PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 16-O-14295
	)	
MARK ROBERT HADDON,	)	OPINION AND ORDER
	)	
State Bar No. 186480.	)	
	)	

Mark Robert Haddon is charged with 12 counts of misconduct related to his settlement of a client's case that involved deceitful actions to his client and the Office of Chief Trial Counsel of the State Bar (OCTC). The hearing judge found Haddon culpable on 11 of the 12 charges and recommended disbarment. Haddon appeals, but does not contest the culpability findings. He primarily argues that the disbarment recommendation is excessive, and that his 2006 brain aneurysm, which led to his misconduct beginning in 2014, should be considered sufficient mitigation to justify discipline less than disbarment. He also argues that his due process rights were violated on multiple occasions during the disciplinary proceedings. OCTC does not appeal and asks us to uphold the judge's recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability and discipline determinations. Haddon failed to establish a causal connection between his brain injury and his misconduct and, therefore, we do not credit him with mitigation under standard 1.6(d).[1] We also reject his due process claims. The absence of compelling mitigating circumstances combined with Haddon's six acts of moral turpitude, including lying to his client and OCTC, warrant his disbarment.

[1] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

I. RELEVANT PROCEDURAL BACKGROUND

On February 6, 2017, OCTC filed a Notice of Disciplinary Charges (NDC). On June 8, 2017, OCTC filed an amended NDC.

On July 10, 2017, the hearing judge granted, in part, Haddon's request for a continuance of the trial that was scheduled to occur July 18–20. Specifically, the judge ordered OCTC to proceed with its case-in-chief on the scheduled trial dates, but allowed Haddon a 90-day continuance in presenting his defense so that he could obtain a medical expert's opinion regarding a recent medical diagnosis that Haddon's attorney believed could establish a defense to the charges alleged in the NDC.[2]

On July 18, 2017, the parties filed an extensive Stipulation as to Facts and Admission of Documents (Stipulation). OCTC presented its case on July 18, 19, and 20, and during this segment of the trial, Haddon admitted culpability on eight of the 12 counts charged in the amended NDC.

Subsequently, on November 14, 2017, Haddon voluntarily transferred to inactive status, and the hearing judge abated the matter. The judge's status conference order stated that the matter would remain abated "as long as [Haddon] remains on inactive status." The judge also ordered Haddon "to notify the court of an intent to change his inactive status so that the court can calendar a status conference before any change in status is sought." Without notifying the judge of his intent to change his status, Haddon resumed active status on January 9, 2018. On the following day, the judge terminated the abatement and set this case for further trial.[3] Trial resumed on March 7 and 8, and the judge issued her decision on June 20, 2018.

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[2] This second phase of the trial was scheduled for October 17 and 18, 2017, but was continued, pursuant to a subsequent motion by Haddon, to November 14, 2017.

[3] The order terminating the abatement stated that Haddon "failed to provide advanced notice of an intent to change his status, and denied the court the ability to calendar a status conference before any change in status was sought."

II. FACTUAL BACKGROUND[4]

Haddon was admitted to practice law in California on December 10, 1996, and has no prior record of discipline. On April 20, 2014, Eduardo Vazquez employed Haddon to represent him in an employment claim against Vazquez's former employer, International Surplus Packaging, LLC (International). Vazquez agreed to pay Haddon 40 percent of any settlement arising out of the matter. Vazquez was introduced to Haddon by Michael Juarez, a non-lawyer who assisted Vazquez with his wage claim before the California Labor Commissioner (CLC).

Haddon filed suit against International in May 2014. Vazquez was not aware that his wage claim before the CLC was abandoned and that Haddon had made the strategic decision to litigate the claim in superior court.[5] In December 2014, International sent Haddon a written settlement offer of $50,000, but Haddon did not communicate the offer to Vazquez. On December 26, Haddon signed Vazquez's signature on the settlement agreement without Vazquez's permission and sent it to International, which agreed to pay the $50,000 in four payments of $12,500.

On December 30, 2014, Haddon deposited the first $12,500 settlement payment into his client trust account (CTA). On January 20, 2015, he deposited the second $12,500 installment check into his CTA. Haddon directed Juarez to meet with Vazquez and give him certain documents. Juarez met with Vazquez on January 26 and gave him an altered copy of the settlement agreement, along with two documents labeled "Settlement Breakdown" and "Costs for Eduardo Vazquez." Haddon had altered the settlement agreement to falsely state that the matter had settled for $40,000, which would be paid in four $10,000 payments. He also altered

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[4] The facts included in this opinion are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[5] Vazquez has limited English proficiency and cannot read English. He communicated with Haddon about his case through Juarez.

the payment schedule.[6] Juarez also gave Vazquez a check from Haddon's CTA for $5,293.60. Additionally, Haddon issued a check from his CTA to Juarez for $1,600 on January 26. Haddon deposited the third $12,500 settlement check from International into his CTA on February 17. The next day, he issued a check from his CTA to Vazquez for $6,000. Haddon deposited the final $12,500 settlement check into his CTA on March 16. On March 20, he issued a $6,000 check to Vazquez and a second $1,600 check from his CTA to Juarez.

Haddon did not issue a fourth payment to Vazquez even though he had received all of the payments from International. Vazquez called Haddon five times seeking the remainder of the settlement funds as outlined in the altered settlement agreement. In June 2016, Vazquez submitted a complaint against Haddon to the State Bar. In total, Haddon issued checks to Vazquez for $17,293.60 when Vazquez was actually entitled to receive $29,293.60 from Haddon, a difference of $12,000.[7]

On July 15, 2016, an OCTC investigator sent Haddon a letter requesting his response to Vazquez's allegations of misconduct. Haddon responded on July 18, stating that his office settled the employment matter with International for a total of $40,000. He also stated that the agreement included four payments of $10,000 with a monthly payment schedule commencing on January 15, 2015. Haddon reported that he received only $30,000 from International and did not attempt to obtain the final $10,000 because Vazquez treated him "in a very uncivil and inappropriate manner." Haddon sent OCTC a copy of the altered settlement agreement for $40,000, which he represented as a "true and correct copy." After further correspondence with

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[6] The authentic settlement agreement designated a payment schedule of December 30, 2014, and January 15, February 15, and March 15, 2015. The altered agreement set forth the following payment schedule: January 15, February 15, March 15, and April 15, 2015.

[7] $29,293.60 is equal to the $50,000 settlement minus Haddon's 40 percent in attorney fees and $706.40 in costs.

OCTC, Haddon sent Vazquez a check for $14,400, which represented the $12,000 he owed his client, plus interest.

III. CULPABILITY

A. ADMISSIONS AT TRIAL

On July 20, 2017, the third day of trial, Haddon admitted culpability to counts three through six and nine through 12. These eight counts charged Haddon with the following violations: Business and Professions code section 6106 (moral turpitude—presenting fabricated document to a client),[8] rule 4-100(B)(1) of the Rules of Professional Conduct (failure to notify of receipt of client funds),[9] rule 4-100(A) (failure to maintain client funds in trust account), section 6106 (moral turpitude—misappropriation), rule 4-100(B)(3) (failure to render appropriate accounts of client funds), section 6106 (moral turpitude—false accounting), section 6106 (moral turpitude—misrepresentation to the State Bar), and section 6106 (moral turpitude—presenting fabricated document to the State Bar). The hearing judge found Haddon culpable of the misconduct as charged under these counts in the amended NDC. The record supports his culpability, and we adopt the judge's findings.

B. CONTESTED CULPABILITY AT TRIAL

After Haddon's admissions, only counts one, two, seven, and eight were at issue. The hearing judge found him culpable of counts one, two, and seven, which charged him with the following violations: rule 3-510 (failure to communicate a settlement offer), section 6106 (moral turpitude—simulating client signature on settlement agreement), and rule 4-100(B)(4) (failure to pay client funds promptly). Haddon does not challenge these culpability findings on review. We

[8] All further references to sections are to the Business and Professions Code unless otherwise noted.

[9] All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

find that the record supports his culpability as charged in these counts and adopt the judge's findings.

Count eight charged Haddon with violating rule 1-320(A) (sharing legal fees with a non-lawyer) when he paid Juarez for his involvement in the Vazquez matter. Rule 1-320(A) provides, with certain exceptions, that an attorney shall not directly or indirectly share legal fees with a non-lawyer. The hearing judge found that OCTC did not present clear and convincing evidence[10] that Haddon's payments to Juarez violated rule 1-320(A). As such, count eight was dismissed with prejudice. We agree with the judge's conclusion and, because OCTC does not challenge the dismissal on review, we also dismiss count eight with prejudice.

IV. DUE PROCESS ARGUMENTS

On review, Haddon cites several instances in these proceedings where he claims he was denied due process. First, he asserts that OCTC violated his rights when it notified the district attorney of his possible criminal conduct in December 2016 without disclosing this to him because he would have then asserted his Fifth Amendment right in his disciplinary trial. While Haddon has a right to invoke the Fifth Amendment in disciplinary proceedings,[11] OCTC had no duty to disclose to Haddon the notification it made to the district attorney. Further, OCTC is required to disclose to criminal investigatory agencies information concerning any attorney who allegedly has committed a crime. (§ 6044.5.) Haddon's argument is without merit.

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[10] 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.)

[11] See *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 343 fn. 23 ["In general, respondent has the right to invoke constitutional and statutory privileges in [State Bar] disciplinary proceedings"]; accord, *Black v. State Bar* (1972) 7 Cal.3d 676, 686–688.

Haddon also contends that his rights were violated when he was required to participate in a settlement conference on May 2, 2017, without his attorney.[12] Additionally, he cites the denial of a trial continuance as another due process violation.[13] Haddon did not explain how these instances caused him to suffer prejudice and nothing in the record supports his claims. We reject his arguments because he failed to establish that he was specifically prejudiced. (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 592 [respondent has burden to clearly establish bias and to show how he was specifically prejudiced]; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928 [due process challenge must make showing of specific prejudice].)[14] We find that Haddon received a fair trial and was treated justly throughout these proceedings.

Lastly, Haddon argues that he was denied due process when the hearing judge did not offer him the opportunity to participate in the Alternative Discipline Program (ADP) after his brain injury was discovered. The judge is not required to make such an offer. More importantly, Haddon never requested that he be considered for ADP when he learned of his injury. Finally, given his admitted acts of moral turpitude and dishonesty that caused significant harm to his

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[12] Haddon states that his attorney was unable to participate on that date due to illness. On our own motion, we take judicial notice of the May 2, 2017 settlement conference order (rule 5.156(B) of the Rules of Procedure of the State Bar). The record contains little information about this settlement conference apart from the Hearing Department order indicating that Haddon's attorney did not appear and that the parties were unable to reach a compromise. Notably, the minutes of the settlement conference do not indicate that Haddon requested a continuance or otherwise objected to the conference taking place.

[13] This claim is partially inaccurate. Haddon's June 28, 2017 request to continue was ruled upon on July 10, 2017, and the minute order states that Haddon's motion was, in fact, partially granted (we also review this order pursuant to rule 5.156(B) of the Rules of Procedure of the State Bar). The order shows that OCTC's case-in-chief was to proceed as scheduled later that month, but Haddon received a continuance to October (which was then extended an additional 30 days before the case was abated for two more months) so that his attorney could prepare his defense.

[14] Haddon also argues that he was "deliberately denied due process by willful conduct of the State Bar," but merely cites to various events that occurred in this matter without any explanation of how they constitute willful misconduct by the State Bar or caused him prejudice. We therefore also reject this claim.

client, Haddon would have been ineligible to participate in ADP pursuant to rule 5.382(C)(3) of the Rules of Procedure of the State Bar. His argument is without merit.[15]

V. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Haddon to meet the same burden to prove mitigation.

A. AGGRAVATION

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

The hearing judge found Haddon's 11 ethical violations, which included six acts involving moral turpitude, to be an aggravating factor. We agree and assign substantial weight. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

2. Misrepresentation (Std. 1.5(e))

Haddon provided the seven character witnesses who submitted declarations for him with a document titled "Sequence of Events," which falsely stated that he settled the case with Vazquez's permission for $40,000, and later negotiated an additional $10,000 for the settlement. This document was also attached to the declaration from his psychologist that was submitted at trial. The hearing judge found that Haddon intentionally made these misrepresentations to those individuals in order to diminish the seriousness of his misconduct. We agree and assign substantial weight in aggravation, and note that the facts supporting this aggravating circumstance are different from those used to support the misrepresentation charges under

[15] Haddon also argues that the State Bar's failure to offer him ADP is also a denial of equal protection of the laws. We reject this argument for the same reasons that we deny his due process argument.

culpability. (Cf. *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to find culpability, it is improper to again consider in aggravation].)

3. Significant Harm to the Client (Std. 1.5(j))

The hearing judge found that Haddon caused Vazquez significant harm by withholding the settlement funds owed to him. Haddon intentionally misappropriated $12,000 from Vazquez and did not make restitution until approximately two years after the money was due to Vazquez. As the hearing judge noted, Vazquez credibly testified that he struggled financially and had a difficult time supporting his family while he was trying to obtain his settlement funds. We agree with the judge's determination and find that the harm Haddon caused Vazquez merits substantial weight in aggravation.

4. Indifference (Std. 1.5(k))

The hearing judge found that Haddon was indifferent toward rectification of or atonement for the consequences of his misconduct. She noted that he "characterized himself as the victim and complained of the repercussions he has suffered due to these proceedings . . . ." For example, he cited his withdrawal from lucrative cases when he was on voluntary inactive status and the related criminal case[16] that included time in jail and negative publicity from the district attorney's press release regarding his conviction.

The judge found that Haddon failed to understand that his own actions led to those repercussions. We agree and find that Haddon's lack of insight into his misconduct shows his indifference, warranting substantial weight in aggravation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781–782 [failure to recognize problems shows attorney may not correct them]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require

[16] Haddon has a conviction referral proceeding (Case No. 17-C-07404) based on his criminal convictions for the same facts that are at issue here. That proceeding is currently abated and is not part of this disciplinary matter.

false penitence but does require attorney to accept responsibility for acts and come to grips with culpability].)

5. High Level of Victim Vulnerability (Std. 1.5(n))

The hearing judge concluded that Vazquez had a high level of vulnerability due to his limited English-language skills and his lack of understanding of the legal system. Vazquez relied entirely on Haddon to assist him, yet Haddon deceived him and misappropriated his settlement funds. We agree that Vazquez was a highly vulnerable victim and assign substantial weight in aggravation.

6. Uncharged Misconduct (Std. 1.5(h))

Uncharged misconduct cannot serve as an independent basis for discipline, but may be used if otherwise relevant to the proceeding. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 34.) Specifically, uncharged misconduct may be used as an aggravating factor where questioning about the circumstances of charged misconduct results in the attorney revealing additional acts of misconduct previously unknown to the State Bar. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35–36 [no violation of right to notice when uncharged misconduct used as an aggravation factor and based on attorney's own testimony].)

When Haddon was asked at trial about the misappropriation charges, he testified that he wrote himself checks from his CTA in various amounts during the time that he was receiving the Vazquez settlement funds. For example, he admitted that he did not withdraw the $5,000 he was owed in attorney fees from the January 2015 settlement check in one lump sum. Instead, in January, he wrote a check to himself for $500. At trial, he stated that he did not know why he did so. He went on to say, "you're going to see a lot of checks issued to me from my trust account, and I'm not going to have a clue why they are [there] or what I issued them for . . . ." He was unable to identify from which client funds he was withdrawing and admitted that he did

not keep records for his CTA. Instead of removing fees when received, he withdrew them in installments. The hearing judge found that Haddon commingled funds, in violation of rule 4-100(A)(2),[17] and, therefore, assigned moderate weight in aggravation for uncharged misconduct. We agree and adopt the judge's finding on this aggravating circumstance.[18]

B. MITIGATION

1. Extreme Emotional Difficulties and Physical and Mental Disabilities (Std. 1.6(d))

In March 2006, Haddon went to the emergency department at Kaiser Permanente Hospital because he was suffering from a severe headache. Several diagnostic tests indicated that Haddon had experienced a subarachnoid hemorrhage. In August 2017, and after OCTC had presented its case in this matter, Haddon saw Lester Zackler, M.D., a psychiatrist who specializes in neuropsychiatry.[19] Haddon told Dr. Zackler that, since 2006, he had undergone mood changes with increased anger and decreased memory. The doctor also spoke separately to Haddon's wife regarding his behavior and medical history. In September 2017, Dr. Zackler ordered a positron emission tomography (PET) scan of Haddon's brain, which was performed on November 20, 2017.

On January 17, 2018, Dr. Zackler prepared a "neuropsychiatric evaluation summary" based on his review of the Kaiser Permanente medical records, the 2017 PET scan, and his discussions with Haddon and his wife. The doctor concluded that the 2006 subarachnoid

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[17] Rule 4-100(A)(2) provides that an attorney must withdraw from his CTA any fees earned at the "earliest reasonable time" after the attorney's interest in his portion of the funds becomes fixed.

[18] The commingling found here is different from the conduct charged in count five, which also alleged a violation of rule 4-100(A). In that count, Haddon was charged with failing to maintain a balance of $12,000 in his CTA on behalf of Vazquez.

[19] No evidence was produced showing that Haddon received medical care for any complaints pertaining to the brain injury from the time it occurred in 2006 until 2017. We note that Haddon was prescribed medication for depression in 2010, which he stated helped his mood by making him more focused and less irritable.

hemorrhage in the frontal lobe of Haddon's brain was caused by an aneurysm and that his frontal lobe does not function normally because it displays hypometabolic activity. Specifically, Dr. Zackler stated,

> The PET scan revealed decreased radio tracer uptake in both frontal lobes with [radioactive labeled glucose] activity, 4 standard deviations below the mean. The metabolic activity of his frontal lobes is less than 99% of the normative population. The hemorrhage in the brain stem has significantly affected frontal lobe circuits involving executive behavior and personality. He has become mildly disinhibited, increasingly impulsive, and has responded in a thoughtless and self-destructive fashion. The changes have been subtle and have advanced gradually as he has aged.

Dr. Zackler indicated that Haddon's frontal lobe activity could be modified with medication. He also referred Haddon for cognitive behavioral therapy. The doctor disclosed in the report that Haddon's prognosis was good and that he had the capacity to continue to function as an attorney.

Standard 1.6(d) provides that mitigation may be assigned for any emotional difficulties or physical or mental disabilities if (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701.) At trial, Haddon attempted to establish through expert testimony that his misconduct between December 2014 and July 2016 was due to the symptoms he suffered as a result of the 2006 brain aneurysm. The hearing judge found a lack of clear and convincing evidence under standard 1.6(d) because Haddon did not establish "the causal connection between his 2006 aneurysm and the misconduct in this matter."

Haddon argues that his aneurysm damaged his frontal lobe and caused an increase in "rage and anger" that led to his misconduct. He claims he did not know he was injured at the time of his actions and therefore could not control himself. He asserts that the testimony of his expert, Dr. Zackler, established that his frontal lobe injury caused his misconduct. He also

claims that his injury is treatable and he is capable of performing his ethical and professional duties as an attorney. For these reasons, Haddon asserts that he should be given mitigating credit for his medical condition under standard 1.6(d) and, in turn, not be disbarred.

OCTC asserts that Haddon did not establish that his brain injury was directly responsible for his misconduct and, therefore, failed to prove that he is entitled to mitigation under standard 1.6(d). We agree and uphold the hearing judge's decision not to give mitigation credit under standard 1.6(d).

We accept Dr. Zackler's statement that Haddon's frontal lobe functions abnormally and uses less glucose than is considered normal. However, medical literature presented at trial and the doctor's own testimony under cross-examination suggest that PET scans cannot determine whether an individual's brain injury caused certain behaviors. Notably, Dr. Zackler stated at trial that he could not conclude that the 2006 brain trauma was directly responsible for Haddon's misconduct. He testified that Haddon's behavior "was, *in part*, determined by the underlying brain function which, in my opinion, is abnormal." (Emphasis added.) He stated that the brain trauma was only one of a variety of factors that contributed to Haddon's misconduct.[20] Further, Dr. Zackler testified that Haddon has always had the cognitive capacity to (1) know the difference between "telling the truth and telling a lie" and (2) distinguish right from wrong. The totality of Dr. Zackler's statements shows that clear and convincing evidence does not exist to establish the requisite causal connection between Haddon's brain injury and the misconduct

[20] Also, Dr. Zackler agreed with an article OCTC presented at trial that stated, regarding correlation between behavior and impaired brain function, "the weight of the commentary does not support the use of an abnormal PET scan or other forms of neuroimaging to provide a direct link to behavior." He agreed as well with the statement that "it is currently not possible 'to infer a causal relationship between functional deviations revealed by imaging and specific thoughts or behavior.'" Likewise, Haddon's current psychologist, Scott F. Grover, Ph.D., indicated in his treatment plan that Haddon "may . . . suffer from cognitive symptoms related to medical concerns, however, assessment on this front is ongoing."

here.[21] Because Haddon did not establish that his brain injury was directly responsible for the charged misconduct, he did not prove that he is entitled to mitigation under standard 1.6(d). (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigation credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].)

We note that Haddon, upon Dr. Zackler's referral, has participated in weekly therapy sessions since February 2018 and asserts that he is consistent with his prescribed medication and that his anger is under control. Haddon contends that his participation in therapy is a "substantial element of the mitigation profile in this case that simply was not available at the time of trial." While we acknowledge his efforts in seeking and undergoing this medical treatment, Haddon nonetheless fails "to demonstrate a meaningful and sustained period of successful rehabilitation." (*Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 664.). Haddon has been in treatment for approximately one year, which is not a sufficient amount of time to demonstrate that his problems are under control. Further, even though he is in therapy, he continues to blame others, claiming that his rage was "justified" because Vazquez lied to him. He has not shown that he no longer poses a risk of committing future misconduct. Accordingly, no basis exists to give mitigation credit to Haddon because of his participation in therapy.

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

The hearing judge gave limited mitigation credit to Haddon for his 18 years of discipline-free practice. Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) Given

[21] We also note that Dr. Zackler's determinations as to why Haddon acted in certain ways are diminished because Haddon did not accurately describe his misconduct to the doctor. He only told Dr. Zackler that Vazquez had lied to him, making him angry, which caused him to punitively withhold money from Vazquez's settlement funds. Haddon did not tell the doctor about the extent of his deceit and the other charges in this matter.

Haddon's lack of insight, he did not establish that his misconduct is unlikely to recur. Further, his misconduct was not aberrational as he committed multiple intentional acts of dishonesty over a two-year period by lying to his client and OCTC. Therefore, we agree with the judge and assign limited weight for this mitigating circumstance. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].)

3. Cooperation with the State Bar (Std. 1.6(e))

Haddon's Stipulation is a mitigating circumstance. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) It was extensive as to facts and preserved court time and resources, but it did not admit culpability and was not filed until the first day of trial. While Haddon ultimately admitted to eight counts as charged in the amended NDC, he did so after the completion of two days of trial. The hearing judge assigned moderate weight for Haddon's cooperation. "[M]ore extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) We agree that the Stipulation and his admission to some culpability after two days of trial entitle Haddon to moderate mitigation.

4. Extraordinary Good Character (Std. 1.6(f))

Haddon may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge gave slight mitigation for Haddon's good character because the good character declarants "did not know the true circumstances of [Haddon's] misconduct." Eight declarants attested to Haddon's good character and discussed his pro bono and charity work. Two declarants were attorneys. Generally, serious consideration is given to the testimony from attorneys because they have a "strong interest in maintaining the honest administration of

justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) However, Haddon provided all of the declarants with the "Sequence of Events" document that contained false and misleading statements of his misconduct. Therefore, none of them understood the full extent of his wrongdoing. Accordingly, we give no mitigation credit for Haddon's good character evidence.

5. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is "made without the threat of force of administrative, disciplinary, civil or criminal proceedings." (Std. 1.6(j).) The hearing judge did not assign any mitigation for restitution. We agree. Haddon only paid Vazquez the entirety of his settlement funds after the disciplinary investigation into this matter commenced. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution paid under threat or force of disciplinary proceedings does not have any mitigating effect].)

VI. DISCIPLINE

Standard 1.1 states that, "The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys." Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be

imposed where multiple sanctions apply].) Here, standard 2.1(a) is the most severe as it presumes disbarment for Haddon's intentional misappropriation of settlement funds.[22]

The hearing judge was concerned with Haddon's misappropriation and his "willingness to lie to his client to mask his misconduct." The judge noted that Haddon also lied to OCTC and falsified documents that he presented to Vazquez and OCTC. Haddon's dishonesty goes directly to his ability to fulfill ethical obligations. Honesty is absolutely fundamental in the practice of law and without it, "the profession is worse than valueless in the place it holds in the administration of justice." (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.)

The hearing judge properly relied on several comparable cases warranting disbarment where deceit to a client and misappropriation occurred, including *Kelly v. State Bar* (1988) 45 Cal.3d 649 (disbarment for nearly $20,000 misappropriation, acts of moral turpitude and dishonesty, and improper communication with adverse party with no aggravation and mitigation for no prior record); *Chang v. State Bar* (1989) 49 Cal.3d 114 (disbarment for $7,900 misappropriation with fraudulent and contrived misrepresentations); and *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 (disbarment for $40,000 misappropriation and intentionally misleading client with mitigation for emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with OCTC). We also rely on *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93. In *Conner*, we recommended disbarment in a single client matter involving misappropriation, CTA violations, and multiple acts involving moral turpitude, including preparing and submitting fraudulent documentation to the State Bar, where Connor received mitigation for his lack of a prior record and his cooperation with the State Bar.

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[22] Standard 2.11 applies to Haddon's misconduct involving moral turpitude, which provides for actual suspension or disbarment. Standard 2.2, which provides that actual suspension is the presumed sanction for commingling or failure to promptly pay out entrusted funds, also applies.

Considering all of the relevant factors discussed above, we conclude that Haddon's misconduct warrants disbarment. Not only did he misappropriate $12,000, which is "one of the most serious breaches of professional trust that a lawyer can commit" (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221), he also intentionally lied to his client, which deserves "more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Edwards v. State Bar*, *supra*, 52 Cal.3d at p. 38.) Finally, his lies to OCTC confirm that a severe sanction is warranted.

As discussed above, Haddon asserts that his brain injury directly caused his misconduct and warrants mitigation that would preclude disbarment. We reject this argument due to a lack of sufficient proof of a causal connection between his injury and the misconduct. Further, no other mitigation is compelling enough to warrant discipline other than disbarment, and we can find nothing else in the record that would justify not following standard 2.1(a).[23] (See *Blair v. State Bar*, *supra*, 49 Cal.3d at p. 776, fn. 5 [clear reasons for departure from standards should be shown]. Therefore, we uphold the hearing judge's disbarment recommendation in order to protect the public, the courts, and the profession.

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Mark Robert Haddon be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

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

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[23] Haddon also argues that disbarment would not be appropriate because his criminal case involved misdemeanor convictions and the "monetary issues" between him and Vazquez had been resolved before his criminal hearing in superior court. This argument is misplaced as our discipline analysis here is not based on his criminal convictions.

We further recommend 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.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Mark Robert Haddon be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective June 23, 2018, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

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 Los Angeles, on April 18, 2019, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED APRIL 18, 2019

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:

MARK ROBERT HADDON
LAW OFFICES OF MARK R. HADDON
1840 ARROW HWY
LA VERNE, CA. 91750-5338

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

Brandon K. Tady, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 18, 2019.

Mel Zavala
Court Specialist
State Bar Court