



**PUBLIC MATTER**

**FILED**

APR 01 2016

STATE BAR COURT  
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LOS ANGELES

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case Nos.: 14-O-04592 (14-O-05291) YDR
	)	
<b>TINA AMOUEI NIA,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 237610,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this matter, Tina Amouei Nia (Respondent) was charged with thirteen counts of misconduct in two client matters. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) dismissed four counts and has the burden of proving the remaining charges by clear and convincing evidence.<sup>2</sup> This court finds by clear and convincing evidence that Respondent is culpable of five ethical violations: 1) the failure to promptly pay client funds (two counts) ; 2) the failure to promptly notify a client of the receipt of settlement funds; 3) accepting representation of clients with potential conflicting interests without obtaining their informed written consent; and 4) making a false misrepresentation. The court recommends that Respondent be suspended from the practice of law in California for one year, that execution of

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

<sup>2</sup> 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.)

that period of suspension be stayed, and that Respondent be placed on probation for a period of one year subject to a 120-day actual suspension.

### **Significant Procedural History**

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case numbers 14-O-04592 and 14-O-05291 on May 29, 2015. Respondent filed a response to the NDC on June 26, 2015.

The parties filed a Stipulation as to Facts and Admission of Documents on September 16, 2015 (Stipulation). On October 1, 2015, the State Bar dismissed Counts Four, Six, Nine and Eleven.

Trial took place on October 7, December 9, and December 10, 2015. The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Respondent was represented by Edward Lear. The State Bar filed a closing brief on January 8, 2016, and Respondent filed her closing brief on January 11. The matter was submitted for decision on January 8, 2016.

### **Findings of Fact**

Respondent was admitted to the practice of law in California on August 19, 2005, and has been a member of the State Bar of California at all times since that date. These findings of fact are based on the record, evidence admitted at trial, and facts set forth by the parties in their Stipulation.

#### **Case No. 14-O-04592 – The Lukens Matter**

##### **Facts**

On June 13, 2010, Monique Lukens was involved in a car accident. On June 15, 2010, Lukens hired Respondent and signed a representation agreement for Respondent to represent her in a personal injury claim arising out of the accident. The agreement Lukens signed contained the following provision:

Where there is a cash award to CLIENT beyond what is owed to 3<sup>rd</sup> party lien-holders and/or where CLIENT's bodily injury recovery is limited; such as where CLIENT carried no liability insurance at the time of the accident and as a result the recovery is limited by Civil Code Section 3333.4 (Proposition 213), ATTORNEY shall receive as its fee, 1/3 or 33.33% of monies received as property damage payments made to CLIENT, if such a recovery or settlement is made before filing in any court or a demand for arbitration is made and forty percent (40%) if a lawsuit or demand for arbitration is filed. (Emphasis in original.)

### **Lukens' Property Damage Claim**

In mid-August 2010, Allstate Insurance Co. notified Respondent that it intended to send Respondent a \$3,604.98 payment for Lukens' property damage claim. In anticipation of Allstate's payment, Respondent provided Lukens with a \$3,604.98 check on August 13, 2010. On August 18, 2010, Respondent deposited a \$3,604.98 check she received from Allstate into her client trust account (CTA).

After distributing the property damage funds to Lukens, Respondent and Lukens had a disagreement. Lukens terminated Nia and hired a different attorney, but eventually, Lukens rehired Respondent. On September 10, 2010, Lukens signed a second representation agreement containing the same property damage provision outlined in the June 15, 2010 agreement. Respondent testified that she specifically pointed out the property damage provision entitling her to one-third of the property damage settlement as attorney's fees. However, Lukens testified that Respondent indicated the opposite; she claimed that Respondent said she would not take any portion of the property damage settlement.

On September 23, 2010, Allstate issued a \$1,099.96 check payable to Respondent and Lukens for Lukens' loss of use.<sup>3</sup> Respondent deposited the check into her CTA on September 27, 2010, and disbursed \$666.65 to herself as attorney's fees. During the month of September, Respondent advised Lukens about the loss of use payment, but did not issue any of those funds to her. On October 1, 2010, Lukens emailed Respondent's staff inquiring about the loss of use

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<sup>3</sup> Loss of use was considered a component of the property damage claim.

funds. The record does not indicate that Lukens received a response. On October 6, 2010, Respondent disbursed an additional \$433.31 to herself for attorney's fees. During the same month, Respondent sent Lukens a disbursement letter indicating that she was entitled to attorney's fees totaling \$1,568.31 (one-third of \$3604.98 [property damage payment] and \$1,099.96 [loss of use payment]). The letter also indicated that costs totaled \$300. Lukens' recovery totaled \$2,836.63, but Respondent had already paid Lukens \$3,604.98. Thus, Respondent determined Lukens was overpaid \$768.35. After receiving the disbursement letter, Lukens contacted Respondent's office to express her concerns over Respondent's claim that Respondent was entitled to a portion of Lukens' property damage/loss of use recovery. The matter was not resolved at that time.

On June 12, 2012, Lukens sent Respondent an email inquiry about the loss of use funds, and in July 2014, Lukens specifically inquired about the status of the \$1,099.96 check. On July 28, 2014, Respondent emailed Lukens stating, "it was paid to you already. I will pull your file tomorrow and check on the \$1,099.96." Respondent did not pay Lukens until Lukens instituted attorney-client fee arbitration proceedings. The proceedings took place in January 2015, and on January 22, 2015, Respondent paid Lukens \$1,248 for loss of use and interest.

#### **Lukens' Bodily Injury Claim**

In connection with her June 2010 auto accident, Lukens had a bodily injury claim, where she sought treatment from various providers. On or about August 27, 2010, Respondent acknowledged the lien of Jon Scott, D.C. Respondent acknowledged the lien of Dr. Ali Dinn on or about October 13, 2010.

Respondent settled Lukens' bodily injury claim for \$14,000 in June 2012. Respondent deposited the funds into her CTA. On June 16, 2012, Lukens called Respondent's office and informed her staff that her emergency bill had not been paid and it had been sent to collections.

She indicated that if the bill was not paid and the derogatory information was not removed from her credit report, she would report Respondent to the State Bar. Respondent called Lukens on the same day informing Lukens that it was “illegal to threaten her with the Bar.” Respondent indicated she was no longer Lukens’ attorney and abruptly ended the call. At that point, Lukens and Respondent stopped communicating with one another.

On June 18, 2012, Respondent disbursed \$4,666.66 to herself as attorney’s fees.

In September 2013, Lukens notified Respondent that some outstanding medical bills were unpaid and had gone to collections. Additionally, although Lukens’ healthcare provider, Healthy Way LA, initially indicated it would pay the emergency treatment bills incurred on the date of the accident, Lukens informed Respondent that Healthy Way LA was not going to pay those bills. Lukens forwarded those bills to Respondent. On September 11, 2013, Respondent informed Lukens that she would have to renegotiate with Lukens’ other lien holders so that there would be sufficient funds to pay them along with the emergency treatment bills. Respondent paid Dr. Dini \$450 on March 11, 2014, to satisfy his medical lien. She satisfied Dr. Scott’s lien on July 23, 2014, by issuing him a \$900 check.

After paying the all outstanding liens, on July 23, 2014, Respondent disbursed \$4,732.32 to Lukens as her portion of the bodily injury settlement. Later, after the January 2015 arbitration proceedings, Respondent paid Lukens an additional \$1,631.49. The arbitrator determined that 30% of Respondent’s fee was unearned because she delayed over one year to disburse the bodily injury settlement funds.

### **Conclusions of Law**

#### ***Count One – Rule 4-100(B)(4) [Promptly Pay Client Funds]***

Respondent is charged with willfully violating rule 4-100(B)(4) by delaying the distribution of the property damage/loss of use settlement proceeds until January 22, 2015. Rule

4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive. Respondent is culpable of violating the rule.

Respondent received the \$1,099.96 loss of use payment on September 23, 2010. She had removed the entire amount by October 6, 2010.<sup>4</sup> After Respondent sent Lukens the October 2010 property damage disbursement letter, Respondent knew Lukens disputed her taking one-third of her property damage/loss of use recovery. Lukens continued to inquire about the loss of use funds in June 2012 and July 2014, yet Respondent did not pay Lukens until after Lukens instituted fee arbitration proceedings in January 2015. “[W]here a client asks an attorney to distribute funds claimed by the client and where the attorney claims an interest in the funds, the attorney violates rule 4-100(B)(4) if he or she does not promptly take appropriate, substantive steps to resolve the dispute in order to disburse the funds. [Citation.]” (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 854.) Respondent knew Lukens disputed her fees in October 2010, yet she took no steps to resolve the dispute. It was Lukens who instituted the fee arbitration proceeding to resolve their disagreement. Respondent failed to take prompt, substantive steps to resolve the dispute, and is thus culpable of violating rule 4-100(B)(4).

***Count Two – Rule 4-100(B)(4) [Promptly Pay Client Funds]***

Respondent is charged with willfully violating rule 4-100(B)(4) by delaying to satisfy the liens of Dr. Dini and Dr. Scott, even though Lukens requested that she do so. The court does not find clear and convincing evidence that Respondent violated rule 4-100(B)(4).

An essential element of a rule 4-100(B)(4) violation is “a request by the client for payment of funds or property held by the attorney.” (*In the Matter of Nelson* (Review Dept.

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<sup>4</sup> Respondent testified that she took the entire \$1,099.96 because she had already advanced Lukens the \$3,604.98 property damage payment on August 13, 2010.

1990) 1 Cal. State Bar Ct. Rptr. 178, 188.) Lukens' June 2012 and September 2013 communications with Respondent indicate that Lukens wanted Respondent to pay the outstanding emergency medical treatment bills, but there is no evidence that she directed Respondent to pay the liens of Drs. Dini and Scott or that either doctor requested payment. Moreover, Respondent's September 2013 response to Lukens' concerns about her unpaid emergency medical treatment bills, indicated that Respondent would have to renegotiate the other liens (which included Dr. Dini's and Dr. Scott's liens) so that there would be enough money to pay all of the outstanding bills. Accordingly, there is a lack of clear and convincing evidence demonstrating that Lukens asked Respondent to pay the medical liens of Drs. Dini and Scott, and Respondent is not culpable of violating rule 4-100(B)(4). (Cf. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 114 ["unjustified failure to pay third party liens on demand constitutes a violation of (rule 4-100(B)(4))"]. Count Two is dismissed with prejudice.

***Count Three – Section 6106 [Moral Turpitude]***

Respondent is charged with violating section 6106 by dishonest or grossly negligent misappropriation of \$1,099.96 from Lukens. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent is not culpable of the misconduct alleged in Count Three.

Respondent credibly testified that she informed Lukens that paragraph three in the fee agreement entitled Respondent to one-third of Lukens' property damage recovery. Under paragraph three, Respondent was entitled to a fee because the property damage payment was recovered and no third party lienholder was owed for the property damage claim. Respondent admitted, however, that paragraph three was ambiguous and it failed to specifically refer to property damage liens. When Respondent disbursed the initial \$3,604.98 property damage funds

to Lukens, Respondent claimed that it was an advance, but Respondent failed to memorialize in writing that the payment was an advance. This most likely led to Lukens' misunderstanding that Respondent would not take any of the property damage recovery.

When Respondent withdrew the \$1,099.96 for her outstanding attorney's fees, Respondent honestly believed that she was entitled to them. Lukens did not dispute Respondent's entitlement to the fees until after Respondent had already removed them from her CTA. Based on these facts, the court does not find clear and convincing evidence that Respondent intentionally or grossly negligently misappropriated \$1,099.96 from Lukens. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-11 [an attorney's honest but mistaken belief that he has a right to entrusted funds may negate moral turpitude within the meaning of section 6106].) Count Three is dismissed with prejudice.

#### **Case No. 14-O-05291 – The Lopez Matter**

##### **Facts**

On May 11, 2012, Patricia Lopez and her minor son, Anthony Carmona, were involved in a car accident. Lopez was the driver and her son was a passenger. Lopez's ex-husband was friends with Respondent and he referred Lopez to Respondent. On May 14, 2012, Lopez hired Respondent to represent her and Carmona for their personal injury claims arising from the accident. The fee agreement that Lopez signed indicated that Respondent had the special power of attorney to affix Lopez's and Carmona's signatures "as an endorsement to any releases, necessary to obtain a recovery and/or settlement. . . ." On June 1, 2012, Respondent paid Lopez \$409.35 as an advance for bodily injury settlement. On June 25, 2012, Respondent advanced an additional \$712 to Lopez.<sup>5</sup>

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<sup>5</sup> During the disciplinary hearing, Respondent testified that the letters memorializing the advances should have read "property damage" rather than "bodily injury" settlement. Additionally, both checks reflect on the memo line that the funds are to cover car rental charges.

In July 2012, Respondent received a \$1,012.15 check from Interinsurance Exchange of the Automobile Club ("Interinsurance") for Lopez's property damage claim. Respondent deposited the check into her CTA.

On December 18, 2013, Respondent's office called Lopez to advise her that the insurance company offered \$17,500 to settle Lopez's bodily injury claim and \$5,000 for Carmona's claim. Lopez approved the offers and on the same date, Respondent settled Lopez's and Carmona's bodily injury claims for \$17,500 and \$5,000.00, respectively. Pursuant to Respondent's direction, on December 18, 2013, Respondent's paralegal Louis Fuentes, signed Lopez's and Carmona's names to their settlement agreements and releases.

On December 27, 2013, Respondent received the settlement checks from Interinsurance, which she deposited into her CTA. Respondent testified that she did not inform Lopez that she received the settlement checks, but she informed Lopez's ex-husband who Lopez authorized Respondent to communicate with about the auto accident claims. In April and May 2014, Lopez called Respondent to obtain the status of her settlement, but Respondent was not responsive to her call. Thereafter, Lopez complained to the State Bar of California.

On February 24, 2015, Lopez signed a disbursement sheet that failed to include the advances Respondent made to her in June 2012 or the \$1,012.15 property damage payment. The disbursement sheet indicated Lopez would receive \$6,025.73. Before Lopez signed the document, Respondent emailed Lopez on February 23 indicating that her recovery would be reduced by the \$712 and \$409.35 advance payments. Respondent paid Lopez \$4,904.38 on March 4, 2015. Carmona's net recovery was \$1,672.77, which Respondent also paid on March 4. Respondent did not disburse the \$1,012.15 that Respondent received for Lopez's property damage claim until September 23, 2015.

### **Lopez's State Bar Complaint**

State Bar complaint analyst, Rosemary Almaguer was handling Lopez's State Bar complaint. On October 6, 2014, Respondent told Almaguer that Lopez wanted to withdraw her complaint. Almaguer informed Respondent that Lopez would have to contact the State Bar to do so. On October 7, 2015, Respondent and Lopez had a lengthy conversation lasting 30 minutes.

On October 8, 2014, Almaguer received a three-way conference call from Respondent and another person who Respondent identified as Lopez. Respondent explained that the individual spoke Spanish and Respondent offered to translate for the individual. In Spanish, Almaguer asked the other person on the line if she wanted to withdraw the complaint against Respondent. When the person expressed reservations about retracting the complaint, Respondent interjected and indicated that the two had discussed the matter and the individual had indicated she wanted to withdraw her complaint. Almaguer believed Respondent was pressuring this individual to rescind her complaint. At that point, Almaguer indicated she was terminating the conversations and intended to speak directly with "Lopez."

After the conversation terminated, Almaguer spoke to "Sylvia Lopez" who confirmed that she was on the earlier three-way conversation. Sylvia Lopez indicated that she did not have a son, her accident occurred on June 25, 2013, and she lived in Sylmar, not Van Nuys, California.<sup>6</sup> This individual had never filed a complaint with the State Bar.

Next, Almaguer contacted Patricia Lopez, who had actually submitted the written State Bar complaint. Almaguer obtained Patricia Lopez's phone number from the complaint form. Lopez indicated that she never lived in Sylmar, and that Respondent had been calling her all morning badgering her to withdraw her complaint. Lopez stated that she did not want to withdraw her complaint against Respondent, and faxed a letter to Almaguer indicating as such.

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<sup>6</sup> Patricia Lopez's accident occurred on May 11, 2012, and she lived in Van Nuys, California.

## **Conclusions of Law**

### ***Count Five – Rule 4-100(B)(4) (Promptly Pay Client Funds)***

In Count Five, the State Bar alleges that by delaying the distribution of Lopez's and Carmona's settlement proceeds until February 24, 2015, Respondent failed to promptly pay, as requested by her clients, the settlement proceeds in her possession, in willful violation of rule 4-100(B)(4). Respondent stipulated that she is culpable of this charge. The court finds Respondent willfully violated rule 4-100(B)(4).

### ***Count Seven – Rule 4-100(B)(1) (Notification to Client of Receipt of Client Property)***

Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds, securities, or other properties. The State Bar charged Respondent with willfully violating rule 4-100(B)(1) by failing to notify Lopez and Carmona until March or April 2014 that she received two settlement checks totaling \$22,500 on their behalf. Respondent is culpable of willfully violating the rule.

Respondent received the settlement checks on behalf of Lopez and Carmona on December 27, 2013. Lopez did not find out that Respondent received the settlement checks until April or May 2014 when she called Respondent's office. Respondent acknowledged that she did not inform Lopez that she had received the settlement funds on Lopez's and Carmona's behalf. Instead, she told Lopez's husband that she received the settlement checks from Interinsurance. There is a lack of clear and convincing evidence that Respondent told Lopez's ex-husband about the settlement money and that Lopez authorized Respondent to communicate with her ex-husband about her accident claims. Thus, the court finds Respondent is culpable of willfully violating rule 4-100(B)(1).

***Count Eight – Rule 3-310(C)(1) (Avoiding Representation of Adverse Interests, Written Consent***

Rule 3-310(C)(1) provides that an attorney must not, without the informed written consent of each client, accept representation of more than one client in a matter in which the clients' interests potentially conflict. Respondent is charged with violating rule 3-310(C)(1) by failing to inform Lopez and Carmona about the potential conflicts of interests that existed when Respondent accepted representation of both clients and to obtain the written consent of each.

Respondent stipulated that at the time she accepted the representation of Lopez and Carmona, their interests potentially conflicted because Lopez drove the vehicle in which Carmona was riding, and Lopez may have been partially liable to Carmona for his injuries. Since Respondent admitted that a potential conflict existed and she failed to obtain the informed written consent from Lopez and Carmona, Respondent is culpable of violating rule 3-310(C)(1). (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 612, 616-617 [attorney's failure to discuss potential conflict of interest between driver and passenger and obtain informed written consent in vehicle accident case violated former rule 5-102(B)].)

***Count Ten – Section 6090.5, subd. (a)(2) (Agreeing/Seeking Agreement to Withdraw a State Bar Complaint or Not Cooperate with State Bar)***

Section 6090.5, subdivision (a)(2), provides “[i]t is cause for suspension, disbarment, or other discipline for any member, whether as a party or as an attorney for a party, to agree or seek agreement, that: [¶] . . . [¶] (2) The plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the disciplinary agency.”<sup>7</sup> The

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<sup>7</sup> Former section 6090.5 read “It is a cause for suspension, disbarment, or other discipline for any member of the State Bar to require as a condition of a settlement of a civil action for professional misconduct brought against the member that the plaintiff agree to not file a complaint with the disciplinary agency concerning that misconduct.” Although the language changed in 1996, section 6090.5 “applies to all settlements, whether made before or after the commencement of a civil action.” (Section 6090.5, subd. (b).) Thus, a violation occurs when an attorney who, settling a civil dispute against the attorney, seeks an agreement from the *plaintiff*

NDC alleges that “Respondent, while acting as a party sought agreement from [] Lopez, the plaintiff, that she shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the State Bar in willful violation of [] section 60905(a)(2).” Respondent is not culpable of this charge.

First, the statute refers to seeking an agreement with the “plaintiff.” (Section 6090.5, subd. (a)(2).) Lopez did not become a plaintiff by filing the State Bar complaint, she is the complainant. Next, Respondent’s attempt to convince Lopez to withdraw her State Bar complaint was not in connection with a civil settlement agreement, as required by section 6090.5, subdivision (a)(2). (See *In the Matter of McCarthy*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 372, 381-383 [term of civil settlement agreement that would have the complaining witness contact the State Bar to withdraw any claims violated section 6090.5, subd. (a)(2)]; *In the Matter of Brockway*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 954-955 [in resolving a dispute, attorney violated section 6090.5, subd. (a)(2), by entering into settlement agreement with a provision stating that the client “agreed to settle [their fee] dispute and to withdraw the complaint pending before the State Bar, all in accordance with the terms of this Agreement”].) As such, Respondent is not culpable of violating section 6090.5, subd. (a)(2). Count Ten is dismissed with prejudice.

***Count Twelve – Section 6106 (Misrepresentation)***

Respondent is charged with willfully violating section 6106 by signing or causing to be signed, releases on behalf of Lopez and Carmona, which misrepresented to Interinsurance that the signatures were Lopez’s and Carmona’s when Respondent knew or was grossly negligent in not knowing the signatures were not authentic. Respondent is culpable of willfully violating section 6106.

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to withdraw a disciplinary complaint. (Emphasis added.) (See *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364; *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.)

At Respondent's direction, Respondent's paralegal signed the releases on behalf of Lopez and Carmona to expedite the settlement checks. A December 18, 2013 letter to Interinsurance provided that the enclosed releases were "properly signed . . . by our clients, Patricia Lopez and Anthony Carmona." This representation was false. Respondent's fee agreement gave Respondent the special power of attorney to sign the releases, but she should have indicated she was signing them in a representative capacity. Although she may have been legally authorized to simulate Lopez's and Carmona's signatures under her power of attorney, she "should not have led [Interinsurance] to believe that [Lopez and Carmona] had personally signed" the releases. (*Hallinan v. State Bar* (1948) 33 Cal.2d 246, 249.) Respondent's conduct was deceptive. (*Ibid.*) Thus, Respondent is culpable of committing an act involving moral turpitude, in willful violation of section 6106.

***Count Thirteen – Section 6106 (Misappropriation)***

The State Bar alleged that Respondent dishonestly or gross negligently misappropriated \$1,012.15 from Lopez, in willful violation of section 6106. Respondent is not culpable of this charge.

On July 17, 2012, Interinsurance issued a \$1,012.15 check for Lopez's property damage claim. Respondent received the check and deposited it into her CTA later that month. When Respondent disbursed Lopez's bodily injury settlement, Respondent deducted \$1,121.35 for the advance payments Respondent provided in June 2012. Respondent did not pay Lopez \$1,012.15 until she discovered her accounting error in September 2015. If Respondent had proper accounting practices she would have discovered her mistake sooner, but her failure to promptly pay Lopez did not amount to misappropriation. There is no evidence in the record that Respondent's CTA ever fell below the \$1,012.15 she was required to maintain in trust on Lopez's behalf. Nor is there evidence that Respondent ever removed the fees for her own

purposes. Thus, there is a lack of clear and convincing evidence that Respondent misappropriated Lopez's funds and Respondent is not culpable of violating section 6106. Count Thirteen is dismissed with prejudice.

**Aggravation<sup>8</sup>**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

**Multiple Acts (Std. 1.5(b).)**

Respondent committed multiple acts of misconduct in two matters when she mishandled and delayed the payment of her clients' settlement funds, made misrepresentations to Interinsurance, and failed to obtain her clients' informed written consent to represent them when they had potentially conflicting interests. Her multiple acts of misconduct is an aggravating circumstance.

**Bad Faith and Dishonesty (Std. 1.5(d).)**

Respondent's misconduct is aggravated by her dishonesty and bad faith in trying to deceive the State Bar. The court finds that Respondent initiated the three-way conference call with Almaguer knowing that the individual who she represented to be Patricia Lopez, was not the Patricia Lopez who submitted a complaint against Respondent. The morning before Respondent initiated the three-way conference call with Almaguer on October 8, 2014, Respondent called Lopez's cell phone and had a 30-minute phone conversation with her. Additionally, the evening after the three-way conference call occurred, Respondent twice dialed the correct phone number to call Lopez. Respondent intentionally misrepresented that Patricia

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<sup>8</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Lopez was on the phone seeking to withdraw the complaint she submitted against Respondent, which was untrue. “The Supreme Court has repeatedly noted ‘that deception of the State Bar may constitute an *even more serious offense* than the conduct being investigated.’ [Citation.]” (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 289, original italics.) Respondent’s deception is a significant aggravating circumstance.

### **Mitigation**

It is Respondent’s burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

#### **Good Faith (Std. 1.6(b).)**

“In order to establish good faith as a mitigating circumstances, an attorney must prove that his or her beliefs were both honestly held and reasonable. [Citation.]” (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Respondent had an honest and reasonable belief that she was entitled to Lukens’ loss of use payment as her fees since Respondent paid Lukens all of the property damage settlement without deducting any fees one month prior to receiving the loss of use check. But, Respondent could only maintain her good faith belief from September 2010 until October 2010 when Lukens disputed Respondent’s retention of the loss of use funds as Respondent’s fees. Under these circumstances, the court affords minimal weight for Respondent’s good faith.

#### **Extreme Physical/Mental Difficulties (Std. 1.6(d).)**

Respondent and her aunt testified that beginning in 2011, Respondent’s parents became ill. Respondent became their primary caregiver. In 2014 and 2015, Respondent’s father’s health seriously declined, causing frequent hospital stays. He is a diabetic and was experiencing kidney failure. At the time, Respondent was very distracted and stressed. Moderate weight is assigned to Respondent’s emotional difficulties in dealing with her parents’ health issues. (*In the Matter*

*of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 [“some mitigating weight” assigned to personal stress factors established by lay testimony]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341 [mitigation afforded for personal problems based on lay testimony because it was “readily conceivable” that problems clouded attorney’s judgment].)

**Cooperation with State Bar (Std. 1. 6(e).)**

Respondent stipulated to one count of misconduct and limited facts that were easily provable. The court affords Respondent only slight mitigation credit for Respondent’s cooperation.

**Good Character (Std. 1. 6(f).)**

Respondent presented four witnesses who testified to her good character. The witnesses included two attorneys, a worker’s compensation hearing representative and a former employee. The witnesses described Respondent as honest and hardworking. All of the witnesses knew about the allegations against Respondent and none of them would change their opinion of her even though she stipulated to one count of misconduct as alleged in the NDC. Both of the attorney declarants considered Respondent trustworthy. One attorney, who was Respondent’s aunt, stated that Respondent does what is in the best interest of her clients and has referred clients to Respondent. She indicated that she would continue to refer individuals to Respondent because she does not believe Respondent was trying to steal from her clients. This evidence from members of the bar is entitled to great consideration because they are strongly interested in maintaining the administration of justice. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.) However, Respondent’s good character evidence is not from “a wide range of references in the legal and general communities.” (Std. 1.6(e).) Thus, the court assigns minimal weight in mitigation. (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at

p. 50 [testimony of four character witnesses afforded diminished weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys warranted limited mitigation because not broad range of references].)

### **Community Service and Pro Bono Activities**

Annually, Respondent volunteers with Southwestern Law School in support of their fundraiser. In 2009 and 2010, Respondent was involved with the San Fernando Valley Bar Association (“SFVBA”) where she was on the board of directors. She has also volunteered with the SFVBA committee on attorney referral programs. Since 2012, Respondent has been involved with the Universalist Church as a member and an advisor.

Respondent is afforded modest weight for her community service endeavors because the level of her service cannot be quantified from the record. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, [little weight given to pro bono activities where Respondent testified but evidence lacking regarding level of involvement].)

Overall, the significant weight of Respondent’s aggravating circumstances outweigh her mitigating circumstances.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the 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). Standard 2.11 is applicable to this matter. Standard 2.11 provides for disbarment or actual suspension as the presumed sanction for an act of moral

turpitude depending on the magnitude of the misconduct, the extent to which the victim was harmed, and the extent to which the misconduct related to the practice of law. The State Bar requested that Respondent be actually suspended for one year. Respondent, on the other hand, argued that the appropriate discipline range is from a period of stayed suspension to 60 days actual suspension. While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) Respondent is culpable of misrepresenting to Interinsurance that her clients signed the settlement releases, which was an act of deception involving moral turpitude. There was no clear and convincing evidence of any harm to Interinsurance, but the misconduct was directly related to Respondent's practice of law. The court must also take into account that Respondent mishandled her clients' settlement funds.

In addition to the standards, the court considers decisional law relevant to Respondent's misconduct to determine the appropriate level of discipline. The court is guided by *Hallinan v. State Bar, supra*, 33 Cal.2d 246; *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092; and *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716.

In *Hallinan, supra*, 33 Cal.2d 246, the Supreme Court suspended an attorney for three months for signing his client's name to a settlement agreement without disclosing that the attorney, and not the client, had signed the settlement papers. The attorney was legally authorized to sign the client's name on his behalf, but opposing counsel requested that the client's signature be genuine. It was not merely opposing counsel's request that the signature be genuine, but rather the attorney's deception in leading opposing counsel to believe that the client had personally signed the settlement papers that was deemed sanctionable.

In addition to *Hallinan*, the court considers two cases involving the mishandling of client funds. In *Dudugjian v. State Bar, supra*, 52 Cal.3d 1092 two attorneys commingled funds by depositing a client settlement check into their general bank account instead of their CTA. They

refused to pay the funds to the client upon request. There was no moral turpitude involved or misappropriation because the attorneys incorrectly believed in good faith that the client had authorized them to retain the funds. There were no aggravating circumstances and several mitigating factors. The most significant mitigating circumstance was the attorneys' honest belief that they had permission from the clients to retain the settlement funds. Additional mitigating factors included the finding that the attorneys were not likely to commit such misconduct in the future, good moral character, and that their misconduct was aberrational. Each attorney received a public reproof.

In *In the Matter of Respondent E*, supra, 1 Cal. State Bar Ct. Rptr. 716, a newly hired bookkeeper mistakenly billed a client of the attorney for \$1,753.94. as a cost advanced in litigation. The client paid the bill, and the client's check was deposited into the attorney's general operating account. Nearly three years later, the attorney discovered the mistake, but the matter was not settled until the parties participated in arbitration. The attorney offered to credit the client for the erroneously paid \$1,753.94 as an offset against other unpaid costs in almost the same amount. The review department held that the attorney failed to put \$1,753.94 in a trust account when he discovered the mistake, pending the resolution of the dispute with the client. There were no aggravating circumstances and several mitigating factors, including no prior record of discipline during long years of practice, extensive pro bono activities and community involvement, and testimony from a great number of character witnesses about the attorney's impeccable honesty and reliability. The discipline was a private reproof.

In light of the standards and applicable case law, the court finds that the appropriate level of discipline for Respondent's misconduct is a 120-day actual suspension. As in *Dudugjian* and *Respondent E*, Respondent's mishandling of her clients' funds did not involve dishonesty. But several factors justify imposing a much greater sanction than a reproof – Respondent's case

involved two client matters; she had significant aggravating circumstances; and she engaged in other acts of misconduct that involved deception. Although Respondent's deception was similar to the deceit in *Hallinan*, her other misconduct warrants greater discipline than a three-month actual suspension. Moreover, particularly concerning is Respondent's additional act of dishonesty in trying to have Lopez's complaint withdrawn by deceiving the State Bar. Respondent's acts manifest an "abiding disregard of ' "the fundamental rule of ethics – that of common honesty – without which the professions is worse than valueless in the place it holds in the administration of justice." ' [Citation.]" (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.) A 120-day suspension will serve the purpose of protecting the public, the courts and the legal profession.

#### **Recommendations**

It is recommended that Respondent Tina Amouei Nia, State Bar Number 237610, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>9</sup> for a period of one year subject to the following conditions:

1. Respondent Tina Amouei Nia is suspended from the practice of law for the first 120 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation

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<sup>9</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

### **Multistate Professional Responsibility Examination**

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

**California Rules of Court, Rule 9.20**

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

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April 1, 2016

  
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YVETTE D. ROLAND  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 1, 2016, I deposited a true copy of the following document(s):

**DECISION**

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

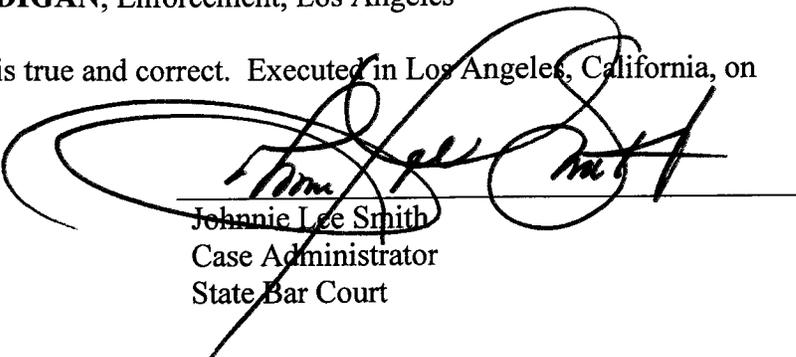
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045**

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

**HUGH RADIGAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 1, 2016.



Johnnie Lee Smith  
Case Administrator  
State Bar Court