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STATE BAR COURT
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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of
ROBERT MICHAEL WILLIAMS,
A Member of the State Bar.

Case Nos: 99-O-13604;
01-O-02353

OPINION ON REVIEW

Respondent Robert Michael Williams seeks our review of a hearing judge's decision recommending a thirty-day actual suspension, a two-year stayed suspension and a two-year probation based on findings of culpability of failure to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)),¹ failure to notify a client of the receipt of funds (rule 4-100(B)(1)), failure to pay out client funds promptly upon the client's request (rule 4-100(B)(4)) and failure to respond promptly to reasonable client inquiries (Bus. & Prof. Code, § 6068, subd. (m)).²

The State Bar, on the other hand, accepts the findings and conclusions of law and recommendation of discipline made by the hearing judge.

Our independent review of the record leads us to conclude that respondent committed three rather than the four violations found by the hearing judge but that respondent's misconduct was surrounded by more factors in aggravation than the hearing judge found. Overall, we conclude that the hearing judge's determination regarding the level of discipline was appropriate and adopt her recommendation of 30 days' actual suspension.

¹All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

²All further references to sections are to provisions of the Business and Professions Code unless otherwise noted.



FACTS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on June 23, 1976.

99-O-13604 The Rosero Matter

On July 2, 1998, Helen Rosero employed respondent to help secure her interest in her former husband's retirement account. She agreed to pay respondent \$500 for his services in the following manner: \$250 initially and \$250 upon receipt of her portion of the retirement fund.

Respondent agreed to prepare the Qualified Domestic Relations Order (QDRO) in this matter. Although he did not know how to prepare one, he assigned this task to his secretary who had attended a class on QDRO preparation.³ Respondent and the State Bar stipulated that in May or June 1999, the QDRO was filed but returned by the court because it was incomplete. It lacked the original signature of Rosero's ex-husband Rice. After the return, respondent did not complete and file the QDRO.

On April 19, 1999, Rosero wrote to respondent inquiring about the delay and mentioned her weekly calls to his secretary, Nancy, in reference to the retirement benefits. She also mentioned that it had been almost one year since she last spoke to respondent. On September 24, 1999, Rosero wrote to respondent regarding the San Joaquin County Retirement Plan asking for help because she was in a severe financial crisis and about to lose a valuable asset. She also mentioned that the Retirement Board was to meet on October 8, 1999.

On November 29, 1999, Rosero wrote to respondent demanding the refund of the \$250 in advanced attorney fees and the return of her files. On December 8, 1999, respondent refunded the \$250 and returned her files, including the paperwork for her QDRO. On December 22, 1999, Rosero wrote to respondent that she did not receive the original document with signatures of all parties, to wit Rice's signature. Respondent, or someone in his office, called Rosero soon after receiving Rosero's letter and informed her that respondent had sent Rosero everything that was

³Respondent admitted this fact to the State Bar in his letter of response to the complaint of Helen M. Rosero.

in her file.

Conclusions and Discussion

The hearing judge found that by failing to provide the legal services for which respondent was hired for more than one year, despite repeated requests from his client, respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A). (See, e.g., *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 279 [attorney's failure to perform any substantive work on client's case for more than five years was repeated and reckless failure to perform legal services competently]. We adopt the hearing judge's conclusion in this regard.

As to the allegation of a violation of rule 3-700(D)(1), failure to promptly release a client's file, the hearing judge determined that the State Bar failed to prove the violation by clear and convincing evidence. We concur and also adopt this conclusion.

Respondent argues on review that he was denied due process because the Notice of Disciplinary Charges (NDC) failed to identify whether the failure to perform services competently was claimed to have been intentional, reckless or repeated, and thus he was denied fair notice sufficient to permit him to defend himself. He further argues that the criteria for competence is not "time" but the "community standard of care" of active practicing lawyers.

We find respondent's arguments to be specious and incredible. First of all, the NDC expressly charged in count 1, a wilful violation of rule 3-110(A): "By not filing an acceptable QDRO, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence." The Supreme Court has stated that "adequate notice requires only that the attorney be fairly apprised of the precise nature of the charges before the proceedings commence [citation]." (*Van Sloten v State Bar* (1989) 48 Cal.3d 921, 929.) There is nothing vague or ambiguous about this allegation, and as a matter of fact, respondent filed an answer to the NDC, without objecting or noting any alleged ambiguity and even discussed, without objection, the rule 3-110(A) charge in his pretrial statement. We find that the NDC provided respondent with

sufficient notice of the specific charges.

He then suggests that attorneys in the Stockton area work at a different rate of speed in the preparation of QDROs than attorneys in other areas and this should be determined by "expert" testimony on the standard of members of the profession in the same or similar locality under similar circumstances.⁴ He criticizes the State Bar for not offering evidence on the preparation of the QDRO. However, the Rules of Professional Conduct adopted by the State Bar's Board of Governors and approved by the Supreme Court are binding on all member of the State Bar. (§§ 6076, 6077; rule 1-100.) Accordingly, respondent's contention that the ethical standards established by the Rules of Professional Conduct may be changed by the customs or practices of attorneys or vary according to the geographic location or area of one's practice is meritless. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 511 [rejecting contention that immigration attorneys may be disciplined only if their conduct violates purported "practice standards" for immigration law].) Moreover, the ethical standards established by the Rules of Professional Conduct cannot "be changed by expert testimony. If an expert testifies contrary to the Rules of Professional Conduct, the standards established by the rules govern and the expert testimony is disregarded. [Citation.]" (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1147.)

In any event, suffice it to say, respondent testified that he promised Rosero on July 2, 1998, that he would prepare and file the QDRO. It is unrefuted that he had not completed or filed the QDRO by December 8, 1999. Rosero wrote letters to respondent inquiring about the QDRO. She called respondent's secretary weekly to inquire about the status of her matter. Respondent, after 17 months, had not completed and filed the QDRO as employed to do. Respondent proffers that although he "completed" the QDRO by obtaining Rice's signature, he didn't have the time to resubmit it for filing or go to court because he was involved in a serious

⁴Yet, respondent testified that he gave the preparation of the QDRO to his secretary who had taken a class on QDRO.

criminal case.⁵ His testimony that he completed the QDRO form, including Rice's signature, is not credible since Rosero informed him on December 22, 1999, that the QDRO file received from respondent was incomplete and lacking a document with Rice's signature. A trier of fact does not need the assistance of an expert to draw a conclusion that there was reckless or repeated inattention to Rosero's matter by respondent and a failure to perform services competently. "An attorney must use his best efforts to accomplish with reasonable speed the purpose for which he was employed. Failure to communicate with and inattention to the needs of a client are grounds for discipline.[Citation]" (*Van Sloten v. State Bar, supra*, 48 Cal.3d at p. 931.)

Respondent attempts to explain his delay by the fact that he fired his secretary in August or September 1999. However, this does not explain the incomplete filing in June 1999 when the submitted QDRO was returned as incomplete by the court or that in December 1999 the allegedly completed QDRO form had not been filed.

Respondent argues further that since the Rosero matter is a one-client issue, there cannot be "repeated failure to perform." Respondent ignores the many calls from Rosero requesting the performance of the services that she had hired him for and his repeated failure to perform competently⁶ for seventeen months. Repeated failure to perform does not require multiple clients. (See, e.g., *In the Matter of Layton* (Review Dept 1993) 2 Cal. State Bar Ct. Rptr. 366 [attorney found culpable of recklessly failing to competently perform legal service in a single probate case].) However, we additionally conclude that this conduct constitutes reckless inattention and failure to complete and file the QDRO in a timely fashion.

Respondent argues that the State Bar failed to prove that Rosero suffered actual and appreciable harm, and since harm is a critical element of negligence, the finding of repeated lack of competence should be deleted. He argues that the "mere breach of a professional duty, causing only

⁵Respondent testified that his office was located across the street from the courthouse.

⁶As noted *ante*, the QDRO filed in May or June 1999 was returned because it was incomplete. Respondent claims that the superior court lost the original document with the signature of Rice.

nominal harm, or the threat of future harm-not yet realized does not suffice to create a cause of action for negligence." We find it difficult to follow respondent's argument. Respondent has not been charged with negligence nor is this a civil matter, as respondent well knows. In any event, the Supreme Court has repeatedly held that lack of harm is not a defense to professional misconduct. (E.g., *Zitny v. State Bar* (1966) 64 Cal.2d 787, 792-793; *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903.) Nevertheless, lack of harm is a mitigating circumstance under standard 1.2(e)(iii) of the Standards for Attorney Sanctions for Professional Misconduct.⁷ As we discuss *post*, harm to a client is an aggravating circumstance in disciplinary proceedings, to be considered in determining the degree of sanction to be recommended, bearing in mind the protection of the public, the courts and the legal profession.

01-O-02353 The Oliver Matter

In February 2001, respondent was retained by Sherrie Oliver to represent her in a personal injury matter. A contingency fee agreement was entered into in which respondent agreed to a fee of 25 percent of the settlement proceeds.

A settlement offer of \$43,000 was made by the defendant prior to trial. Respondent communicated this offer to Oliver, with the explanation that if Oliver did not receive more than the settlement offer at trial, she would be responsible for costs. They discussed this at some length, going over estimates of what the specific costs would likely be for different items. Respondent offered to take less than the 25 percent of the proceeds if she accepted the settlement offer. Oliver declined the offer. Respondent and his father, Oliver's prior attorney, both discussed the offer with her, and she declined the offer insisting that she would take her chances with a jury. Oliver insisted that she wanted \$100,000⁸ which was rejected by the opposition. The trial lasted one week, and the jury awarded Oliver \$25,000. Immediately after respondent and Oliver left the courtroom, Oliver

⁷The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

⁸Oliver rejected a \$55,000 offer while represented by respondent's father.

asked respondent when she would receive her money, and respondent replied that it could take several weeks or possibly longer than a month but that respondent would let Oliver know as soon as he received the money.

During the month after the trial, Oliver called respondent at least 15 times from about April 16, 2001, to May 16, 2001, to inquire about the award. Respondent did not personally respond to her calls. On May 14, 2001, Oliver wrote to respondent requesting that he return her calls. Respondent did not answer her letter. According to Oliver, she spoke to a secretary who told her that her check was in the mail. On another occasion, she was told that the insurance company was holding on to her check. On the other occasions, she was told that messages would be left for respondent.

On Thursday, May 17 or Friday, May 18, 2001, respondent received the draft for \$14,594.74 which represented the \$25,000 award less defense costs. Oliver was not notified of the receipt of the check.

On Tuesday, May 22, 2001, respondent was in an automobile accident. He testified that although he was in great pain, was dizzy and light headed and couldn't raise his shoulders without pain, he did not seek medical treatment. He was unable to drive so he had his staff person Vega drive him and pick him up. However, he kept his office open, continued going to court and obtained continuances of cases. He admitted that he did not instruct any of his office staff to contact Oliver to advise her of the receipt of the award check.

On May 29, 2001, Oliver sent respondent a letter terminating his services and sent another letter to opposing counsel Sobolewski, indicating that respondent no longer represented Oliver in the matter.⁹ Oliver received a letter dated June 4, 2001, from Sobolewski in response, informing her that the settlement draft and a satisfaction of judgment had been sent to respondent on May 15, 2001. Upon receipt of this information, and not having heard from respondent as yet, Oliver wrote to respondent on June 7, 2001, requesting that the draft and satisfaction of judgment be sent to her

⁹Our findings regarding the correspondence between Oliver and Sobolewski are based in large part on the stipulation between respondent and the State Bar regarding what the testimony of James Sobolewski would be if he were called as a witness in this matter.

along with a bill for his services and bills for witness fees and informing respondent that she would make her own settlements with the doctors and the hospital.

On June 14, 2001, Oliver wrote to Sobolewski because she still had not heard from respondent and asked him to cancel the original draft and issue a new one along with a new satisfaction of judgment so that she might close this matter. She also informed him that she had submitted a complaint to the State Bar.

Subsequently, Oliver received a call from a State Bar Investigator directing her to go to respondent's office upon receipt of the draft from Sobolewski and have it signed by respondent, which she did. The record is not clear whether respondent submitted his bill for fees and costs as requested by Oliver, nor is there any evidence that Oliver paid respondent any fees.

Conclusions and Discussion

Oliver testified that her dispute with respondent is that "costs" were not explained fully to her and that her understanding was that costs were her witness fees. She claims that she was not told that it included the defense costs. Respondent on the other hand testified that he discussed costs in great detail and at great length. We agree with the hearing judge that the evidence is conflicting and unclear and that the testimony of neither party is credible. We give great weight to the hearing judge's witness credibility determination. (Rules Proc. of State Bar, rule 305(a); cf. *Franklin v. State Bar* (1986) 41 Cal.3d 700.) We concur with the hearing judge's conclusion that there is insufficient evidence to prove the violation of rule 3-110(A). We also note that Oliver did not testify that she would have accepted the settlement offer of \$43,000 had she really understood the extent of "costs."

As to the allegations of a failure to inform Oliver of the receipt of the draft and of a failure to promptly pay the funds to Oliver, we agree that these are duplicative of charges in counts four and five and we do not consider them under rule 3-110(A).

We agree that there is clear and convincing evidence that respondent failed to notify Oliver

that he was in receipt of the jury award check in wilful violation of rule 4-100(B)(1).¹⁰ Respondent admitted that he did not instruct anyone on his staff to contact Oliver upon receipt of the check from the opposition.

As to rule 4-100(B)(4), the hearing judge found a wilful failure to promptly pay or deliver funds to Oliver. The hearing judge determined that Oliver had to request the issuance of another check from the issuer because respondent failed to pay her the funds upon receipt of the check. As we discuss *post*, we disagree with the hearing judge's culpability conclusion as to this count.

Further, the record is clear that, as charged in the NDC, Oliver made many telephone calls (at least 15) and directed a letter to respondent between April 16 and May 16, 2001, but, although respondent's staff spoke with Oliver on two to four occasions, respondent failed entirely to answer Oliver's letter of May 14, 2001, in wilful violation of section 6068, subdivision (m). We agree with the hearing judge's culpability conclusion as to this count.

On review, respondent argues that there was no violation of rule 4-100(B)(1), failure to notify a client of the receipt of funds, because the insurance company notified her that the draft had been issued and sent to opposing counsel.¹¹ Respondent, an attorney for 28 years, actually argues that the insurance company acted as his agent to notify her and proffers that there is no case law that requires that an attorney personally notify a client of the receipt of funds. (See *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41, 49-50.) Although respondent could assign the task of notice to his trusted staff (see *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857), he, not a third party, was ethically responsible for the notice requirement. (rule 4-100(B)(1)). Respondent's defense that his automobile accident prevented him from contacting Oliver, apparently including even a letter or telephone call from his staff, is not credible since his testimony is that during this time, he continued his practice, kept his office open and continued his court appearances.

¹⁰Rule 4-100(B)(1) provides that a member of the State Bar must "[p]romptly notify a client of the receipt of the client's funds, securities, or other properties."

¹¹As found *ante*, it was opposing counsel who informed Oliver that the insurance company forwarded the draft to him and that he sent it to respondent, her attorney.

Respondent claims that there was no delay in the payment of funds to Oliver and therefore no violation of rule 4-100(B)(4). He argues that it was Oliver who delayed bringing the second draft to him for his signature. Further, he was unable to pay her because she had stopped payment on the first draft, so he had no funds to pay to her. The record is clear that respondent was in possession of the draft from about May 17th or 18th and that on June 14th, he still had not paid Oliver her funds so Oliver decided to take matters into her hands. He suggests that she had the second draft issued to defeat paying attorney fees, liens and expert witness fees. Respondent also claims that there was no evidence that Oliver was entitled to any of the funds since there was no itemization of the liens, expert witness fees, attorney fees and other costs. Respondent is correct; there is no evidence that respondent submitted a disbursement statement to Oliver, as she requested. Instead, on review, respondent complained that Oliver did not account to him as to how she disbursed the funds. We note that the total time from the date respondent obtained the draft from opposing counsel to the date Oliver obtained the proceeds from respondent was slightly less than one month. While we cannot determine on this record that respondent would have paid the money to Oliver shortly thereafter had Oliver given respondent more time to do so, we also cannot say that respondent would not have paid the money to Oliver. In view of such a short period of time elapsing before the client obtained her funds in this case, we cannot say that there is clear and convincing evidence in the record of respondent's failure to pay out client funds promptly. (See *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 114 [where there was no evidence of medical provider's enforceable lien and no evidence that provider made demand to attorney for payment from settlement proceeds until about a month before provider's bill was paid, there was no clear and convincing evidence of a violation of rule 4-100(B)(4)].) We therefore decline to find culpability of rule 4-100(B)(4).

MITIGATION¹²

Respondent urges this court to find his automobile accident as mitigation for his failure to notify Oliver of the receipt of the draft. This belies his testimony that he continued to work, went to court and kept his office open. We find lacking in credibility respondent's testimony that he was unable, due to his accident, to either send a letter to Oliver or to have his staff contact her, since, for example, respondent's failure to respond to Oliver's letter happened before his accident. We agree with the hearing judge that under all of the circumstances, this is not a mitigating factor.

Respondent also argues that his serious criminal trial should also be considered mitigating as to the delay in the Rosero matter. We also agree with the hearing judge that this is not a mitigating factor since the Rosero matter had been in respondent's office for over a year when he accepted the criminal case.

Like the hearing judge, we find no mitigating factors.

AGGRAVATION

In aggravation, respondent has a prior record of discipline imposed in 1995. This prior disciplinary matter involved seven client matters, and the parties stipulated to the following counts of misconduct: four counts of violating rule 3-110(A), failure to competently perform legal services; one count of violating rule 4-100(A), failure to deposit client funds in a client trust account; one count of violating rule 4-100(B)(4), failure to promptly pay funds as requested by client; one count of

¹²We note that respondent argues briefly in his opening brief on review that the hearing judge erroneously proceeded to the disciplinary phase of the trial without making culpability determinations first "so that [respondent] could prepare and defend" himself in the disciplinary phase. However, the record establishes that, at the conclusion of the culpability phase of trial, the hearing judge (1) informed respondent that she tentatively concluded respondent was culpable of at least one violation in each client matter and (2) asked respondent to address all of the issues. Under these circumstances, respondent had ample notice of the issues to be addressed and an opportunity to address them. Significantly, respondent has not indicated what specific mitigating evidence or additional arguments on mitigation he was precluded from presenting to the hearing judge, and respondent did not seek to augment the record on review to present any such additional evidence or to assert any additional arguments on mitigation before us. Accordingly, we see no due process violation. (Cf. *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 950.)

violating section 6068, subdivision (m), failure to communicate with client; one count of violating rule 3-700(A)(2), withdrawing without taking steps to avoid foreseeable prejudice to a client; one count of violating section 6068, subdivision (b), failure to maintain respect for the courts; and one count of violating section 6068, subdivision (i), failure to cooperate with the State Bar's investigation. The Supreme Court imposed six months' suspension, stayed, and two years' probation with no actual suspension. When viewed together with the present case, the prior case indicates that respondent has difficulty completing work timely and competently. For example, in the prior case, respondent failed to promptly (1) notify a client that a default had been entered against him in a dissolution of marriage case or otherwise attempt to set aside the default; (2) failed to transfer his clients' adoption case to the county of their new residence for approximately nine months after they informed him of their move; (3) failed for six months to file his clients' petition for bankruptcy; (4) failed to take any steps whatsoever, after he was hired, in a client's child custody case; and (5) failed for approximately five months to prepare a court order for the court's approval after the court requested him to do so. Similarly, in the present case respondent failed to complete and file a QDRO for Rosero for more than a year, failed to promptly notify Oliver of the receipt of her funds, and failed to respond to Oliver's letter. We are troubled by the fact that respondent's prior discipline, involved similar misconduct to the instant case. Although in the prior case respondent was given mitigating credit for having taken steps in his law practice to prevent similar misconduct from occurring in the future, it appears that these steps failed to achieve the desired result, and we find no assurance that respondent has learned from his prior discipline so as not to repeat his misconduct. We therefore give the prior record of discipline more weight in aggravation than did the hearing judge. (Rules Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)¹³

In addition, we find multiple acts of wrongdoing by failing to perform competently for Rosero for more than a year, failing to respond to Oliver's letter, and failing to notify Oliver

¹³All further references to standards are to this source.

promptly of the receipt of her funds. (Std. 1.2(b)(ii); see *In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483, 493.)

Not only does respondent cavalierly state that Rosero and Oliver were not harmed, he also argues that there was no evidence that Rosero did not receive pension payments and no evidence that she otherwise suffered any harm. We disagree. Although Rosero did not testify, her letters to respondent, which were admitted into evidence in their entirety without objection, relate that she sustained severe financial hardship and much frustration due to the delay.¹⁴ Further, she had to complete the QDRO herself.

As to Oliver, respondent claimed that Oliver received a windfall because she kept the entire judgment without payment of attorney fees or court costs. As stated earlier, however, she had to take care of the medical providers herself and mentioned in her testimony at trial in this matter respondent's inaction in compromising her medical bills. We find no evidence of bills for attorney fees or costs presented to Oliver by respondent for payment, although she clearly requested that respondent provide her with a bill for his services and the demands for witness fees.

We find harm to clients as an aggravating circumstance under standard 1.2(b)(iv) in addition to the aggravation found by the hearing judge.

DISCIPLINE DISCUSSION

The hearing judge recommended thirty days' actual suspension. Respondent argues that thirty days is excessive. The State Bar finds thirty days to be lenient but accepts the recommendation by the hearing judge.

To determine the appropriate discipline to recommend, we must consider the underlying conduct together with all relevant aggravating and mitigating circumstances. We look to the standards as guidelines (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563,

¹⁴Because these letters were admitted into evidence during trial in the hearing department without limitation or any hearsay objection, we may and do consider them for the truth of the matters stated in them. (*In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. 498, 523, 524, fns. 32 & 35.)

580) and consider comparable case law in determining the appropriate discipline (*In the Matter of Klein* (Review Dept.1994) 3 Cal. State Bar Ct. Rptr. 1, 13).

We have found no mitigating factors but have found aggravating factors including a prior record of discipline demonstrating misconduct similar to that in the present case. As previously stated, the underlying misconduct in this prior record included failure to perform competently, failure to notify a client that funds were received and failure to respond to reasonable inquiries from a client.

In considering the standards pertaining to sanctions for the found professional misconduct, we find the range of discipline to be recommended varies from reproof to three months' actual suspension to disbarment. (Stds. 2.2(b), 2.4(b), 2.6(a).) Under standard 1.7(a), where a member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding. In the prior disciplinary proceeding, respondent received six months' stayed suspension and no actual suspension.

The hearing judge found *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, to be similar to the instant case, except that respondent has a prior record of discipline. Aguiluz failed to perform legal services for which he had been retained and withdrew from representation without taking steps to avoid prejudice to his clients. The court found more mitigating factors than aggravating factors but gave only slight mitigating weight to Aguiluz's seven years of practice in California without prior discipline. Aguiluz received a stayed suspension of one year and no actual suspension.

While we agree with the hearing judge's conclusion that *Aguiluz* is similar to this case, we add that *Aguiluz* is less serious both because of the lack of prior discipline in that case as well as the fact that there were more mitigating than aggravating factors in that case.

In *Wren v. State Bar* (1983) 34 Cal.3d 81, in a single client matter, Wren failed to use reasonable diligence to accomplish with reasonable speed the purpose for which he had been retained (Wren failed to take action on his client's case for 22 months), failed to communicate with a client, knowingly misrepresented the status of the case to a client and submitted misleading testimony to the

hearing panel. Although Wren had no prior record of discipline in the 16 years before the misconduct began in that case, the court imposed an actual suspension of 45 days.

We determine that the misconduct in *Wren* was more serious than the misconduct in the present case due to the findings that Wren was culpable of dishonesty both towards his client and towards the State Bar Court in addition to failing to take action on his client's case and failing to communicate with his client.

In the Matter of Johnston (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, also involved a single client matter. There, Johnston failed to perform legal services competently by failing to perform work on a client's case for eight and a half years after filing a complaint for the client, failed to communicate with his client, and misrepresented to his client that he was still working on the client's case when he knew the claim was barred and he was under suspension for failing to pay dues. In addition, Johnston failed to cooperate with the State Bar's investigation of the client's complaint. In aggravation, Johnston's misconduct significantly harmed his client because she lost her cause of action, and Johnston failed to file a response to the notice of disciplinary charges. In mitigation, Johnston had practiced law for over 12 years without prior discipline. The review department increased the recommendation of actual suspension from the hearing judge's 45 days to 60 days.

We conclude that *Johnston* is more serious than the present case, since (1) Johnston's failure to perform work on his client's case continued for eight and a half years; (2) Johnston was culpable of dishonesty towards his client; and (3) Johnston failed to cooperate with the State Bar's investigation and failed to respond to the charges.

In the Matter of Nunez (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, Nunez was found to have failed to perform legal services competently, failed to deposit funds in the client trust account, failed to communicate with a client, failed to promptly return a client's file and abandoned a case without protecting the rights of his client. This case involved one client matter, no prior record of discipline, impressive pro bono and community service mitigation evidence, and Nunez's

"sincerely-expressed aspiration not to be the subject of disciplinary proceedings again." (*Id.* at p. 207.) However, the court recognized that Nunez's misconduct was serious and resulted in harm to his client in that she lost her cause of action. The court rejected the hearing judge's recommendation of 60 days' actual suspension and instead recommended 30 days' actual suspension.

We conclude that *Nunez* is the most similar to the instant case. Although there were more mitigating factors and fewer aggravating factors in *Nunez* than in the present case, *Nunez* involved more misconduct than was present in the instant case. Based on all of the relevant factors, we agree with the hearing judge's determination that a two-year stayed suspension, a two-year period of probation, and an actual suspension of 30 days is warranted to protect the public, the courts and the legal profession. (Std. 1.3)

DISCIPLINE RECOMMENDATION

For the foregoing reasons, we recommend that respondent Robert Michael Williams be suspended from the practice of law for a period of two years, that execution of that suspension be stayed, and that respondent be placed on probation for a period of two years on the following conditions:

1. Respondent is actually suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation ("reporting dates"). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of respondent's probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of

California as follows:

(a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct, and other terms and conditions of probation since the beginning of this probation; and

(b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct, and other terms and conditions of probation during the period.

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

5. Subject to the proper assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.
6. Within one year after the effective date of the Supreme Court order in this matter, respondent must: (1) attend and satisfactorily complete the State Bar's Ethics School; and (2) provide satisfactory proof of completion of the school to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)
7. Respondent's probation will commence on the effective date of the Supreme Court order in this matter. And, at the end of the probationary term, if he has complied with the terms and conditions of probation, the Supreme Court order suspending him from the practice of law for two years will be satisfied, and the suspension will terminate.

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of his passage of that examination to the State Bar's Office of Probation in Los Angeles within that same year.

We also recommend that costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

WATAI, J.

We concur:

STOVITZ, P. J.

EPSTEIN, J.

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 July 13, 2004, I deposited a true copy of the following document(s):

OPINION FILED JULY 13, 2004

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

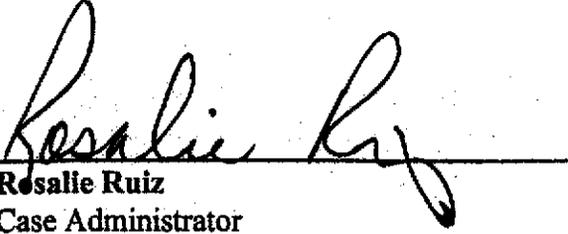
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT M WILLIAMS
110 N SAN JOAQUIN ST #306
STOCKTON CA 95202**

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

MARIA J OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 13, 2004.



Rosalie Ruiz
Case Administrator
State Bar Court