PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 13-O-14152 (13-O-15777)
	)	
PHILLIP GERRALD SAMOVAR,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 39842.	)	
	)	

This is Phillip Gerrald Samovar's first disciplinary proceeding. It arises from his mishandling of the advance fees he received from a client and from his misappropriation of funds entrusted to him by that client's daughter. A hearing judge found Samovar culpable on six of eight charged counts of misconduct—most seriously for an "egregious" misappropriation of more than $375,000. Though the judge afforded Samovar's unblemished 45-year career some weight in mitigation, she recommended disbarment pursuant to applicable disciplinary standards and in the interest of public protection. She also ordered Samovar to pay restitution.

Samovar seeks review; he generally contests culpability on evidentiary grounds but primarily argues that he was entitled to the monies he took, as payment for legal fees earned in representing his client. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we affirm the judge's findings and disbarment recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find that Samovar: (1) failed to render an accounting to his client; (2) intentionally misappropriated $376,934 in entrusted funds; (3) violated the rule governing the handling of client trust accounts; and (4) made a misrepresentation to a realtor when his client's daughter attempted to purchase a

home. We dismiss the remaining counts. We also find significant aggravation for multiple acts, dishonesty, harm to his client's daughter, indifference, and failing to make restitution. Like the hearing judge, we acknowledge Samovar's long tenure of discipline-free practice. Nevertheless, the seriousness of his misconduct, coupled with significant aggravation, compel the conclusion that only disbarment will protect the public, the courts, and the legal profession.

I. PROCEDURAL HISTORY

Samovar was admitted to the practice of law in California on January 4, 1967. On June 27, 2014, OCTC filed an eight-count Notice of Disciplinary Charges. A trial was held on December 17 and 19, 2014. On March 24, 2015, the hearing judge issued her decision.

II. FACTS AND CULPABILITY[1]

To facilitate our analysis, we address the counts out of order and grouped by matter.

A. The Williams Matter (Case No. 13-O-15777)

1. Facts

In 2012, Mary Sisler-Williams hired Samovar to represent her in numerous legal matters, including a divorce action, a bank dispute, a personal injury matter, business lien matters, and business tenant matters. Williams signed retainer agreements for the divorce action on February 6, 2012, the bank dispute on February 9, 2012, and the personal injury matter on February 11, 2012. Between February 6 and March 7, 2012, Williams paid Samovar $35,425 in advance attorney fees, and Samovar performed legal services for Williams. Williams terminated Samovar in March 2013. Between February 2012 and March 2013, Samovar did not provide Williams with any billing statements or an accounting for the advance fees he received.

[1] We base the facts on trial testimony, a partial stipulation that Samovar orally agreed to during trial, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

2. Culpability

Count Three: Rule 4-100(B)(3) – Failure to Render Accounting[2]

All three retainer agreements provided that Samovar would send Williams periodic statements for fees and costs, but he did not do so. The hearing judge correctly found that by failing to provide Williams with an accounting for the $35,425 in advance fees she paid, Samovar failed to render appropriate accounts to Williams regarding all funds coming into Samovar's possession. Thus, he willfully violated rule 4-100(B)(3). (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757-758 [attorney had duty to account for advance fees]; see also *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 211.)

Count Two: Rule 3-110(A) – Failure to Perform with Competence[3]
Count Four: Rule 3-700(D)(2) – Failure to Refund Unearned Fees[4]

OCTC does not challenge the hearing judge's dismissal of the allegations that Samovar failed to perform services competently (Count Two) or that Samovar failed to refund unearned fees (Count Four). We adopt the hearing judge's findings as supported by the record, and dismiss both counts with prejudice.

B. The McWilliams Matter (Case No. 13-O-15777)

1. Facts

In April 2012, Williams's daughter, Tawny McWilliams, had $450,000 in savings she planned to use for the purchase of a home. McWilliams had collected the money over roughly

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[2] Rule 4-100(B)(3) of the Rules of Professional Conduct provides that a member shall: "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 . . . ." All further references to rules are to this source unless otherwise noted.

[3] Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

[4] Rule 3-700(D)(2) requires attorneys to refund promptly any part of a fee paid in advance that has not been earned.

five years through gifts from Williams, her stepfather, her ex-husband, and from her own earnings.

Samovar was not McWilliams's attorney, but they were acquainted through Williams. Samovar learned from Williams that she had given her daughter a large amount of money over the course of roughly five years so McWilliams could buy a home. He suggested that this money be placed in a trust account to prevent Williams's husband from claiming the money was community property during their divorce proceeding. On April 10, 2012, Samovar emailed McWilliams and stated: "I have been advised by [Williams] that you want this office to hold funds in trust for the purchase of a home. You want the funds ready to go and feel it best it be [*sic*] the trust account. I understand they will be in the trust account for a while until you find the real estate." That day, McWilliams wired $450,000 into Samovar's client trust account (CTA), which contained $16.11 at the time. Other than Samovar's April 10, 2012 email, no documents address this arrangement.

a. Samovar Withdraws $376,934 of McWilliams's Money

Almost immediately after the wire transfer, Samovar began to withdraw McWilliams's funds without authorization and for his own benefit. From April 16 to May 4, 2012, he withdrew $77,500.

On May 9, 2012, McWilliams emailed Samovar instructing him to wire $375,000 to a title company for her to buy a home. Unbeknownst to McWilliams, Samovar had only about $372,500 in his CTA at the time. He wired $370,000 to the title company, and McWilliams provided the other $5,000 from her own funds.[5]

The home sale, however, fell through, and the title company issued a check to McWilliams for $375,000, which she gave to Samovar. He deposited this check into his CTA on

[5] The record is silent as to why McWilliams agreed to provide the difference.

June 5, 2012. Therefore, as of June 5, 2012, McWilliams had entrusted a total of $455,000 to Samovar.

Samovar continued to draw heavily on McWilliams's funds without authorization. For example, between June 6 and September 17, 2012, Samovar issued 42 checks to himself (totaling $171,450) and seven checks to others (totaling $62,101.86). Around September 2012, McWilliams began requesting the return of her money, but Samovar did not comply.

Then, in December 2012, McWilliams tried again to purchase a home. The realtor asked McWilliams to provide proof that she had a minimum of $170,000 available for the home purchase. On December 6, 2012, McWilliams emailed Samovar, requesting that he prepare a letter to the realtor that stated he held $170,000 in trust for her. Samovar did so, writing "this office has $170,000.00 in its trust account for Tawny McWilliams." In fact, the CTA balance was $93,927.25.[6] The home sale did not go through.

On December 12, 2012, McWilliams emailed Samovar to confirm he was holding $455,000 in trust for her. Samovar responded, "Ok, " although the CTA balance was $90,366.25. By January 8, 2013, that balance had dipped to $78,066.25—$376,934 less than he had received from her and approximately $70,000 less than when McWilliams began demanding that Samovar return the money she had entrusted to him.

b. Samovar Returns Only $140,000 to McWilliams

McWilliams continued to ask that Samovar return her money. Finally, from February 1 through February 27, 2013, Samovar returned a total of $140,000 to McWilliams and to Williams for McWilliams.

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[6] The Hearing Department decision incorrectly stated that the balance in Samovar's CTA was $96,227.25 at the time. The balance in his CTA was $93,927.25 between December 3 and 10, 2012. It had been $96,227.25 between December 1 and 3, 2012.

In March 2013, Williams terminated Samovar's services and employed attorney Christine A. Greer to represent her in the marital dissolution. Greer sent a letter to Samovar requesting an accounting. On May 6, 2013, Samovar sent a billing statement to Greer for over $300,000 for services he purportedly provided in the dissolution action. This was the first billing statement Samovar ever sent to Williams (or McWilliams). He later submitted to the State Bar billing statements for work he purportedly performed for Williams in other matters, which reflected approximately $30,875 in additional fees. Thus, the total of Samovar's claim of earned fees was approximately $341,535. The hearing judge found the billing statements to be "fabricated."

To date, Samovar has not returned the remaining $315,000 of McWilliams's money.

c. Samovar's Claim He Was Properly Collecting Fees Is Not Credible

We adopt the hearing judge's findings that Samovar was not credible in his claims that: (1) Williams and McWilliams told him that the money belonged to Williams; (2) he told Williams he was going to use the entrusted funds to pay for Williams's legal fees; and (3) Williams and McWilliams told him that he could use the entrusted funds to pay his legal fees. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [great weight given to hearing judge's findings on credibility].) Similarly, we also reject Samovar's argument in his briefs on review and at oral argument that the funds returned to his CTA after the failed escrow were Williams's funds.

Other than his own testimony, the evidence does not support Samovar's claims. For example, Williams and McWilliams testified that the money belonged to McWilliams and that neither of them had authorized Samovar to withdraw any of it to pay Williams's legal fees. Further, no writing commemorates Samovar's version of the purported agreement. In fact, in email exchanges in February and March of 2013, Williams rejected Samovar's claims that McWilliams's $455,000 was a source from which he could collect his fees for legal work he

performed for Williams. Further, Samovar deposited into his CTA the $375,000 check the title company issued to *McWilliams* as a refund; Williams was not the source of the funds. Finally, Samovar withdrew the funds without telling McWilliams about the withdrawals. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 690 [hearing judge's credibility findings are entitled to great weight particularly where "the documentary evidence does not support [the attorney's] version of the facts"].)

2. Culpability

Count Seven: Business and Professions Code, Section 6106 – Misappropriation[7]

OCTC charged that Samovar committed an act of moral turpitude in violation of section 6106 by dishonestly or grossly negligently misappropriating "at least $315,000 that McWilliams was entitled to receive." The hearing judge found that Samovar misappropriated $376,934 of McWilliams's funds when the balance in his CTA fell to $78,066.25 in January 2013. We agree.

Once Samovar accepted funds from McWilliams, he had a fiduciary duty to ensure they were used for their intended purpose for her benefit. (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156 ["When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust"].) A breach of fiduciary responsibilities can constitute an act involving moral turpitude where the breach involves more than simple negligence. (*In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185, 191; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.

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[7] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6106 states: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

153, 169.) Such a breach was encompassed within the allegations in support of the charged section 6106 violation. (See *In the Matter of Hagen*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 170, fn. 12 ["Even though [former] rule 8-101(A) was not expressly charged in the notice to show cause, misappropriation of client funds was clearly encompassed within the allegations in support of the section 6106 charge. [Citation.]"].)

We reject Samovar's argument that he had earned over $341,000 in fees for services provided to Williams and was, therefore, entitled to collect those fees from the entrusted funds. The money belonged to McWilliams, not Williams, and neither of them authorized Samovar to collect his fees from that source. Instead, without authorization and without submitting a billing statement, Samovar converted $376,934 of McWilliams's money. (*Himmel v. State Bar* (1973) 9 Cal.3d 16, 19 [attorney who used entrusted funds for own purpose rather than payment of judgment creditor amounted to conversion]; *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 375 [improper conversion of trust funds was willful misappropriation involving moral turpitude].)

Count Six: Rule 4-100(A) – Failure to Maintain Client Funds in Trust Account[8]

The hearing judge erred in finding Samovar culpable for the failure to maintain a balance of $455,000 in his CTA on behalf of McWilliams because Samovar was not McWilliams's lawyer. The funds were entrusted funds, but not *client* funds. In fact, under rule 4-100(A), Samovar was not permitted to hold McWilliams's money in his CTA. (See *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 424-425 [attorney who accepted fiduciary duty to hold non-client business funds in CTA was culpable of commingling; neither duty nor placement of funds in CTA converted them to client funds].) OCTC, however, did not

[8] Rule 4-100(A) requires an attorney to deposit into a trust account all funds held for the benefit of a client, including advances for costs and expenses.

allege a rule violation under this theory. Therefore, we find Samovar is not culpable *as charged*, and we dismiss Count Six with prejudice.[9]

Count Eight: Section 6106 – Moral Turpitude (Misrepresentation)

The hearing judge correctly found that Samovar's misstatement in the December 6, 2012 proof of funds letter to the realtor constitutes moral turpitude. Samovar stated that he held $170,000 in his CTA for McWilliams. Yet he knew or should have known, as a fiduciary of the entrusted funds, that the balance in his CTA was only $93,927.25 due to his continuing withdrawals from the account.[10] (*In the Matter of Lilly*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 192 ["section 6106 prohibits *any* act of attorney dishonesty, whether or not committed while acting as an attorney. [Citation.]" (Italics in original)].) As the Supreme Court has stated, "it is immaterial whether any harm was done, since a member of the State Bar should not under any circumstances attempt to deceive another person. [Citations.]" (*McKinney v. State Bar* (1964) 62 Cal.2d 194, 196.)

Count Five: Section 6106 – Moral Turpitude (Improper Purpose)

OCTC alleged that around April 10, 2012, Samovar stated in writing to McWilliams that she should deposit the $450,000 her mother gave her into his CTA, to prevent her stepfather from tracing it and asserting a lien against it as a community asset in the dissolution of marriage proceeding between her mother and stepfather. OCTC further alleged that Samovar committed an act involving moral turpitude because he knew or was grossly negligent in not knowing that

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[9] Our conclusion is consistent with case law recognizing that the duty to comply with rule 4-100 when handling *client funds* may sometimes extend to interested non-clients. An attorney may owe rule 4-100 duties to non-clients, but only for funds held in trust *for a client-matter*. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 10.)

[10] We note that, as of December 6, 2012, the balance in Samovar's CTA was $93,927.25, and not $96,227.25, as indicated in the Hearing Department's decision.

his statements to McWilliams would improperly and/or unlawfully conceal the $450,000 from her stepfather.

We dismiss this charge with prejudice. First, we agree with the hearing judge that clear and convincing evidence does not show that Samovar gave McWilliams such advice in writing.[11] Second, while we agree with the judge's finding that Samovar agreed to engage in the concealment, and did so, we disagree with the judge's reasoning that Samovar's purported "act of concealment was dishonest and involved moral turpitude that is subject to professional discipline."

It is unclear that McWilliams's stepfather had a legitimate claim to any of McWilliams's money as it was saved over a four- or five-year period and came from various sources, including McWilliams's mother, stepfather, ex-husband, and her own earnings. Also, McWilliams had paid taxes on interest earned on the funds over the last four or five years. Further, Samovar's acceptance of McWilliams's money could have been intended to protect his client's daughter's funds from getting entangled in a contentious divorce rather than to improperly shield these assets from Williams's husband.

These facts distinguish the instant matter from the case cited by OCTC, *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767. There, the attorney knew that his client had stopped paying child support and intended to move, with the express purpose of avoiding compliance with a child support order. Despite such knowledge, the attorney provided his client with affirmative help in moving. He was found to have committed an act of moral turpitude despite his lack of specific intent to help his client avoid the support order.

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[11] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

As we must resolve all reasonable doubts in favor of Samovar (*Alberton v. State Bar* (1984) 37 Cal.3d 1, 11), we dismiss Count Five with prejudice.

C. The Client Trust Account Matter (Case No. 13-O-14152)

1. Facts

Between June 13, 2012, and July 17, 2013, Samovar withdrew funds and issued multiple checks from his CTA. At trial, Samovar initially testified that the checks were to pay for client expenses,[12] but later stipulated that they "were written against the CTA when there were no funds on deposit for the issuance of those checks." We find the payments at issue were for Samovar's personal and business operating expenses.

2. Culpability

Count One: Rule 4-100(A) –Client Trust Account Violation

OCTC charged that between June 13, 2012 and July 17, 2013, Samovar issued 11 checks, and made an electronic withdrawal, from funds in his CTA for personal or business expenses, in willful violation of rule 4-100(A). The hearing judge found that by writing checks to pay his personal and business operating expenses, Samovar "used funds belonging to the CTA for his own expenses" in violation of the rule.

We note that the only funds in Samovar's CTA when he wrote the first five at-issue checks were McWilliams's funds. Based on these same facts, we found Samovar culpable of misappropriating entrusted funds, and we dismiss the allegations with respect to the first five checks in Count One as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose is served by duplicate allegations of misconduct].)

Nevertheless, we find Samovar culpable of violating rule 4-100 for making the other seven payments from his CTA for his personal and business operating expenses. (*Doyle v. State*

[12] The hearing judge found Samovar's claim "without merit and disingenuous."

Bar (1982) 32 Cal.3d 12, 22-23 [using account denominated as "client trust account" for personal purposes violates rule 4-100(A) even if no client funds are on deposit therein; rule absolutely bars use of trust account for personal purposes]; Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group) ¶ 9:181 ["Paying personal obligations directly from the trust account violates [rule 4-100(A)] even when the account contains earned legal fees"].)

III. SAMOVAR WAS NOT SUBJECT TO "A FORM OF DOUBLE JEOPARDY"[13]

Samovar's argument that he was subject to "a form of double jeopardy" lacks merit. He complains about the State Bar letter, dated December 2, 2013, which stated: "The State Bar has completed the investigation of the allegations of professional misconduct reported by [McWilliams] and determined that this matter does not warrant further action. Therefore, the matter is closed." As explained to Samovar in the letter, "[t]he decision to close this matter is without prejudice to further proceedings as appropriate pursuant to rule 2603 of the Rules of Procedure of the State Bar of California."[14]

IV. SIGNIFICANT AGGRAVATION OUTWEIGHS MITIGATION[15]

The hearing judge found five factors in aggravation and one in mitigation. We agree with the five aggravating factors and find one additional mitigating factor.

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[13] Having independently reviewed all of the arguments raised by Samovar, those not specifically addressed herein have been considered and are rejected as lacking merit.

[14] Rule 2603 provides that OCTC "may, subject to Rule 51 [Period of Limitations], reopen an inquiry, investigation, or complaint in the following limited circumstances: [¶] (a) if there is new material evidence; or [¶] (b) if the Chief Trial Counsel or designee, in his or her discretion, determines that there is good cause." (First set of brackets in original.)

[15] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards, and all further references to standards are to this source. Standard 1.5 requires OCTC to establish aggravation by clear and convincing evidence, while standard 1.6 requires Samovar to meet the same burden to prove mitigating circumstances.

A. Aggravation

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

The hearing judge correctly found that Samovar's multiple acts of misconduct constitute an aggravating factor. (Std. 1.5(b).) Samovar repeatedly misappropriated McWilliams's funds, failed to render an accounting, misused his CTA, and committed two separate acts of moral turpitude. We assign this factor significant weight.

2. Dishonesty, Misrepresentation, and Concealment (Stds. 1.5(d), (e), (f))

The hearing judge found Samovar's fabricated billing statement warrants aggravation for dishonesty. However, we do not find in the record clear and convincing evidence in support of this determination. Nonetheless, we find that Samovar concealed from McWilliams that he had taken her entrusted funds for his own use, and led her to believe that he maintained her funds in trust. These acts support a finding of significant aggravation.

3. Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j))

The hearing judge correctly found that Samovar's misappropriation of McWilliams's funds significantly harmed McWilliams, an unemployed, single mother, and damaged the integrity of the legal profession. Based on her experience with Samovar, McWilliams testified that she thought "he had a plan all along," and that she "never thought that [she] would run across such a dishonest thief, manipulative thief." Further, Williams testified that she believed that Samovar took her daughter's money because greed and evil took over, and stated: "It's a terrible feeling. I never thought that a human being existed like that, that cold." She also noted that hiring Samovar has affected her relationship with McWilliams, and caused hardship between McWilliams and her brother. These acts support a finding of significant aggravation.

4. Indifference Toward Rectification/Atonement (Std. 1.5(k))

The hearing judge correctly found aggravation because Samovar does not accept responsibility for his misappropriation, insisting that he had earned $350,000 in legal fees. Samovar fails to acknowledge that, whether he was entitled to additional payment from Williams or not, he was not permitted to engage in self-help by taking McWilliams's money without her authorization. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 ["The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]"].) Samovar's indifference "causes concern that he will repeat his misdeeds." (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.) We thus assign this factor significant weight in aggravation.

5. Failure to Make Restitution (Std. 1.5(m))

We agree with and adopt the hearing judge's finding that Samovar's failure to make restitution of $315,000 is a significant aggravating factor. (*In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Court Rptr. 404, 417.)

B. Mitigation

1. No Prior Record (Std. 1.6(a))

The "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur" is a mitigating circumstance. (Std. 1.6(a).) The hearing judge found that Samovar's 45 years of discipline-free practice prior to the misconduct here "warrants significant consideration in mitigation; however, this mitigation is somewhat reduced due to the serious nature of the present misconduct."

We too acknowledge Samovar's 45 years of discipline-free practice. But the misconduct here was repeated and continuous, consisting of dozens of misappropriations over the course of

many months. It was coupled with Samovar's dishonesty and concealment and his failure to accept responsibility or make restitution of $315,000 to a victim he significantly harmed. We cannot make a finding that such misconduct was aberrational or not likely to recur. Therefore, we assign only limited mitigation credit for Samovar's lack of prior discipline. (See *In the Matter of Reiss*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 218 [no mitigation credit assigned for 13-year discipline-free record where attorney engaged in 10-year pattern of dishonesty and serious misconduct, did not prove significant mitigation or demonstrate rehabilitation, and failed to accept responsibility for wrongdoing].)

2. Cooperation (Std. 1.6(e))

Unlike the hearing judge, we find that Samovar is entitled to minimal mitigation for cooperation with the State Bar. (Std. 1.6(e) [mitigation credit permitted for spontaneous candor and cooperation displayed to State Bar].) During trial in this matter, Samovar orally stipulated to a relevant fact, which assisted the State Bar's prosecution of the case. The mitigating weight is discounted, however, since Samovar delayed stipulating to it until trial, and the stipulated fact was easily provable. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if relevant and assisted prosecution of case]; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [limited mitigating weight for belated stipulation concerning easily provable facts].)

V. DISBARMENT IS APPROPRIATE[16]

Our discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards

[16] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

unless grave doubts as to propriety of recommended discipline].) Standard 2.1(a) is most applicable and provides that disbarment is the presumed sanction for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[17] (*In the Matter of McCarthy*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 377 [improper conversion is willful misappropriation of trust funds].) "Misappropriation of client trust funds has long been viewed as a particularly serious ethical violation" (*Kelly v. State Bar* (1989) 45 Cal.3d 649, 656), and it generally warrants disbarment in the absence of clearly mitigating circumstances. (*Ibid.*)

Samovar misappropriated more than $375,000 from McWilliams, making dozens of payments to himself and using tens of thousands of dollars for personal or business purposes. Moreover, his misappropriation was surrounded by concealment, dishonesty, and at least one affirmative misrepresentation. Further, he took advantage of his status as an attorney to engender McWilliams's and Williams's trust in him. Samovar's mitigation is not compelling and does not predominate over his serious aggravation and protracted grave misconduct. Nor do we find a reason to depart from applying standard 2.1(a). (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].)

As the hearing judge correctly stated, "[t]he gravamen of this case is neither a fee dispute matter gone awry nor a failure to perform services competently. It is an egregious case of misappropriation. Yet, [Samovar] has refused to take responsibility for his misconduct or recognize his wrongdoing." We too conclude that disbarment is warranted by the facts of this

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[17] Multiple other standards apply: standard 2.11 provides that actual suspension or disbarment is appropriate for an act of moral turpitude; standard 2.2(a) provides that a three-month actual suspension is the presumed sanction for commingling or failure to promptly pay out entrusted funds; and standard 2.2(b) provides that suspension or reproval is the presumed sanction for any other violation of Rule 4-100. We apply the standard calling for the most severe sanction. (Std. 1.7(a).)

case and under relevant case precedent in order to protect the public, the courts, and the legal profession. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [disbarment where attorney with 10 years of discipline-free practice misappropriated $29,000 from law firm and lied about it]; *Weber v. State Bar* (1988) 47 Cal.3d 492 [disbarment where attorney with 13 years of discipline-free practice misappropriated over $24,000 and attempted to conceal theft, displayed contempt for State Bar proceeding and lack of remorse]; *Gordon v. State Bar* (1982) 31 Cal.3d 748 [disbarment for $27,000 misappropriation, despite 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm]; *In the Matter of Spaith* (1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for $40,000 misappropriation, intentionally misleading client about funds, mitigation including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar not sufficiently compelling].)

VI. RECOMMENDATION

We recommend that Phillip Gerrald Samovar be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We also recommend that Samovar be ordered to make restitution to Tawny L. McWilliams in the amount of $315,000, plus 10 percent interest per year from March 1, 2013 (or reimburse the Client Security Fund to the extent of any payment from the Fund to Tawny L. McWilliams, in accordance with Business and Professions Code, section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles.

We further recommend that Samovar must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

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

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Phillip Gerrald Samovar be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective March 27, 2015, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.