he learned that Citibank had charged \$40,000 against Respondent's new client trust account. Although Respondent then promptly protested the bank's actions, the bank has failed to reverse the transaction and litigation by Respondent against the bank is still pending. In the interim, the \$40,000 of client funds, that was previously in that account, has not been available to Respondent to disburse to the clients whose funds were in the CTA or to their lienholders. As a result, when Respondent has determined that portions of those funds were owed to a particular client or lienholder, he has frequently been required to pay those funds with his own money.

After being terminated on March 30, 2012, Alexander Kim quickly secured a new relationship with another attorney, Daniel Hitzke, and the two promptly sought to persuade Respondent's clients to move their files from Respondent to Hitzke's new office at the old Wilshire address.

Litigation was also initiated between Respondent and Kim, who was represented by Hitzke. However, that litigation, and Respondent's continuing efforts to obtain complete client files and bookkeeping records, ended in December 2012 when Kim committed suicide.

Case No. 12-O-13556 (Norton Matter)

Leroy Norton (Norton) was involved in a multiple-car collision on or about August 27, 2011. The accident was caused by a inattentive driver who, while talking on her cell phone, rear-ended the car ahead of her, driven by Norton. The momentum of the impact on Norton's car caused him to then rear-end the car ahead of him.

Because Norton sustained both personal injuries and property damage in the accident, he wanted to hire an attorney to pursue a claim against the errant driver. Norton knew Alexander Kim. He called the Wilshire office and talked with a non-attorney member of the office staff there about the accident and his injuries. This individual then discussed the details of the accident with Respondent, who agreed that Respondent would be willing to represent Norton. Several hours later, another non-attorney representative of the Wilshire office went to Norton's house on behalf of Respondent. This individual informed Norton that he was not an attorney but was instead representing Respondent, who was an attorney. Norton was then given a retention agreement, whereby Respondent would be hired to handle Norton's claims arising out of the auto accident. This individual from Respondent's office also gave Norton the name of several medical providers whom Norton could consult for his claimed injuries. Norton then agreed to hire Respondent in connection with those claims. This representation was affirmed in a letter from Respondent's office on August 29, 2011. The letter also advised Norton that Riley Kim would be Norton's "file handler."

Norton promptly went to several medical providers for therapy related to his automobile accident. Each of these medical providers then filed liens with Respondent's office on the proceeds of any settlements.

On January 30, 2012, Respondent settled Norton's bodily injury claims for \$15,000.00, representing Norton's pro rata share of the policy limits of the errant driver. (Ex. B, p. 27.) On February 1, 2012, Respondent returned to the adverse insurer a release, which had been signed by Norton at Respondent's office. On February 13, 2012, a settlement check, dated February 7, 2012, was sent to Respondent's office. That check was made payable to Respondent and Norton in the amount of \$15,000.00. On or about March 5, 2012, Respondent deposited the settlement check into his original client trust account at Citibank (CTA-1).

As discussed above, on March 30, 2012, Respondent closed the Wilshire office and transferred Norton's matter to his other office. Later, on April 17, 2012, Respondent closed the original client trust account, CTA-1, opened a new client trust account at Citibank (CTA-2), and moved into it the Norton settlement funds that had previously been deposited in CTA-1.

With regard to Norton's claim for property damage to his car, in January 2012, the carrier for the errant driver had notified Norton and the owner of the other damaged car that there was only \$10,000 of insurance available for both of their two property damage claims, which totaled more than that amount. It proposed that the two competing claimants divide the \$10,000 on a pro rata basis, based on the amount of their respective property damage claims. For Norton, that share would be \$4,349.33. (Ex. B, pp. 105-106.) For this settlement to go forward, however, the carrier required that both claimants agree to the split. While Norton was agreeable to the arrangement, the other driver did not sign the required paperwork for many months.

In April 2012, Norton talked with both Respondent and other representatives of Respondent's office regarding the status of his personal injury and property damage claims. He was informed of the status of both.

Because Norton had gone to three different medical providers for treatment of personal injuries related to the car accident, there were bills and medical liens totaling \$8,856 from Christine An, D.C. (Dr. An), Michael Smith, M.D. (Dr. Smith), and E-Z Diagnosis Center. During the month of May, Respondent was successful in getting Drs. An and Smith to substantially reduce their medical liens so that more money could be paid to Norton.

On June 1, 2012, Respondent issued a check from CTA-2 to Norton in the amount of \$2,110.50, for Norton's portion of the bodily injury settlement. On June 3, 2012, Respondent sent Norton a letter regarding the settlement disbursement, including an accounting. The accounting noted that one-third (\$5,000) of the settlement funds had been retained by Respondent as his contingent fee; that \$500 had been retained by him for costs; and that \$1,500 was being held to offset funds that had previously been advanced by Respondent to Norton. With regard to the balance, Respondent's June 3, 2012 letter recounted that Respondent was also obligated to pay the liens of Norton's medical providers, whose bills totaled \$8,856, but that the medical providers had agreed to reduce their liens to \$5,890.

Within days after sending this letter and before Respondent had paid any money to Norton's medical providers/lienholders, Respondent learned of the \$40,000 reduction in the funds on deposit in his new client trust account.

Respondent made no effort to pay any of the three lienholders until the end of August 2012, when he sent checks to all three of the lienholders, using his own money to satisfy the liens.² In the interim, he had talked with these providers, with whom he had long-standing relationships, and explained the problems that he was having. Representatives of each of these

² In the NDC, the State Bar alleges that Respondent did not pay any of the three providers until October 31, 2012. Dr. An testified that she was unsure when she was paid; the CEO of EZ Diagnostics testified that his company was paid in August of 2012; and the administrator of Dr. Smith's office testified that he was also unsure when his office was paid.

providers was then subpoenaed by the State Bar to testify at trial. These witnesses for the State Bar also testified favorably regarding their dealings with Respondent and expressed no criticism of him.

Count 1 – Rules of Professional Conduct,³ Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”

In this count the State Bar alleges that Respondent willfully violated rule 3-110(A) by “failing to disburse Norton’s funds of the bodily injury settlement to Norton between on or about March 5, 2012 and on or about June 1, 2012, by failing to respond to Norton’s inquiries regarding his bodily injury settlement between on or about April 23, 2012 and on or about June 1, 2012, by failing to pay Dr. Smith for medical services provided to Norton to date, and by failing to supervise his non-attorney employees.”

This court agrees that Respondent’s delay in disbursing funds to Norton and his medical providers constituted a willful violation of his professional obligations. However, the conduct underlying those portions of this count are duplicative of the conduct giving rise to the charges, discussed below, of willful violations of rule 4-100(B)(4), and it is more appropriately addressed in that count. To that extent, the court dismisses those portions of this count.

With regard to the remaining allegations of this count regarding Respondent’s alleged failure to supervise his staff, those allegations are based on the allegations that Respondent allowed his non-attorney staff to practice law and effectively run the Norton matter without

³ Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

Respondent's involvement. As will be discussed below, the court does not find clear and convincing evidence that there was any such failure to supervise.

This count is dismissed with prejudice.

Count 2 – Business & Professions Code,⁴ Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to “respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” In this count, the State Bar alleges that Respondent failed to respond to Norton’s inquiries regarding his bodily injury settlement between April 23, 2012, and June 1, 2012.

The State Bar had the burden of presenting clear and convincing evidence to support this charge. The evidence at trial did not meet that standard. Norton at trial was a very poor witness, demonstrating a very poor recollection of the underlying events. Nonetheless, he testified that he talked with other representatives of Respondent’s office about his claim on numerous occasions after April 1, 2012, and that, after leaving a message in April asking Respondent to call him, Respondent may have returned his call. There is no evidence that Norton was not given repeated status updates by Respondent’s office during the subject period or that Norton was unaware of any development in his case during that period of time.

This count is dismissed with prejudice.

⁴ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

Count 3 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

Rule 1-300(A) of the Rules of Professional Conduct provides, “A member shall not aid any person or entity in the unauthorized practice of law.”

In this count, the State Bar alleges that Respondent aided the unauthorized practice of law by the non-attorneys in his office involved in the Norton matter by “allowing non-attorneys, including but not limited to, Kim, Tabb, and Alvarez, to enter into an attorney-client relationship with Norton on Respondent’s behalf and to enter into a contingent fee arrangement for legal services without Respondent or any other attorney being present, and without any attorney being available to discuss with Norton the viability of his legal remedies, his medical treatment and his damages, and by failing to provide any legal advice to Norton so that all legal advice regarding Norton’s case and settlement came from his non-attorney employees.”

This court concludes that the evidence fails to provide clear and convincing proof of any violation by Respondent of rule 1-300(A). To the contrary, Respondent testified credibly, and this court finds, that Respondent made the decision to represent Norton and did so prior to the retainer agreement being offered to Norton. Respondent was also personally responsible for and made every decision during the course of his office’s handling of the matter. There was no credible evidence that any non-attorney gave Norton any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. Finally, while counsel for the State Bar argued at the outset of this matter that Respondent’s failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar acknowledged in its responsive brief that “the law does not require an attorney to meet with a client prior to entering into a retainer

agreement.” (State Bar’s Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Count 4 – Rule 4-100(B)(3) [Failure to Maintain Records and Render Accounts of Client Funds]

Rule 4-100(B)(3) requires a member to “maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]”

In this count the State Bar alleges that Respondent violated rule 4-100(B)(3) by failing to maintain the required records regarding his receipt and disbursement of the Norton funds.

This court agrees that Respondent has failed to maintain the required records for his client trust account for the period leading up to March 30, 2012, and that this failure is a willful violation of his obligations under rule 4-100(B)(3).

During the time that Respondent was operating his practice out of the Wilshire office, he had delegated all record-keeping responsibilities to Alexander Kim. He neither required Kim to provide him with a copy of the required records nor had made any contractual arrangement whereby he was entitled to have access to such records after the termination of the relationship with Kim. As a result, Respondent was without any record of the status of Norton’s funds in his CTA after March 30, 2012, causing him to be unaware until May 2012 that these funds had not been previously disbursed. It is for the very purpose of avoiding such problems that the duty to comply with rule 4-100, including the duty to maintain records, is a non-delegable duty.

Count 5 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Rule 4-100(B)(4) of the Rules of Professional Conduct requires attorneys to “[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the

possession of the member which the client is entitled to receive.” This obligation includes the duty to pay valid medical liens where the attorney is holding client funds for that purpose. (See, e.g., *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 286; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.)

Norton’s matter was settled in February 2012, and funds were received by Respondent on March 5, 2012. Norton came to the office several times to ask for the release of the settlement funds. Nonetheless, Respondent did not seek to reduce the existing medical liens until May 2012; did not he disburse any funds to Norton until June 1, 2012; and did not pay any money to any of the medical providers until the end of August 2012, at the earliest. Such delays clearly violated rule 4-100(B)(4). (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 170 [two-month delay violated rule].)

At trial, Respondent explained these delays by stating that he had been unaware until May 2012 that the funds had not been previously disbursed by his staff. That explanation, however, does not excuse Respondent’s conduct. From the time that the funds were in his client trust account on March 5, 2012, Respondent had a duty to take steps to be able to release promptly those funds to his client or to the lienholders. To the extent those steps involved negotiating a reduction in the liens, that was a chore for Respondent to perform as an attorney, not a job to be wholly delegated to one of his non-attorney staff members. It is no excuse that Respondent was sufficiently removed from the handling of the Norton file throughout the month of March that he was completely unaware that nothing was being done by him to complete the settlement and resolve the liens.

Case No. 12-O-14216 (Perez Matter)

On June 4, 2010, Abraham Perez (Perez) was seriously injured in an automobile accident. On June 4, 2010, while he remained hospitalized and seriously injured, Perez, acting through his relatives, hired Respondent to represent him in connection with his bodily injury claims. This matter was not handled through the Wilshire office.

On January 28, 2011, Perez authorized Respondent to settle Perez's bodily injury claims for \$100,000.00, the limits under the State Farm policy. On January 31, 2011, State Farm Mutual Automobile Insurance Company (State Farm) issued a check payable to Perez, Respondent, and medical provider USCB, Inc. in the amount of \$100,000.00. On February 4, 2011, Respondent deposited the State Farm settlement check into his Wells Fargo client trust account.

Although the settlement of Perez's personal injury claim entailed a payment of \$100,000, the amount of his medical bill subject to medical liens exceeded that amount. When Perez asked to receive his portion of the settlement funds, he was told that these large liens would first need to be reduced before any funds could be released to him. After receiving the settlement funds, Respondent then went to work to obtain a reduction of the various liens.

On April 12, 2011, CompSpec, Inc. (CompSpec) sent Perez a letter stating that CompSpec was authorized by LAC USC Medical Center (i.e., USCB, Inc.) to obtain reimbursement for medical treatment provided to Perez, in connection with the accident. On April 19, 2011, Perez faxed the CompSpec letter to Respondent's office. Respondent received the fax. The amount of the outstanding medical bill for serviced rendered to Perez was \$101,043.00.

On June 28, 2011, Respondent secured a reduction in the USCB lien and issued a check from his CTA to USCB, Inc., in the amount of \$32,546.00, as payment for LAC USC Medical Center's medical lien. On July 5, 2011, that check cleared Respondent's CTA.

Then, as Respondent sought to obtain approval from Perez for various other disbursements of funds to the lienholders, it was determined that the phone number for Perez was no longer valid and he was not responding to letters sent by Respondent's office.

In July, August, and November 2011, Respondent and his office sent letters to Perez, telling him of the problems they were having contacting him and asking him to communicate with the office. Respondent also hired an investigator to look for Perez. That effort also proved unsuccessful. It was not until May of 2012 that Perez re-surfaced. At that point he immediately began to press Respondent's office regarding the distribution of the settlement funds, although he initially had some difficulty reaching Respondent personally. After Perez finally talked with Respondent in late May about Perez's desire to receive his money, Perez signed the letter authorizing the remaining disbursement by Respondent of the State Farm settlement funds on June 2, 2012.

More than six weeks later, on July 21, 2012, Respondent issued a check from his CTA to Schaefer Ambulance in the amount of \$1,397.75. On September 20, 2012, that check cleared the CTA.

On July 26, 2012, Respondent issued a check from his CTA to Aipian Chiropractic in the amount of \$1,160.00. On October 9, 2012, that check cleared the account.

On July 26, 2012, Respondent issued a check from his CTA to Perez in the amount of \$22,987.92. Perez picked up this check personally from Respondent's office and presented the check immediately for payment. On July 27, 2012, that check cleared Respondent's CTA.

At the time that Perez authorized the above distribution of funds, he had been provided with a disbursement breakout that inaccurately stated that the amount that was being paid to USCB was \$39,546.00, rather than \$32,546. As a result, the amount of funds owed to Perez as a result of the settlement was understated in the letter by \$7,000.

Within a few hours after Respondent had delivered the mistaken check to Perez, he realized that the figure in his disbursement sheet was incorrect. To correct the error, he issued a supplemental check in the amount of \$7,000 and mailed it that same day to Perez with an explanatory letter. (Ex. C, p. 12.) Unfortunately, the letter apparently did not reach Perez.⁵ It was not until June 2013, after Respondent was provided with a new address for Perez in Pomona, California, that Respondent successfully sent Perez a new copy of his prior letter, together with a check for \$7,000.

Count 6 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) by “failing to disburse Perez’s portion of the bodily injury settlement between on or about February 4, 2011 and on or about June 26, 2012, by failing to respond to Perez’s phone messages regarding his bodily injury settlement between in or about May 2011 and May 2012, and by failing to supervise his non-attorney employee Tabb.”

This court agrees that Respondent’s delay in disbursing funds to Perez and his medical providers constituted a willful violation of his professional obligations. However, the conduct underlying those portions of this count is duplicative of the conduct giving rise to the charges, discussed below, of willful violations of rule 4-100(B)(4), and it is more appropriately addressed in that count. To that extent, the court dismisses those portions of this count.

⁵ During this same period of time, the State Bar was also having difficulty reaching Perez. (See Ex. M.)

With regard to the remaining allegations of this count regarding Respondent's alleged failure to supervise his staff, those allegations are based on the allegations that Respondent allowed non-attorney Tabb to practice law and effectively run the Perez matter without Respondent's involvement. As will be discussed below, the court does not find clear and convincing evidence that there was any such failure to supervise.

Finally, the evidence is not clear and convincing that Respondent failed to respond to phone messages from Perez. The claim by Perez at trial that he was calling Respondent's office four times a week was not credible. While phone records maintained by Respondent's office show that Perez called one time in May 2012 and left a message to the effect that he had been trying to reach Respondent all week, there was no other record in the phone log of any such efforts. Worse, the number taken down by Respondent's office proved to be incorrect. However, shortly thereafter in May 2012, Perez agrees that he talked with Respondent regarding the settlement, including the fact that it reflected the State Farm policy limits.

Finally, after Perez received his check on July 26, 2012, he makes no contention that he sought to contact Respondent for any reason prior to receiving the additional funds in June 2013. During that same period, however, both Respondent and the State Bar were seeking to establish contact with him.

This count is dismissed with prejudice.

Count 7 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

In this count, the State Bar alleges that Respondent aided the unauthorized practice of law by Vonn Tabb, a non-attorney working for his office on the Perez matter, by "allowing non-attorneys, including but not limited to Tabb, to enter into an attorney-client relationship with Perez on Respondent's behalf and to enter into a contingent fee arrangement for legal services

without Respondent or any other attorney being present, and without any attorney being available to discuss with Perez the viability of his legal remedies, his medical treatment and his damages, and by allowing Tabb to give legal advice to Perez regarding his case and settlement.”

This court concludes that the evidence fails to provide clear and convincing proof of any violation by Respondent of rule 1-300(A). To the contrary, Respondent testified credibly, and this court finds, that Respondent made the decision to represent Perez and did so prior to the retainer agreement being offered to Perez. Respondent was also personally responsible for and made every decision during the course of his office’s handling of the matter. There was no credible evidence that any non-attorney gave Perez any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. Finally, while counsel for the State Bar argued at the outset of this matter that Respondent’s failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar acknowledged in its responsive brief that “the law does not require an attorney to meet with a client prior to entering into a retainer agreement.” (State Bar’s Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Count 8 – Rule 4-100(B)(3) [Failure to Maintain Records and Render Accounts of Client Funds]

In this count the State Bar alleges that Respondent violated rule 4-100(B)(3) by failing to maintain the required records regarding the handling of the funds received on behalf of Perez. In addition, it contends that Respondent failed to account to Perez for \$1,575 of those funds. This court finds that Respondent failed to maintain the required records regarding his client trust

account and the Perez funds deposited in it. The court disagrees that Respondent also violated rule 4-100(B)(3) by failing to account for \$1,575.

At virtually the same time that Perez was renewing ties with Respondent's office in May of 2012, he complained to the State Bar that he had not yet received any portion of the settlement funds paid by State Farm. On June 20, 2012, a State Bar investigator sent a letter to Respondent regarding the complaint by Perez.⁶ In that letter, the investigator asked Respondent for a written response to the allegations made by Perez and for an accounting of all funds received on behalf of Perez. The investigator also asked Respondent to provide, among other things, a client trust account ledger for Perez, the written account journal for the client trust account, and monthly reconciliations from the time Respondent initially received the funds for Perez. Respondent received the letter but did not provide any of the requested records, despite his statutory duty to cooperate with the investigation. Nor has Respondent produced such records during the course of the instant proceeding. Based on all of the evidence received by this court, including the evidence regarding Respondent's confusion over the amount of money owed to Perez, this court concludes that Respondent did not have the required records and reconciliations.

The evidence is to the contrary with regard to whether Respondent accounted to Perez regarding the \$1,575 that remained of the settlement after the payments for Respondent's one-third share, the payments to the various medical providers, and the payments to Perez are subtracted. In Respondent's distribution letters to Perez, Respondent specifically stated that this \$1,575 had gone to pay for costs incurred in handling the case. In the absence, as here, of any request by Respondent's client for additional detail regarding those costs, this accounting was sufficient to satisfy Respondent's duties under rule 4-100(B)(3).

⁶ By that time, Perez had already been in contact with Respondent and had signed the authorization to disburse funds.

Count 9 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

Respondent received settlement funds for Perez in February 2011 and did not disburse any of the funds to Perez until July 26, 2012, and did not disburse all of the funds to Perez until June 2013. While much of the delay was due to difficulties caused by problems in reaching Perez, those difficulties do not account for all of the delay. It is agreed that Perez re-surfaced in May 2012, and that he signed the authorization to disburse funds at the beginning of June 2012. Nonetheless, it was not until the end of July that Respondent acted to actually release funds to Perez or the remaining medical providers, a delay of nearly two months. Given the delay that had already taken place, this failure by Respondent to act with real dispatch is especially problematic and represents a willful violation by Respondent of his obligation under rule 4-100(B)(4) to promptly pay client funds.

Count 10 –Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent's statement in his distribution letter, that the USCB lien required a payment of \$39,546, rather than \$32,546, constituted an act of moral turpitude. This court agrees.

There was no historical explanation for the \$39,546 figure. The only reduction that Respondent's office ever requested that USCB consider was in the amount of \$32,546, and that was the only figure ever offered by USCB. There is no evidence that \$39,546 was a possible reduction ever considered by the parties.

Under the circumstances, Respondent's use of the \$39,546 figure in his letter to Perez (and in all of the other versions of it) was either an intentional misrepresentation or reflected an unintended typographical error in the letter. This court finds no clear and convincing evidence that it was the first of those two options, but instead concludes that it was the latter.

Nonetheless, while the figure in the letter may have merely been an unintended typo, Respondent continued to repeat that figure repeatedly over time and, more significantly, relied on it in calculating the money due to Perez. Respondent had a duty to provide an accurate accounting to Perez regarding his client's entitlement to funds, to make an complete distribution to Perez of the funds owed to him, and to maintain and consult accurate financial records in performing those functions. Clearly he did not do so. This ongoing failure by Respondent represented ongoing acts of gross negligence by Respondent, and it caused a delay of nearly a year before Perez had received all of the funds due to him.

Case No. 12-O-14216 (Castillo Matter)

On May 2, 2011, Javier Castillo (Castillo) was involved in an automobile accident.

On May 16, 2011, Allstate Insurance Company (Allstate) issued a check to Castillo in the amount of \$4,740.89 as payment for Castillo's property damage claims. Castillo received the check. On May 23, 2011, Allstate issued a check to Castillo in the amount of \$29.98, in reimbursement for loss of use of Castillo's vehicle. Castillo received the check. On May 25, 2011, Allstate issued a third check to Castillo in the amount of \$24.00, in reimbursement for loss of use of Castillo's vehicle. Castillo received the check.

On February 21, 2012, Allstate sent a letter to Respondent containing a settlement offer regarding Castillo's bodily injury claims, in the amount of \$10,998.00. Respondent received the letter. However, when Respondent tried contact Castillo regarding the offer, Castillo's telephone number and address were no longer valid. Letters were then sent to Castillo by Respondent's office on March 6 and 12, 2012, but Castillo did not respond to them until May 2012. At that time, Castillo agreed to the settlement proposal and came into Respondent's West Goldleaf Circle office on May 25, 2012, and executed the release documents necessary to finalize the

settlement. Respondent met with Castillo (who does not speak English) when he was at the office and testified that Castillo had no questions about the agreement. On the same day, the executed release was faxed by Respondent's office to Allstate, with a Facsimile Transmittal sheet that listed Respondent's current business address and phone number. (Ex. D, p. 50.)

Unfortunately, the new address was apparently not noted by the Allstate adjuster handling the file, and she forwarded the settlement check to Respondent's prior Wilshire address.

In July, Respondent became aware that the settlement check had been sent to the former address. Allstate's adjuster was then contacted by Respondent's office and requested to put a stop order on the prior check (which had not been negotiated) and send a new check.

In August 2012, Respondent was notified that Castillo had hired a new attorney, Steven Murray. Although Murray was apparently aware that a settlement had been reached with Allstate, he took the position that Respondent was not entitled to a fee for his work in obtaining property damage and bodily injury settlements with Allstate. Because Respondent refused to agree with that proposition, Allstate then hired counsel to represent it in the matter. Ultimately, Murray agreed that Respondent was entitled to a fee for his work, and settlement funds were released to Murray in January 2013.

Count 11 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) by “failing to meet Castillo regarding his bodily injury and property damage claims, by failing to follow up with Allstate regarding Castillo's settlement check between May 25, 2012 and August 2012, by failing to supervise non-attorney employee Kim when she signed Castillo up as a client of Respondent's, and by failing to supervise non-attorney Alvarez regarding his failure to return Castillo's phone calls and the settlement of Castillo's bodily injury claims.”

The evidence fails to provide clear and convincing evidence of any willful violation by Respondent of rule 3-110(A).

In the first instance, Castillo failed to appear as a witness in the matter, despite being subpoenaed by the State Bar to do so. As a result, there was no evidence from him regarding his dealings with non-attorneys in Respondent's office or any complaints by him about those individuals.

With regard to the remaining contentions, Respondent testified credibly that he did follow up regarding the settlement check, that he did meet with Castillo on one occasion, that he made the decision as to whether to represent Castillo (as he did all of his clients accepted through the Wilshire office), and that the decision to recommend acceptance of Allstate's settlement offer was made by him.

This count is dismissed with prejudice.

Count 12 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

In this count, the State Bar alleges that Respondent aided the unauthorized practice of law by the non-attorneys in his office involved in the Castillo matter. This court does not agree. Respondent made the decision to represent Castillo prior to the retainer agreement being offered to him, and he was personally responsible for every decision made during the course of the handling of the case. There was no credible evidence that any non-attorney gave Castillo any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. Finally, while counsel for the State Bar argued at the outset of this matter that Respondent's failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar

acknowledged in its responsive brief that “the law does not require an attorney to meet with a client prior to entering into a retainer agreement.” (State Bar’s Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Case No. 12-O-16124 (El Fadel Matter)

On February 13, 2012, Abdellah El Fadel hired Respondent to represent him in connection with his bodily injury claims.

In early March 2012, El Fadel left for Morocco and was out of the United States for approximately three months. During that period of time, it was not possible for Respondent’s office to contact him.

On March 23, 2012, Respondent sent a settlement demand for \$14,000.00 to Progressive Insurance Company (Progressive) regarding El Fadel’s bodily injury claim. At the time, the case was being handled by Respondent’s Wilshire office. El Fadel testified that he had been made aware of this settlement demand.

On April 18, 2012, Progressive sent Respondent a settlement offer in the amount of \$2,760. Although it was addressed to his former Wilshire office address, Respondent received the April 18, 2012 written settlement offer. However, because he was aware that El Fadel was out of the country, he did not take any steps at the time to inform his client of it. Nor did he inform El Fadel of the offer after El Fadel had returned to this country.

On or about May 25, 2012, the adjuster at Progressive sent a letter to Respondent’s West GoldLeaf Circle office, stating, “We have reached an agreement for the complete and full settlement of ABDELLAH ELFADEL’s [sic] Bodily Injury claim only. Payment in the amount of \$3,000.00 is enclosed. Please have your client sign the endorsed release and return it in the

envelope provided.” A copy of this letter was sent by Progressive to El Fadel. The letter was not addressed to any particular individual and there was no evidence at trial regarding whether any conversation had actually taken place between the insurance adjuster and anyone at Respondent’s office.

Enclosed with the above letter was a check from Progressive in the amount of \$3,000. The check was made payable to both El Fadel and Respondent’s office. On receipt, it was endorsed by a member of Respondent’s office on behalf of both the office and El Fadel and deposited into Respondent’s client trust account.

On returning to this country, El Fadel became concerned about the handling of his file after talking with a former employee still at the Wilshire office address. As a result, he decided to replace Respondent with Daniel Hitzke.

On June 4, 2012, a representative of Respondent’s office contacted Progressive to ask for a release form. On that same date, a legal assistant in Hitzke’s office sent a letter to Respondent’s office, informing Respondent that El Fadel had requested Hitzke’s office to take over the file. The letter purported to inform Respondent’s office that it was no longer authorized to represent El Fadel. The letter, however, did not include any authorization or directive from El Fadel personally. Two days later, on June 6, 2012, a letter and authorization from El Fadel was sent by Hitzke’s office to Progressive, notifying it that Respondent’s office had been replaced.

El Fadel then decided to go to another law firm to handle his auto claim. In July 16, 2012, he executed an authorization for the law offices of K. J. Lee & Associates to represent him in the auto accident matter. That authorization included an instruction that Respondent’s office cease all work on behalf of El Fadel. This directive was then sent to Respondent’s office. In the meantime, Vonn Tabb of Respondent’s office had been told by El Fadel that he wanted to accept

the \$3,000 settlement check. As confirmed by the activity log in Respondent's file for the El Fadel matter, Tabb then told El Fadel that "there was no check." (Ex. E, p. 66.)

On August 16, 2012, Respondent sent a letter to Progressive, notifying it that his office had been discharged by El Fadel and taking the position that there had never been a settlement of the El Fadel case and that the \$3,000 settlement draft had been deposited by his office "inadvertently." As a result, Respondent sought to return the \$3,000 to Progressive. In this same letter, Respondent's office asserted a lien over any future settlement of the matter. In response to this letter, Progressive declined to accept the proffered return of funds, taking the position in a letter dated August 22, 2012, that the case had settled.

In October 2012, a letter was sent by the State Bar to Respondent, informing him that El Fadel had filed a complaint against him, claiming that the \$3,000 settlement was unauthorized.

After much wrangling between the office of Respondent and K. J. Lee, an agreement was reached whereby El Fadel would accept from Respondent the \$3,000 as a full settlement of his claims against Progressive's insured, while Respondent's office agreed to waive any fees to which it might be entitled. This agreement was funded in or about March 2013.

Count 13 – Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent violated rule 3-110(A) by "permitting Oscar to solicit El Fadel's business at the scene of the accident, by failing to supervise Alvarez in his handling of El Fadel's case and his communications with Progressive, by failing to supervise Oscar's communications with El Fadel regarding the referral to Hitzke, by failing to inform El Fadel that Alvarez had settled El Fadel's personal injury claim with Progressive without El Fadel's authorization, by failing to inform El Fadel that Respondent had received the \$3,000.00 settlement check, by signing or allowing one of his employee's [sic] to sign El Fadel's signature

on the \$3,000.00 settlement check without El Fadel's knowledge or consent, by failing to inform El Fadel that Respondent or one of his employees had signed his name on the \$3,000 settlement check, by failing to inform El Fadel that Respondent had received and deposited the \$3,000.00 settlement check, and by failing to promptly disburse any portion of the \$3,000.00 settlement amount to El Fadel."

The allegations that Respondent permitted "Oscar" to solicit El Fadel's business at the scene of the accident and that Alvarez settled the El Fadel matter with Progressive are unsupported by clear and convincing evidence. The allegation that Respondent failed to supervise Oscar at the time that Oscar communicated with El Fadel regarding the referral of the case to Daniel Hitzke ignores the obvious fact that Oscar was not employed by Respondent at the time, but rather was still working at the Wilshire office and no longer under Respondent's authority. The allegation that Respondent violated rule 3-110(A) by signing or allowing an employee in his office to sign El Fadel's signature to the settlement check ignores the fact that El Fadel had authorized Respondent's office generally to make such endorsements on his behalf and there is no clear and convincing evidence that Respondent had any advance knowledge that any employee was going to endorse that particular check.

With regard to the remaining allegations of this count, relating to the alleged failures to communicate with El Fadel regarding developments in the case and to disburse funds at an earlier date, those matters form the basis for several of the charges below, in which the conduct is more appropriately addressed.

Accordingly, this count is dismissed with prejudice.

Count 14 –Section 6068, subd. (a) [Failure to Support Laws

At the request of the State Bar, this count was dismissed at trial.

Count 15 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

In this count the State Bar alleges that Respondent violated rule 1-300(A) by “permitting Oscar to sign El Fadel up as a client of his without supervision, by permitting his non-attorney employees, including but not limited to Alvarez, to give legal advice to El Fadel, and by permitting Alvarez to contact Progressive and make an unauthorized settlement offer in the amount of \$3,000.00.”

This court concludes that the evidence fails to provide clear and convincing proof of any violation by Respondent of rule 1-300(A). To the contrary, Respondent testified credibly, and this court finds, that Respondent made the decision to represent El Fadel and did so prior to the retainer agreement being offered to El Fadel. Respondent was also personally responsible for and made every decision during the course of his office’s handling of the matter. There was no credible evidence that any non-attorney gave El Fadel any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. There is also no persuasive evidence that Alvarez made any settlement offer to Progressive.⁷

Finally, while counsel for the State Bar argued at the outset of this matter that Respondent’s failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar acknowledged in its responsive brief that “the law does not require an attorney to meet with a client prior to entering into a retainer agreement.” (State Bar’s

⁷ Indeed, in Progressive’s rejection of Respondent’s attempt to return the \$3,000 settlement payment, it relies solely on the fact that the check had been deposited and had apparently been endorsed by El Fadel. It made no claim that any offer to settle had been made on El Fadel’s behalf, whether by Alvarez or anyone else. (See Ex. 75.)

Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Count 16 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

As previously noted, section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to “respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.”

The events surrounding the receipt by Respondent’s office of a settlement draft and confirmation of a purported settlement, Respondent’s office’s actions in endorsing and depositing that settlement draft, and Respondent’s continued retention of those settlement funds were all significant developments that Respondent was obligated to communicate to his client. He did not do so. Although the delay in communicating that information might be excused by El Fadel’s absence from the country, that excuse evaporated when El Fadel returned to this country and inquired of the status of his matter. Rather than being informed by Respondent or his office of what had happened, El Fadel was told that “there was no check.” (Ex. E, p. 66.)

Respondent’s failure to communicate with his client constituted a willful violation by him of his duties under section 6068, subdivision (m).

Count 17 – Section 6103.5 [Failure to Communicate Written Offer of Settlement]

Section 6103.5 requires an attorney to promptly communicate to his client any written settlement demands made by or on behalf of an opposing party. Respondent had a duty to communicate to his client the settlement offer made by Progressive on April 18, 2012. As discussed above, although Respondent’s delay in communicating that information might be

excused by El Fadel's absence from the country, that excuse evaporated when El Fadel returned to this country and inquired of the status of his matter. Rather than being informed by Respondent or his office of what had happened, no information was provided to El Fadel regarding the earlier settlement proposal. This failure constituted a willful violation of Respondent's duties under section 6103.5.

Count 18 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

Rule 4-100(B)(1) requires that a member "shall promptly notify a client of the receipt of the client's funds, securities, or other properties." Just as discussed above, Respondent had a duty to inform his client of his office's receipt, deposit and retention of the \$3,000 from Progressive. Although the delay in communicating that information might be excused by El Fadel's absence from the country, that excuse evaporated when El Fadel returned to this country and inquired of the status of his matter. Rather than being informed at that time by Respondent or his office of what had happened, El Fadel was instead told that "there was no check." Respondent's failure to communicate to El Fadel the fact that funds had been received on El Fadel's behalf constituted a willful violation of Respondent's duties under rule 4-100(B)(1).

Count 19 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

In this count the State Bar alleges that Respondent violated rule 4-100(B)(4) by failing to promptly disburse to El Fadel the funds that had been received by Respondent's office from Progressive.

This court disagrees. At various times, either El Fadel or his new attorneys were disputing Respondent's authority to enter into a settlement on El Fadel's behalf, and Respondent was denying that his office had done so. Because Respondent had received the settlement funds as a fiduciary, with the clear understanding that the funds could not be released without an

assurance to Progressive that the effect of that disbursement was to release Progressive's insured from all liability to El Fadel for the prior automobile accident, it would have been inappropriate for Respondent to have released all, or any portion, of the funds to El Fadel.

Further, those settlement funds were subject to medical liens of various providers. (See, e.g., Ex. F, p. 107.) The State Bar presented no proof that those liens had been extinguished such that Respondent was either permitted or required to release the settlement funds.

This count is dismissed with prejudice.

Count 20 –Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent committed an act of moral turpitude “by permitting Alvarez to settle El Fadel’s personal injury claim without authority, and by signing or allowing one of his employee’s [sic] to sign El Fadel’s signature on the \$3,000 settlement check without his knowledge or consent.”

As discussed above, the evidence in this matter failed to provide clear and convincing evidence regarding these factual allegations. Nor did the evidence provide persuasive proof of any act of moral turpitude, as alleged.

Case No. 12-O-16669 (Bell/Flowers Matter)

On September 15, 2011, Carl Bell (Bell) and his mother, Eva Flowers (Flowers), were involved in an automobile accident. On September 21, 2011, Bell and Flowers hired Respondent to represent them in connection with property damage and bodily injury claims arising from the accident.

On May 24, 2012, Infinity Insurance Company (Infinity) agreed to settle Bell's personal injury claims for the amount of \$1,500.00 and personal injury claims of Flowers for the amount

of \$2,000.00. It then provided Respondent's office with releases to be signed by Bell and Flowers.

During this same time period, Bell and Flowers had been convinced by individuals at Respondent's former Wilshire office to replace Respondent with Daniel Hitzke. However, when they learned of the settlement offer, they agreed to continue to have Respondent represent them. In the interim, Hitzke had notified Infinity that he now represented Bell and Flowers.

On July 23, 2012, Bell and Flowers signed the releases, and they were transmitted to Infinity.

On July 25, 2012, Infinity sent Respondent a settlement check in the amount of \$1,500.00 for Bell (payable to Bell, Respondent, and Hitzke and Associates) and a settlement check in the amount of \$2,000.00 for Flowers (also payable to Flowers, Respondent, and Hitzke and Associates).

On August 17, 2012, after getting the required signatures, Respondent deposited the settlement checks into his client trust account.

On September 16, 2012, Respondent sent a letter to Flowers, stating that Respondent had settled Flowers' claim for \$2,000.00. The September 16, 2012 letter stated that Respondent was entitled to a total of \$816.00 in attorney fees and costs and that, before disbursing any portion of the settlement amount to Flowers, Respondent was obligated to pay the medical providers of Flowers directly from Respondent's client trust account due to medical liens executed by Flowers with Grace Chiropractic Clinic and Westchester Advanced Imaging (WAI). This letter to Flowers went on to state that Grace Chiropractic Clinic and WAI had agreed to "significantly reduce the medical liens" from \$2,965.00 to a total sum of \$700.00. As a result, on September 16, 2012, Respondent issued a check to Flowers in the amount of \$484.00.

Also on September 16, 2012, Respondent sent a comparable letter to Bell, stating that Respondent had settled Bell's claim for \$1,500.00. The letter stated that Respondent was entitled to a total of \$650.00 in attorney fees and costs and that, before disbursing any portion of the settlement amount to Bell, Respondent was obligated to pay Bell's medical providers directly from Respondent's client trust account due to medical liens executed by Bell with Grace Chiropractic Clinic and WAI. The letter to Bell went on to state that Grace Chiropractic Clinic and WAI had agreed to "significantly reduce the medical liens" from \$3,837.00 to a total sum of \$600. As a result, on September 16, 2012, Respondent issued a check to Bell, in the amount of \$250.

Respondent had done business with WAI on many occasions in the past, and there was a long-standing informal arrangement between Respondent and his primary contact at WAI regarding the formula for how medical bills would be reduced in instances where the total medical bills were disproportionate to the amount of the ultimate settlement. The bills from WAI for Flowers and Bell were in the amounts of \$110 and \$397, respectively. According to the formula, Respondent understood that WAI would reduce these bills to \$26.64 and \$50, respectively. On September 25, 2012, he sent a check to WAI for \$50 in the Bell matter in accordance with his understanding that it had agreed to the routine reduction.

Respondent was also accustomed to WAI having perfected a lien with his office for the value of its services. At the time of his letters of September 16, 2012, he was unknowingly incorrect on both counts.

When WAI received the \$50 check, it did not return the check, but instead cashed it, but with language written on it stating that it was "Cashed Under Protest" and was being treated as "Partial Payment." This language was placed there by a manager at WAI with who Respondent

had never worked. At the same time, because WAI realized that it did not have a lien on the settlement funds, it then sent bills and form letters to Bell and Flowers on September 18, 2012, threatening to turn them over to collection if the full amount of the bills were not paid within 15 days. Bell then paid \$25 toward the bills and complained to the State Bar.

On October 15, 2012, Respondent, unaware of the problem, sought to pay on a reduced basis a number of WAI bills for various clients, including Bell and Flowers, utilizing the old formula. Once again, the manager elected to cash the check while writing “Cashed Under Protest” on the check.

On October 16, 2012, a State Bar investigator sent a letter to Respondent. In the letter, the investigator asked Respondent for a written response to the allegations made by Bell and Flowers in case No. 12-O-16669. The investigator also asked Respondent for an accounting of all funds received on behalf of Bell and Flowers and asked Respondent to provide, among other things, client trust account ledgers for Bell and Flowers, the written account journal for the client trust account and monthly reconciliations from the time Respondent initially received the funds for Bell and Flowers. Respondent received the letter and subsequently produced the requested records.

Respondent then contacted WAI about the situation and WAI agreed to write-off both the Flowers and Bell bills for the amount of money that it had already received.

Count 21 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) in his handling of the Bell and Flowers matters. This court disagrees. The evidence fails to show any intentional, reckless, or repeated failure by Respondent to act competently in the matter.

At trial, the State Bar called as its witness the WAI manager who had cashed Respondent's tendered payments "under protest." This manager did not dispute Respondent's testimony that a subordinate employee in his department was the individual who had dealt with Respondent on bills involving Respondent's clients; nor did he credibly dispute Respondent's testimony that Respondent had discussed the bills with that employee and understood that WAI had agreed to reduce the bills in accordance with the usual formula. Instead, the manager agreed that this other employee had the authority to make decisions to reduce bills such as those of Bell and Flowers, and he testified on direct examination that it was the procedure of his office that WAI would reduce its bills to the amount equal to its pro rata portion of the total medical bills times one-third of the settlement amount. That was precisely the formula that Respondent had used in calculating the figures used in his letters of September 16, 2012, and in his prior payment to WAI (see calculations set out on Exhibit 95.) While this manager opined that Respondent had not negotiated any reduction prior to September 16, 2012, he admitted that his only basis for providing that opinion was the fact that the employee had not confirmed any negotiation in the file. "Since I'm not the one who would have made the agreement, I would have no knowledge of it." He did not state that he had ever asked his subordinate whether she had reached an agreement with Respondent to reduce the bills.

Respondent testified credibly that he understood that WAI had agreed to reduce its bills in accordance with the standard formula. When he became aware that WAI was disputing the agreement, he contacted the organization and WAI quickly retreated from its position that any more of the bills were owing.

To the extent this count alleges that Respondent acted in violation of rule 3-110(A) in paying out funds before the WAI was paid, that charge is defeated by evidence from WAI's manager that there was no valid lien on the settlement funds.

This count is dismissed with prejudice.

Count 22 – Section 6106 [Moral Turpitude - Misrepresentation]

In this count the State Bar accuses Respondent of an act of moral turpitude in stating that WAI had agreed to reduce its bills. For all of the reasons stated above, this court disagrees.

This count is dismissed with prejudice.

Count 23 – Rule 4-100(B)(3) [Failure to Maintain Records and Render Accounts of Client Funds]

In this count the State Bar charged that Respondent had failed to maintain the records required by rule 4-100(B)(3) regarding the Bell and Flowers accounts. In support of that conclusion, it alleged that Respondent had failed to produce such documents to the State Bar during the course of its investigation of the Bell/Flowers complaints.

At trial, Respondent produced the required documents and testified credibly that he had produced these documents to the State Bar, both during its investigation and during the discovery process after charges were filed. The State Bar offered no contrary evidence.

This charge is dismissed with prejudice.

Case No. 12-O-18103 (Cherrington Matter)

On March 4, 2011, Sherlett Cherrington and her two minor children were involved in an automobile accident. She then contacted a body shop, which recommended that she retain Respondent to represent her and her children in seeking monetary compensation. Cherrington then called Respondent's office. That same day, an unidentified individual came to Cherrington's home and gathered information regarding the accident. This information was then

conveyed to Respondent, who agreed that he would take the case. Cherrington then came to the Wilshire office and signed the papers, including a contingency fee agreement, authorizing Respondent to represent her and her two children.

Between the time of the accident in March 2011 and January 2012, Cherrington and her children sought medical attention from Dr. Raymond Phillips for the injuries they claimed resulted from the accident. Dr. Phillips then perfected liens for the cost of this medical attention against any recovery by Cherrington and her children in their claims against the other driver.

In January 2012, a settlement agreement was reached in the matter, whereby the insurer for the other driver agreed to pay a total of \$10,000 to settle the claims of Cherrington and her children, with \$9,000 be allocated to Cherrington and \$500 being allocated to each of the two minor children. Cherrington was consulted about the proposed settlement, agreed to it, and signed the documents to finalize the agreement.

On January 16, 2012, Respondent received on behalf of his clients three settlement checks from Praetorian Insurance Company totaling \$10,000. Of this sum, Respondent gave instructions for Respondent to pay \$3,333.33 to Dr. Raymond Phillips for medical treatment received by Sherlett Cherrington and her two minor children, consisting of \$3,000 to cover the medical expenses of Sherlett Cherrington and \$333.33 to cover the expenses of her two children.

On or about that same day, Respondent disbursed \$2,983 to his clients, representing their share of the settlement. However, he did not issue any funds to Dr. Phillips in January 2012. Nor did he do so in February 2012. In fact, it was not until November 14, 2012, that Dr. Phillips received his portion of the settlement funds, and only after he had billed Cherrington personally and she had complained to the State Bar.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) in his handling of the Cherrington matter. Included in the reasons listed in the NDC for this charge are his failure to disburse settlement funds to Cherrington’s medical provider, Dr. Raymond Phillips, at any time between January 16, 2012, and November 14, 2012. However, the conduct underlying that portion of this count is duplicative of the conduct giving rise to the charge of a violation of rule 4-100(B)(4), below, and is more appropriately addressed in that count. To that extent, the court dismisses that portion of this count.

In addition, the NDC alleges Respondent violated rule 3-110(A) by “Failing to supervise his non-attorney employees, including but not limited to Alexander Kim, Vonn Tabb, and Riley Kim;”⁸ and “failing to communicate with Cherrington at any time and failing to provide legal advice to Cherrington.”

Respondent testified credibly that he was personally responsible for every decision made during the course of the handling of the case. Cherrington was made aware of developments in the case through intermediaries working at Respondent’s direction and under his supervision, and she participated in the settlement decision and subsequent settlement process.

In sum, with respect to the portions of this count that have not been previously dismissed, the State Bar has failed to present clear and convincing evidence of any willful violation by Respondent of rule 3-110(A). Accordingly, this count is dismissed with prejudice.

Count 2 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

In this count, the State Bar alleges that Respondent aided the unauthorized practice of law by the non-attorneys in his office involved in the Cherrington matter. As previously discussed,

⁸ No actual facts are alleged in the NDC to explain this charge, other than those listed as a separate charge in the same count.

this court does not agree. Respondent testified credibly that he made the decision to represent Cherrington and her two children prior to the retainer agreement being offered to her and that he was personally responsible for every decision made during the course of the handling of the case. There was no credible evidence that any non-attorney gave Cherrington any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. Finally, while counsel for the State Bar argued at the outset of this matter that Respondent's failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar acknowledged in its responsive brief that "the law does not require an attorney to meet with a client prior to entering into a retainer agreement." (State Bar's Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Count 3 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

In this count, the State Bar alleges that Respondent willfully violated his obligation under rule 4-100(B)(4) to pay settlement funds promptly to Dr. Raymond Phillips. This court agrees.

Although Respondent complains throughout the pendency of this matter about the problems that he had as a result of closing the Wilshire office on March 30, 2012, those problems do not explain his failure to pay Dr. Phillips during the period from January 16, 2012 until March 30, 2012. Indeed, had Respondent paid Dr. Phillips prior to March 30, 2012, all of the \$40,000 that Respondent now complains was later taken by Citibank from his account in May 2012 would have been available.

Respondent also claims that he attempted to pay Dr. Phillips on March 29, 2012, but that the check ended up being nullified by the fact that the account was frozen after April 11, 2012, as a result of the bogus \$40,000 check. That testimony is supported only by a purported check stub and is not persuasive. There is no indication of Dr. Phillips having complained about a returned check at any time during 2012, and no record from the bank reporting on one. Moreover, even if the purported March 29, 2012 check had been rejected by the bank, Respondent would presumably have been made aware of that fact at the time and should have taken prompt steps to make funds available to Dr. Phillips, whether before or after Citibank's withdrawal of funds from his CTA in May 2012.

Case No. 13-O-11227 (Lyons Matter)

On January 16, 2011, Terrie Lyons was involved in an auto accident caused by the driver of an oncoming car turning left in front of Lyons in an intersection controlled by traffic lights. Lyons was injured in the accident, including suffering a broken foot.

At some point after the accident, a friend recommended that Lyons retain Respondent to represent her in seeking monetary compensation. Lyons then called Respondent's office and talked with an unidentified individual, who gathered information regarding the accident and Lyon's injuries. This information was then conveyed to Respondent, who agreed that he would take the case. An appointment was then made with Lyons whereby she came to the Wilshire office on January 24, 2011, and signed various papers, including a contingency fee agreement and other documents, authorizing Respondent to represent her.

Between the time of the accident and September 2011, Lyons sought medical attention from various doctors and other medical providers, including Kaiser, for the injuries she claimed

to have resulted from her accident. Kaiser and those doctors perfected liens for the cost of this medical attention against any recovery by Lyons in her claim against the other driver.

In August 2011, a settlement agreement was reached in the matter, whereby the insurer for the other driver agreed to pay \$31,000 to settle all claims by Lyons against its insured. Lyons agreed to the settlement and, on September 1, 2011, signed a release of all claims against the driver of the other car.

On September 22, 2011, Respondent received, on behalf of his client Terrie Lyons, a settlement check from GEICO Insurance Company in the amount of \$31,000.00.

At the time of the settlement, the total of the medical expenses incurred by Lyons with medical providers having liens against her recovery was \$20,314.55. On February 6, 2012, Respondent's office made a request to all of these providers to agree to a discount of their respective fees. (Ex. 115, p. 48.) The request directed to Kaiser, via its subrogation representative (Rawlings Company), was that Kaiser reduce its bill from \$5,214 to \$2,664.30. On February 16, 2012, Kaiser agreed to this reduction and asked that the funds be forwarded as soon as possible. Comparable agreements were reached whereby Respondent agreed to pay \$2,971.72 to Babak Omrani, D.C.; \$1,229.68 to Bahman Omrani, D.C.; and \$1,100 to Studio City Orthopedics and Medical Group. With those liens being paid, \$11,243.33 was to be disbursed to Lyons.

Respondent anticipated that his non-employee staff would take care of making the necessary disbursements. It did not happen.⁹

⁹ Respondent's representations that checks were sent to Lyons and others in February or March 2012 are not persuasive. Both Respondent's client, Lyons, and representatives of the various medical providers complained in 2012 of not receiving a check; there is no evidence that any of the purported recipients ever deposited a check in 2012; and the only evidence in the Lyons file, indicating that checks were sent in 2012, is a purported letter from Respondent, dated February

In June 2012, after Respondent had closed the Wilshire office, representatives of various lienholders, including Drs. Omrani and Kaiser, began complaining to Respondent about the failure of Respondent to disburse the funds owed to the various lienholders. Lyons was eventually informed of this fact in July 2012 by a representative of the two Drs. Omrani, who indicated that the doctors were going to look to her to pay their bills if Respondent failed to disburse settlement funds to them. As a result, Lyons then repeatedly sought to discuss the situation with Respondent by calling his office, but was unsuccessful in getting him to talk with her. She then filed a complaint with the State Bar.

Respondent eventually paid Kaiser Foundation Health Care/the Rawlings Company its portion of the settlement funds, which amounted to \$2,664.30, on February 8, 2013.

Respondent paid Babak Omrani, D.C. his portion of the settlement funds, which amounted to \$2,971.72, on February 18, 2013.

Respondent paid Bahman Omrani, D.C. his portion of the settlement funds, which amounted to \$1,229.68, on February 18, 2013.

Respondent paid Studio City Orthopedics and Medical Group its portion of the settlement funds, which amounted to \$1,100, on February 19, 2013.

Respondent paid Lyons her portion of the settlement, \$11,243.33, on February 27, 2013.

Count 4 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) in his handling of the Lyons matter. Included in the reasons listed in the NDC for this charge are

29, 2012. That letter, however, is highly suspect. It is not on the letterhead of Respondent's Wilshire office, although the case and settlement were being handled out of that office, and it bears Respondent's actual signature, rather than the electronic signature that generally accompanied any letters purportedly sent by him on cases in that office. (See, e.g., Ex. I, p. 43, returning the executed settlement release to the settling insurance company.)

(1) Respondent's failures to disburse settlement funds to his client or to the various lienholders until February 2013, more than a year after the settlement funds were available to be disbursed; (2) Respondent's failure to notify Lyons of his receipt of the settlement funds; and (3) his various failures to communicate with his client after the settlement. The conduct underlying those portions of this count are duplicative of the conduct giving rise to the charges, discussed below, of willful violations of rule 4-100(B)(4) and section 6068, subdivision (m); and they are more appropriately addressed in those counts. To that extent, the court dismisses those portions of this count.

In addition to the above, the NDC alleges that Respondent violated rule 3-110(A) by "Failing to supervise his non-attorney employees, including but not limited to Alexander Kim, Vonn Tabb, and Riley Kim;"¹⁰ "permitting his non-attorney employees to misrepresent to Lyons in September 2011, that she would be receiving approximately \$15,000 as her portion of the \$31,000 settlement funds, when in fact Lyons would only be receiving \$11,243.33"; and "permitting his non-attorney employees to endorse the \$31,000 settlement draft on behalf of Lyons without her knowledge or consent."

The evidence offered by the State Bar in support of the above non-duplicative portions of this count did not constitute clear and convincing evidence of a willful violation by Respondent of rule 3-110(A).

Lyons' complaint to the State Bar in 2013, that she had been told that she would receive \$15,000 of the settlement, was not credible; was largely unsupported by her testimony at trial, in which she recounted the individual's purported comment was that she "may get around \$15,000" and her statement and affect while testifying that she indicated that she would be quite delighted

¹⁰ No actual facts are alleged in the NDC to explain this charge, other than those listed as a separate charge in the same count.

to receive any amount in that range; and is contrary to a notation placed in the file at the time of the settlement that she had indicated she would accept any settlement whereby she received \$10,000. (See Ex. I, p. 88.)

With regard to the endorsement of Lyons' name on the settlement check, that endorsement was made pursuant to an explicit authorization given by Lyons to Respondent's office in the Retainer Agreement she signed on January 24, 2011. (See Ex. I, p. 93.)

This count is dismissed with prejudice.

Count 5 - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

In this count, the State Bar alleges that Respondent aided the unauthorized practice of law by the non-attorneys in his office involved in the Lyons matter. As previously discussed, this court does not agree. Respondent testified credibly that he made the decision to represent Lyons prior to the retainer agreement being offered to her and that he was personally responsible for every decision made during the course of the handling of the case. There was no credible evidence that any non-attorney gave Lyons any legal advice or did anything other than act as an intermediary for communications initiated by Respondent or carry out essentially clerical functions at the direction of Respondent. Finally, while counsel for the State Bar argued at the outset of this matter that Respondent's failure to meet personally with his prospective clients constituted a violation of rule 1-300(A), after being directed by this court to provide any authority reaching that conclusion, counsel for the State Bar acknowledged in its responsive brief that "the law does not require an attorney to meet with a client prior to entering into a retainer agreement." (State Bar's Bench Brief Re: Whether Law Requires an Attorney to Meet with Client Prior to Entering into a Fee Agreement, p. 2.)

This count is dismissed with prejudice.

Count 6 – Rule 4-100(B)(1) [Failure to Notify Client of Receipt of Client Funds]

As noted above, Respondent received \$31,000 on behalf of his client on September 22, 2011. He had a personal responsibility to make certain that she was notified of that fact. He did not do so. That failure constitutes a willful violation by him of his duties under rule 4-100(B)(1).

Although Respondent complains throughout the pendency of this matter about the problems that he had as a result of closing the office in March 2012, those problems do not explain his failure to fulfill this important obligation in the many months prior to March 30, 2012.

Count 7 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count, the State Bar alleges that Respondent willfully violated his obligation under section 6068, subdivision (m), by failing to communicate to Lyons the fact that he was closing his Wilshire office and relocating her file to his office on West Goldleaf Circle in Los Angeles. This court agrees.

As discussed more fully above, Lyons was never told by Respondent or his office that the Wilshire office had been closed and her file relocated. Instead, she only learned of that fact when the attorney for Dr. Phillips contacted her in July 2012, to complain about the non-payment of his client's lien. During that conversation, this attorney reported that, when he had sought to complain to Respondent at the Wilshire office address, he had been informed that the office had been closed. This was the first time that Lyons had heard of this development.

Count 8 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count, the State Bar alleges that Respondent willfully violated his obligation under section 6068, subdivision (m), by failing to respond to the many inquiries by Lyons regarding the

status of her case between December 2012 and the end of February 2013. For all of the reasons discussed above, this court agrees.

Count 9 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]

In this count, the State Bar alleges that Respondent willfully violated his obligation under rule 4-100(B)(4) to promptly pay settlement funds to Lyons and to the various medical providers, identified above. For all of the reasons discussed above, this court agrees.

Case No. 13-O-11672 (State Bar Investigation Matter)

Count 10 – Rule 4-100(A) [Commingling]

Rule 4-100(A) “absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; see also *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [“Trust accounts, open or closed, are never to be used for personal purposes”].) Respondent is accused in this count of using personal funds in his client trust account to pay personal and office expenses.

At trial Respondent stipulated that he had paid personal expenses directly from funds deposited in his client trust. He also stipulated, and this court finds, that such conduct by him represented a willful violation of the prohibition of rule 4-100(A) against commingling.

Count 11 – Rule 1-320(A) [Sharing Legal Fees with Non-Lawyer]

With various exceptions, rule 1-320(A) provides in pertinent part, “Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer[.]” In this count, the State Bar alleges that Respondent violated this prohibition by sharing fees with Vonn Tabb, in relation to the fee earned in the Perez matter, discussed above.

The evidence offered by the State Bar in support of this allegation did not provide clear and convincing evidence of any willful violation by Respondent of rule 1-320(A). There was no

evidence of any agreement between Respondent and Vonn Tabb that they would share the fees earned on the case. Instead, the sole evidence relied on by the State Bar is the fact that, after Respondent had earned his fee on the matter, he issued a check to Tabb equal to one-half of that fee. Respondent credibly explained that check merely represented his effort to pay for work done by Tabb in the past.

Despite the broad language quoted above, there is no absolute prohibition against an attorney using money, previously earned by the member as legal fees, to pay non-attorneys for helping the member to earn those fees or to assist the member in earning fees in the future. Were such a prohibition to exist, no attorney could ever hire a secretary or a bookkeeper. Instead, the rule prohibits attorneys from entering into advance agreements with non-attorneys whereby they agree in advance to split fees earned in the future.¹¹

This count is dismissed with prejudice.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,¹² std. 1.5.)¹³ The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent was disciplined by the Supreme Court in 1995 in case No. 92-O-16953. The misconduct took place between November 1990 and August 1992, and involved Respondent's failure to avoid representation of conflicting interests and his acts of moral turpitude in seeking to deny what he had done. He received a one-year stayed suspension and two years of probation.

¹¹ And even that prohibition is subject to exceptions with respect to employees of the attorney. (See rule 1-320(A)(3).)

¹² All further references to standard(s) or std. are to this source.

¹³ Previously standard 1.2(b).

No period of actual suspension was ordered. Respondent received mitigation for candor and cooperation in the disciplinary investigation and remorse by correcting his previously communicated false statement. In addition, he received mitigation credit for the fact that he had not previously been disciplined.

This prior discipline is an aggravating circumstance.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).)

Lack of Insight

Respondent was found culpable in this proceeding of 15 separate acts of misconduct. Of those 15 counts, he acknowledged culpability for only the commingling charge, and he did that only during the middle of trial. With regard to the remaining 14 counts, he continues to contend that his actions were in conformance with his professional obligations, and he seeks to have those counts dismissed.

This lack of insight by Respondent, into how his inattention to the business aspects of his practice violates the standards of professional conduct and endangers his clients, is a significant aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)¹⁴

The court finds the following with regard to mitigating circumstances.

¹⁴ Previously standard 1.2(e).

Character Evidence

Respondent presented good character testimony from numerous individuals, representing a wide range of references in the legal and general communities and who were aware of the full extent of the Respondent's misconduct. These individuals included attorneys, former clients, and members of the business community. This is a mitigating circumstance. (Std. 1.6(f).)

Restitution

Although Respondent mishandled funds entrusted with him for the benefit of others, he eventually disbursed the funds to his clients and their lienholders. Such conduct is a mitigating factor. (*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 13.)

Cooperation

Respondent entered into a stipulation of facts and admitted at trial to culpability for the charge of commingling. For such conduct, Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.) However, because Respondent denied culpability to all other counts and admitted culpability only during the course of the trial, the weight of this mitigating circumstance is limited. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

No Harm

This court declines to find that Respondent is entitled to some mitigation credit because his misconduct caused no actual harm to the client or person who is the object of the misconduct. (Std. 1.6(c).) While the State Bar does not allege that there is evidence of significant harm as an aggravating factor, there was nonetheless evidence that numerous individuals, such as Perez, were deprived of the use of funds owed to them for periods of time that were sometimes lengthy.

Under such circumstances, this court cannot conclude that Respondent's misconduct caused no harm to any of those individuals.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a)¹⁵ provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.7, which provides that disbarment or actual suspension is appropriate for an act of moral turpitude, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

In addition, standard 2.2 provides that actual suspension of three months is appropriate for commingling or failure to properly pay out entrusted funds.

Respondent's culpability in these matters includes 15 counts of misconduct, involving six separate client matters, and a finding of commingling of funds in his client trust account. While the State Bar repeatedly charged Respondent with a failure to supervise the work of others, the actual source of most of his misconduct was his overall failure to devote his own time, energy, and attention to the needs of his clients outside of the courtroom. A busy attorney, however talented, who takes on more work that he or she can handle is a menace to the public and the profession. Carefully monitoring the funds in a client trust account and taking the time to see that hard-earned settlement funds are properly and promptly disbursed are foreseeably not the chores of first choice of court-room lawyers. But inattention to those chores is frequently a greater risk to the welfare of the attorney's clients than a poor day in court, and it is absolutely prohibited by the professional standards governing the practice.

After considering the breadth of Respondent's misconduct and balancing the relative aggravating and mitigating factors, this court concludes a discipline consisting of a two-year

¹⁵ Previously standard 1.6(a).

stayed suspension and a three-year probation, with conditions including an 18-month period of actual suspension, is necessary and appropriate to protect the public and the profession. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119.)

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Philip Lorin Marchiondo**, Member No. 129947, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first eighteen (18) months of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within 30 days after the effective date of the Supreme Court order in this proceeding, Respondent must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with the assigned probation deputy to discuss the 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. Thereafter, Respondent must promptly meet with the probation deputy as directed and upon request of the Office of Probation.
5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).¹⁶ However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:
 - (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
 - (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

¹⁶ To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.
6. During the period of Respondent's actual suspension, Respondent must attend and satisfactorily complete the State Bar's Ethics School and the State Bar's Client Trust Accounting School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)
7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
8. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹⁷

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: July _____, 2014

DONALD F. MILES
Judge of the State Bar Court

¹⁷ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)