STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ALLAN MERLE TABOR, A Member of the State Bar, No. 52846.	Case Nos. 15-O-15448 (16-O-14941; 16-O-15553)-LMA DECISION

Introduction[1]

In this contested original, disciplinary proceeding, respondent Allan Merle Tabor (Respondent) is charged with a total of twelve counts of misconduct involving three separate client matters. Specifically, Respondent is charged with two counts of failing to perform legal services competently (rule 3-110(A)); two counts of making false statements (§ 6106); two counts of misappropriating client funds (§ 6106); two counts of failing to maintain client funds in a trust account (rule 4-100(A)); one count of failing to promptly payout client funds upon request (rule 4-100(B)(4)); one count of failing to communicate (§ 6068, subd. (m)); one count of failing to communicate the terms of a written settlement offer to a client (rule 3-510); and one count of failing to support the laws of this state (§ 6068, subd. (a)). After thorough consideration, the court finds Respondent culpable on all 12 counts.

Based on the facts and circumstances, as well as the applicable aggravating and mitigating factors, the court recommends, among other things, that Respondent be suspended

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

from the practice of law for a minimum of two years and until he establishes his rehabilitation, fitness to practice, and present learning and ability in the general law in accordance with standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct.[2]

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) against Respondent on November 22, 2017. Thereafter, Respondent filed a response to the NDC on December 13, 2017. On March 6, 2018, the parties filed a partial stipulation of facts.

A two-day trial was held in this matter on March 20 and 22, 2018. The State Bar was represented by Deputy Trial Counsel Britta G. Pomrantz. Respondent represented himself.

The matter was submitted for decision on April 2, 2018, after each party filed a closing brief.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 1972, and has been a member of the State Bar of California at all times since that date.

Case Number 15-O-15448 -- The Gerard Matter

Facts

In June 2011, Veronica Gerard (Veronica) was hospitalized following a fall in the restroom of a Taco Bell restaurant. Veronica died shortly thereafter. Not long after Veronica's death, Veronica's daughter, Cynthia Henry (Cynthia), contacted Respondent's law office about possible legal action over her mother's sudden death.

In August 2011, James Gerard (James), Veronica's husband and Cynthia's father, signed a legal services agreement hiring Respondent to represent him in filing a wrongful death lawsuit

[2] The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

over Veronica's sudden death. Also, in August 2011, Respondent sent James a letter with various forms enclosed. A hand-written note at the bottom of the letter read, "Do not fill out the forms—just sign and initial where indicated."[3] James signed without dating at least four blank verification forms in the early part of Respondent's representation.

In October 2011, Cynthia and her two brothers, Rick and Ken, also hired Respondent to represent them in a wrongful death lawsuit over their mother's death.

On April 5, 2012, Respondent filed a civil complainant in the Lake County Superior Court on behalf of the four Gerard family members, entitled *James Gerard, et al., v J.A. Sutherland, Inc., dba Taco Bell* (*Gerard v. J.A. Sutherland*).

In August 2012, the defendant served, on each of the four plaintiffs, the defendant's first set of discovery requests, which included Form Interrogatories, Special Interrogatories, and a Demand for Production of Documents. And, on October 19, 2012, Respondent served, on the defendant, James's responses to the defendant's discovery requests. The responses, however, were not prepared by James, but by Alvin, Respondent's paralegal and brother. Even though James's discovery responses were purportedly signed by Respondent as the "Attorney for Plaintiff [¶] James Gerard," the signatures on the responses actually belonged to Alvin. Respondent never told the Gerards that his brother Alvin was working on their matter. Nor did Respondent ever disclose to them that Alvin had resigned from the State Bar with disciplinary charges pending.

In November 2012, Respondent, through Alvin, provided the defendant with verification forms signed by James for the discovery responses that Respondent previously sent the

---

[3] Even though the letter purports to be signed by "Allan M. Tabor, Esq.," Respondent testified that letter was actually signed by Alvin E. Tabor (Alvin), who is both Respondent's paralegal and Respondent's identical twin brother. Alvin is a former member of the State Bar of California, who resigned from the State Bar with disciplinary charges pending against him in 1990. Alvin has been employed as Respondent's paralegal since 1990 after he resigned with charges pending.

defendant on October 19, 2012. Each of the verification forms stated, under penalty of perjury, that James had reviewed the discovery responses and verified their contents. In fact, James had never even seen the responses that Alvin prepared, much less read, reviewed, and verified them.

In September 2013, Responded filed an opposition to the defendant's Motion for Summary Judgment in *Gerard v. J.A. Sutherland*. Respondent supported that opposition with a declaration from James, which was accompanied by a verification signed by James. That verification, which purports to have been signed by James on September 11, 2013, states under penalty of perjury, that James had reviewed the declaration and verified its contents. In fact, James had never even seen the declaration, much less read, reviewed, and verified its content on September 11, 2013.

On October 3, 2013, the defendant's counsel sent Respondent a written offer to settle *Gerard v. J.A. Sutherland* for $6,000 stating that the offer would expire the following day. Even though Respondent testified that he informed the Gerards of the settlement offer, his testimony lacked credibility, and was contradicted by James and Cynthia, who were both extremely credible witnesses.

A mandatory settlement conference was scheduled in *Gerard v. J.A. Sutherland* for October 22, 2013. Respondent's personal appearance at that conference was required by the local rules of court. Respondent did not notify his clients of the settlement conference and did not have their authority to engage in settlement discussions. On the day of the settlement conference, the defendant's counsel appeared in court, but Respondent did not. At the court's direction, opposing counsel contacted Respondent by telephone. On October 22, 2013, the court issued an order to show cause (OSC) ordering Respondent to show cause "as to why sanctions should not be ordered for his nonappearance today." A hearing on the order to show cause was scheduled for November 4, 2013.

///

On October 23, 2013, opposing counsel wrote to Respondent, confirming his and Respondent's agreement that the opposing counsel's costs and fees associated with Respondent nonappearance at the settlement conference would be waived so long as Respondent prepared a request for dismissal with prejudice prior to the November 4, 2013, hearing on the order to show cause. Respondent did not discuss this settlement with his clients.

On October 29, 2013, Respondent, by facsimile transmission, filed in the Lake County Superior Court a request for the dismissal, with prejudice, of *Gerard v. J.A. Sutherland.* Thereafter, the case was dismissed on November 1, 2013. Respondent did not communicate to his clients that he had dismissed their lawsuit.

Believing that *Gerard v. J.A. Sutherland* was still pending in the superior court, Cynthia sent an email to Respondent on April 24, 2014, attaching information regarding her deceased mother's pacemaker and a letter explaining her view of the information's potential as evidence. Cynthia sent additional emails to Respondent on April 26, 2014, and May 12, 2014. Respondent did not respond to any of Cynthia's emails. When Cynthia finally reached Respondent by telephone, Respondent still failed to inform her that the lawsuit had been dismissed and assured her that he would review the information she sent him about her mother's pacemaker.

On June 27, 2014, Respondent sent Cynthia a letter stating that, with her father's permission, he had dismissed the case. In fact, James had never been consulted about the settlement and dismissal of the case. Moreover, James did not even have his children's permission to authorize the settlement or dismissal of the lawsuit on their behalf.

On July 25, 2014, James retrieved the copy of Respondent's case file from Respondent's office.

///

///

Conclusions of Law

Count One A (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. In this count, OCTC charges that Respondent willfully violated rule 3-110(A) in the Gerard matter, by (1) failing to communicate the written settlement offer for $6,000 to his clients; (2) failing to appear at the mandatory settlement conference on October 22, 2013, in violation of the superior court's local rules; (3) filing a request for dismissal with prejudice on October 29, 2013, without his clients' authority, knowledge, or consent; (4) failing to inform his clients that their lawsuit had been dismissed with prejudice; and (5) sending the defendant's counsel the blank verifications that James signed that were then completed to falsely state under penalty of perjury that James had reviewed the discovery responses. The record clearly establishes the charged violations of rule 3-110(A).

Respondent denies knowing of Alvin's actions in completing the undated and blank verifications that James signed to falsely state under penalty of perjury that James had reviewed and verified the discovery requests and the declaration supporting his opposition to defendant's motion for summary judgment and maintains that he is not responsible for Alvin's fraudulent conduct. Respondent's denial of knowledge is not credible or plausible. Moreover, even if Respondent's denial of knowledge were credible, the lack of knowledge would not be a defense to the failure to perform charge. Respondent has no system in place for supervising his employees and monitoring cases. In addition, he permits Alvin to sign documents directly above Respondent's typed name so that it appears that Respondent personally signed the document without training and without supervising Alvin's work. Respondent failed to guide Alvin (e.g., instruct him on how to properly use presigned blank verifications) and to review client files to determine whether Alvin's work on them was appropriate and adequate. Moreover, because

Alvin resigned from the State Bar with disciplinary charges, Respondent had a specific statutory duty to ensure that he did not engage in the practice of law and supervise him in all of his assigned duties. (§ 6133 [the failure to supervise a disciplined, disbarred, or resigned attorney "constitutes a cause for discipline"].) Respondent, however, admitted at trial that he only monitored Alvin to make sure that he completed his assignments on time. Thus, any lack of actual knowledge on Respondent's part of Alvin's improper conduct would not be a defense to the charged violations of rule 3-110(A). (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 336; see also *Simmons Creek Coal Co. v. Doran* (1892) 142 U.S. 417, 437 [one " 'has no right to shut his eyes or his ears to the inlet of information, and then say he is ... without notice' "].)

In short, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in the Gerard matter in willful violation of rule 3-110(A).

Count One B (Rule 3-510(A)(2) [Communication of Settlement Offer])

Rule 3-510(A)(2) provides that an attorney must promptly communicate to the attorney's client all amounts, terms and conditions of any written settlement offer made in non-criminal matters. In this count, OCTC charges that Respondent willfully violated rule 3-510 by failing to promptly inform his clients that, on October 3, 2013, he received a written offer to settle the *Gerard v. J.A. Sutherland* lawsuit for $6,000 paid to Respondent's clients. The record clearly establishes the charged violation of rule 3-510. However, because the court relied on Respondent's failure to inform his client of the $6,000 settlement offer to establish the charged violation of rule 3-110(A) in count one A above, the court does not give the rule 3-510 violation any additional weight in determining the appropriate level of discipline. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155; see also *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 [appropriate level of discipline

for an act of misconduct does not depend on how many rules or statutes proscribe the misconduct].

Count One C (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m) provides that an attorney has a duty to promptly respond 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, OCTC charges that Respondent willfully violated section 6068, subdivision (m) by failing to inform his clients (1) that, on October 29, 2013, Respondent filed a request for dismissal with prejudice in *Gerard v. J.A. Sutherland* and (2) that, on November 1, 2013, the *Gerard v. J.A. Sutherland* lawsuit had actually been dismissed. The record clearly establishes the charged violations of section 6068, subdivision (m). However, because the court relied on Respondent's failures to notify his clients that he filed the request for dismissal and that their lawsuit had been dismissed to establish the charged violation of rule 3-110(A) in count one A above, the court does not give the section 6068, subdivision (m) violation any additional weight in determining the appropriate level of discipline. (See *In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. at p. 155; see also *In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148.)

Count One D (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In this count, OCTC charges that Respondent engaged in acts of moral turpitude and dishonesty in willful violation of section 6106 when he sent the defendant's counsel James's "pre-signed verifications, subsequently completed by Respondent, declaring in writing and under penalty of perjury that Gerard had reviewed his written discovery responses and could verify the truth of their contents,

when Respondent knew that statement was false and misleading because Respondent never provided Gerard with an opportunity to review the responses." The record clearly establishes the charged violations of section 6106. Moreover, it is not duplicative to rely on Respondent's deceptive and fraudulent use of James's presigned verification as a basis for finding Respondent culpable of the rule 3-110(A) violation charged in count one A above and to rely on the same conduct to establish a section 6106 violation. (Cf. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520 [It is not duplicative to find that an attorney's violation of rule is so egregious that it rises to the level of an act involving moral turpitude, dishonesty, or corruption in violation of section 6106.].)

Case Number 16-O-15553 —The Robertson Matter

Facts

On October 16, 2007, Jerlaine Robertson hired Respondent on a contingency basis to represent her in a personal injury matter. On February 6, 2009, Respondent filed a civil complaint for Robertson in the Alameda County Superior Court (PI lawsuit). In April 2009, the PI lawsuit was settled favorably for Robertson for $6,437.

By a letter dated April 17, 2009, Marion Kahle of Vengroff, Williams & Associates ("Vengroff") informed Respondent that on September 26, 2007, Robertson's insurance company had paid $1,305.42 to the San Leandro Hospital EMC on Robertson's behalf. The same letter directed Respondent to remit a check in the amount of $1,305.42 to Vengroff.

On April 22, 2009, Respondent sent Robertson a hand-written disbursement schedule for the $6,437 settlement of the PI lawsuit. According to Respondent's breakdown, Robertson would receive $2,102 after the deductions from the settlement funds for Respondent's attorney's fees and costs and for a $1,305 medical lien. On May 19, 2009, Respondent issued a cheek to Robertson for her $2,102 share of the settlement proceeds.

In 2010, Robertson received notice from her insurance company that its medical lien had not been paid. When Robertson contacted Respondent about the matter, Respondent assured her that the lien had been paid, even though it had not been paid. Almost five years later, Vengroff sent Robertson a letter dated January 30, 2015, informing her that its $1,305.42 lien had still not been paid.

By a letter dated August 30, 2016, the State Bar informed Respondent that an investigation had been opened into allegations that Respondent had failed to satisfy Robertson's medical lien. In March 2017, Respondent remitted $1,305.42 to Vengroff.

Between May 2009 and March 2017, Respondent was required to maintain on deposit in his client trust account (CTA) a minimum of $1,305.42, which was the amount that Respondent withheld from the PI lawsuit settlement proceeds to satisfy the medical lien held by Robertson's insurance company. During that period, Respondent's CTA balance dropped below the $1,305.42 that he was to hold in trust for Robertson and her insurance company on at least the following seven days.

Date	Ending Balance
September 30, 2012	$257.38
September 30, 2013	$515.86
January 31, 2014	$849.22
May 31, 2014	$490.55
May 31, 2015	$294.79
August 31, 2015	$147.70
December 31, 2015	$510.58

///

///

Conclusions of Law

Count Two A (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

In this count, OCTC charges that Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of rule 3-110(A), by failing to satisfy Robertson's medical lien from the settlement proceeds Respondent received on her behalf in connection with the PI lawsuit. The record clearly establishes the charged violation of rule 3-110(A). At a minimum, Respondent recklessly failed to pay Robertson's medical lien for almost eight years.

Count Two B (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

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. The court finds that Respondent willfully violated rule 4-100(B)(4) by failing to promptly pay Robertson's $1,305 medical lien after she contacted him in 2010 in response to the notice she received from her insurance company that the lien had not been paid.[4] Respondent did not pay the lien until March 2017, which was almost eight years later. The record clearly establishes the charged violation of rule 4-100(B)(4).

Count Two C (§ 6106 [Moral Turpitude])

In this count, OCTC charges that Respondent engaged in an act of moral turpitude, dishonesty, or corruption when he falsely told Robertson in or about 2011 that her medial lien had been paid. At a minimum, Respondent was grossly negligent when he assured Robertson

[4] This finding varies from the allegation in the NDC that Robertson asked Respondent to pay her medical lien on or about May 19, 2009. The variance between the pleading and the proof on this issue is de minimis under the notice-pleading standard set forth in Rules of Procedure of the State Bar, rule 5.41(B).

that her medical lien had been paid when it had not. Such gross negligence supports a finding of moral turpitude in willful violation of section 6106.

Count Two D (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])
Count Two E (§ 6106 [Misappropriation])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. In these two counts, OCTC charges that Respondent failed to maintain the $1,305 that he withheld from the settlement proceeds from the PI lawsuit to pay Robertson's medical lien in his client trust account pending his payment of the lien in willful violation of rule 4-100(A) and that Respondent dishonestly or grossly negligently misappropriated $1,157.30 of the $1,305 for his own purposes.

The record clearly establishes the charged violation of rule 4-100(A). Moreover, Respondent stipulated at trial that he is culpable of willfully misappropriating $1,157.30 of the $1,305 for his own purposes in willful violation of section 6106 as a result of his gross negligence in handling client funds. It is not duplicative to find Respondent culpable of violating rule 4-100(A) by failing to maintain $1,157.30 in client funds in his CTA and of violating section 6106 by misappropriating the $1,157.30 for his own use and benefit. (See, e.g., *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169 [attorney's misappropriation of $929 violated trust account rule and section 6106].)

Case Number 16-O-14941 -- The Medi-Cal Matter

Facts

Respondent represented client M.V., who was a Medi-Cal beneficiary/insured, in a personal injury matter filed in the Alameda County Superior Court. By a letter dated February

23, 2012, Respondent informed the California Department of Health Care Services (DHCS) that he represented M.V. In that same letter, Respondent requested an itemized bill for all services rendered to M.V. in connection with her injuries that had been paid for by Medi-Cal. In a letter dated April 13, 2012, DHCS informed Respondent that the then-current total amount of the statutory lien on M.V.'s case was $3,514.30. The letter included an itemization of the payments that Medi-Cal made on M.V.'s behalf. Then, in a letter dated May 30, 2012, DHCS informed Respondent that DHCS would accept a total of $2,635.73 in full satisfaction of the original $3,514.30 lien.

On September 28, 2012, M.V.'s case was settled favorably for M.V. in the amount of $97,500. On October 23, 2012, a settlement check in the amount of $97,500 was issued, payable to both M.V. and the Law Office of Ryan & Tabor. From those funds, Respondent withheld the entire amount of the $3,514.30 Medi-Cal statutory lien. Respondent, however, failed to pay those funds over to DHCS to release the lien. Moreover, between May 30, 2012, and December 5, 2015, DHCS sent Respondent 15 letters regarding M.V's lien. In a letter dated December 3, 2015, DHCS informed Respondent that DHCS would now accept $2,270.90 in full satisfaction of the original $3,514.30 lien. Respondent, however, still failed to pay the lien. In July 2016, DHCS filed a State Bar complaint against Respondent over his failure to pay its $3,514.30 statutory lien despite DHCS's repeated attempts to collect it for more than four years.

On September 26, 2016, Respondent finally remitted $2,270.90 to DHCS in full satisfaction of its $3,514.30 lien. Between September 28, 2012 and September 26, 2016, Respondent was required to maintain on deposit in his CTA the $3,514.30 he retained from M.V.'s settlement in order to satisfy the lien. During that period, the balance of Respondent's CTA dropped below the amount required to be on deposit on the following nine occasions:

///

Date	Ending Balance
September 30, 2013	$515.86
December 31, 2013	$2,993.71
January 31, 2014	$849.22
March 31, 2014	$2,150.17
April 30, 2014	$3,512.59
May 31, 2014	$490.55
May 31, 2015	$294.79
August 31, 2015	$147.70
December 31, 2015	$510.58

Conclusions of Law

Count Three A (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])
Count Three C (§ 6106 [Misappropriation])

In these two counts, OCTC charges that Respondent failed to maintain the $3,514.30 that he withheld from the $97,500 in settlement proceeds that he received for his client M.V. to pay the statutory Medi-Cal lien in his CTA pending his payment of the lien in willful violation of rule 4-100(A) and that Respondent dishonestly or grossly negligently misappropriated $3,366.60 of the $3,514.30 for his own purposes.

The record clearly establishes the charged violation of rule 4-100(A). Moreover, Respondent stipulated at trial that he is culpable of willfully misappropriating $3,366.60 of the $3,514.30 for his own purposes in willful violation of section 6106 as a result of his gross negligence in handing client funds.

The court further finds that Respondent willfully violated section 6106 by intentionally misappropriating $3,366.60 of the $3,514.30 that he held in trust for his client and for Medi-Cal and DHCS for his own use and benefit. The facts that Respondent wrote to DHCS about its lien in February 2012, that DHCS notified Respondent of the exact dollar amount of its lien in April 2012, that DHCS thereafter sent Respondent 15 letters concerning its lien during the two-and-

one-half-year period from May 30, 2012, through December 5, 2015, and that Respondent still did not pay the Medi-Cal lien until September 26, 2016, which was four and one-half years after he knew the exact dollar amount of the lien, makes clear that Respondent's misappropriation of the $3,366.60 was intentional and not merely reckless or the result of gross negligence. Respondent's assertion to the contrary lacks credibility and plausibility.

Count Three B (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. In this count, OCTC charges that Respondent willfully violated section 6068, subdivision (a) by violating Welfare and Institutions Code sections 14124.70 –14124.795. The record clearly establishes that Respondent violated Welfare and Institutions Code sections 14124.70 –14124.795 when he intentionally failed to honor the Medi-Cal statutory lien from October 2012 when received the $97,500 settlement proceeds until September 2016 when he paid DHCS $2,270.90 in satisfaction of the lien. Without question, Respondent willfully violated his duty, under section 6068, subdivision (a), to support the laws of this state when he intentionally violated Welfare and Institutions Code sections 14124.70 –14124.795.

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing. Because Respondent's multiple acts of misconduct spanned over an extended period of time, they warrant significant weight in aggravation.

/ / /

Uncharged, But Proved Misconduct (Std. 1.5(h).)

The record clearly establishes that, in the Gerard matter, Respondent willfully violated rule 1-311(D), which requires, among other things, that an attorney who employs a resigned member of the State Bar, such as Alvin, must serve "upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter, written notice that contains a full description of the resigned member's status; that sets forth the activities that the resigned member cannot perform which are listed in rule 1-311(B); and that states that the resigned member will not perform any such activities. Moreover, Respondent admitted at trial that he previously provided his clients with notice of Alvin's status, but that he stopped doing so.

Lack of Insight

The record clearly establishes that Respondent lacks insight into the wrongfulness of his conduct, which is a significant aggravating circumstance. (*Maltaman v. State* Bar (1987) 43 Cal.3d 924, 958.) For example, Respondent attempts to blame his misconduct in the Gerard matter on the clients' weak case against Taco Bell. Without question, Respondent fails to understand his duty to properly train and supervise his employees, such as Alvin. Respondent's claims that he gave the Gerards their client file without making a copy of anything in it and that multiple key exculpatory documents are missing from the file that the Gerards gave to OCTC lack credibility. Moreover, even if Respondent did give the Gerards their client file without making a copy of it as he claims, the act alone would be a highly suspicious circumstance. One reason attorneys keep files is to prove their honest and ethical handling of their clients' affairs should their actions be questioned. Respondent's lack of insight is particularly troubling because it suggests that the misconduct will reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

///

Significant Harm to Client/Public (Std. 1.5(j).)

Respondent's misconduct caused significant harm to the Gerards because Respondent effectively gave their case to Alvin to handle without any meaningful supervision and as though Alvin was still an attorney in good standing. The Gerards lost not only their cause of action, but their right to look for another attorney to review their case and properly advise them how to proceed. In addition, Respondent's misconduct caused significant harm to the lienholders in the Robertson matter and the Medi-Cal matter because Respondent deprived them of the use of the money he owed them for many years.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

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

As noted above, Respondent was admitted in June 1972 and does not have a prior record of discipline. Respondent's almost 40 years of misconduct-free practice is very compelling mitigation.

Community Service

Respondent is entitled to only limited mitigation for his community service and other philanthropy because the only evidence he proffered to establish it was his own uncorroborated testimony. Moreover, Respondent's civic activities were not recent.

Cooperation (Std. 1.6(e).)

Respondent is also entitled to limited mitigation for his cooperation with OCTC by entering into the partial stipulation of facts.

///

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. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

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). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

While the standards are entitled to great weight (*In re Silverton* (2005) 36 Cal.4th 81, 92), they are not applied talismanically (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222) and "do not mandate a specific discipline" (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). In short, even though the standards provide appropriate guidelines on the issue of discipline, a proper discipline recommendation ultimately rests on "a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316; accord *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940; see also *Howard v. State Bar, supra*, 51 Cal.3d at pp. 221-222 [the Supreme Court is "permitted to temper the letter of the law with considerations peculiar to the offense and the offender"].)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction should be imposed. Standard 1.7 further provides that, if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

The applicable standard with the most severe sanction is standard 2.1(a), which applies to Respondent's intentional misappropriation of client funds in the Medi-Cal lien matter.[5] Standard 2.1(a) provides:

> Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.

The court concludes that there are sufficiently compelling mitigating circumstances, namely Respondent's 40 years of misconduct free practice, to depart from the presumed sanction of disbarment for Respondent's single intentional misappropriation in the Medi-Cal lien matter. Without giving the parties' positions undue weight, the court notes that OCTC does not contend that Respondent should be disbarment in this proceeding. Instead, OCTC contends that the appropriate level of discipline is five years' stayed suspension and five years' probation on conditions, including two years' actual suspension.

The Supreme Court has indicated in some misappropriation cases that discipline of less than disbarment is warranted where extenuating circumstances show that the misappropriation of entrusted funds is an isolated event and other mitigating circumstances are present. The court finds *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357 and *Boehme v. State Bar* (1988) 47 Cal.3d 448 instructive.

In *Lawhorn v. State Bar*, the Supreme Court held that mitigating factors such as the attorney's inexperience, restitution, the single occurrence, and the impending divorce did not

---

[5] The second most severe sanction is found in standard 2.11, which applies to Respondent's violations of section 6106 for making false statements. That standard provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, or corruption, and that the degree of the sanction depends on: the magnitude of the misconduct, the extent to which the misconduct harmed or misled the victim, the impact on the administration of justice, if any, and the extent to which the misconduct related to the member's practice of law.

absolve or excuse his misappropriation, but provided sufficient evidence that disbarment was inappropriate. The attorney paid his client only after she told him that she would file a complaint with the State Bar, but before any formal notice that a complaint had been filed and any contact from the State Bar. The attorney was actually suspended for two years with a five-year stayed suspension and a five-year probation.

In *Boehme v. State Bar,* the Supreme Court suspended an attorney from the practice of law for 18 months for misappropriating settlement funds belonging to a client and the client's medical provider and for making false and misleading statements to the State Bar Court. The attorney had been admitted to practice for 20 years and had no prior disciplinary record. The Supreme Court found that disbarment was excessive and unwarranted for the attorney's single instance of misconduct in light of his health problems and prior good record.

Furthermore, the Review Department has instructed that disbarment is not to be recommended where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 472.) Respondent's almost 40 years of misconduct free practice of law strongly suggests that Respondent's disbarment is not necessary to deter any additional misconduct or to protect the public

On balance, the court concludes that the discipline similar to that imposed in *Lawhorn v. State Bar*, with an additional requirement that Respondent establish his rehabilitation, fitness to practice, and present learning and ability in the law in accordance with standard 1.2(c)(1) before his two-year actual suspension will terminate, will fulfill the goals of attorney discipline and adequately protect the public.

///

///

Recommendations

Discipline

It is recommended that ALLAN MERLE TABOR, State Bar Number 52846, be suspended from the practice of law for five years, that execution of that suspension be stayed, and that Respondent be placed on probation for five years with the following conditions.

Conditions of Probation

Actual Suspension

Respondent must be suspended from the practice of law for a minimum of the first two years of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126 and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully,

promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

State Bar Ethics School and Client Trust Accounting School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and of the State Bar 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 these sessions. If Respondent provides satisfactory evidence of completion of the Ethics School and/or the Client Trust Accounting School after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Proof of Compliance with Rule 9.20 Obligations

For a minimum of one year after the effective date of discipline, Respondent is directed to maintain proof of Respondent's compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-

delivery. Respondent is required to present such proof upon request by the Office of Chief Trial Counsel, the Office of Probation, and/or the State Bar Court.

Commencement of Probation

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of Respondent's actual suspension in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 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 imposing discipline in this matter.[6] Failure to do so may result in disbarment or suspension.

Costs

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: May 24, 2018.

LUCY ARMENDARIZ
Judge of the State Bar Court

[6] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed 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, 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).)

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 29, 2018, I deposited a true copy of the following document(s):

DECISION

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

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

ALLAN MERLE TABOR
RYAN & TABOR
19 CANDLESTICK RD
ORINDA, CA 94563 - 3701

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

BRITTA G. POMRANTZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 29, 2018.

Bernadette Molina
Court Specialist
State Bar Court