

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED MAY 10, 2010

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	05-O-03395, et al.
)	
JAMIE LEIGH HARLEY,)	OPINION ON REVIEW
)	
A Member of the State Bar.)	
_____)	

The State Bar charged Jamie Leigh Harley, a criminal defense attorney, with 20 counts of professional misconduct in 10 client matters occurring from 2002 to 2006. It sought disbarment, alleging that her misconduct involved disrespect and dishonesty to the court and inattention to clients, including mishandling of their funds and files. The hearing judge found Harley culpable of 12 counts in eight client matters, and recommended that she be actually suspended from the practice of law for one year, subject to three years' stayed suspension and three years' probation. Harley admits culpability on several charges and seeks review on others, arguing that the one-year actual suspension should be "substantially reduced." The State Bar concedes Harley is not culpable of certain charges but urges that we affirm the hearing judge's recommended discipline.

Upon our independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we find Harley culpable of nine counts of misconduct in six client matters. Like the hearing judge, we conclude that the mitigation is compelling, particularly Harley's good character, candor and cooperation and nearly two decades of discipline-free practice. Moreover, we find that her misconduct primarily involved mismanagement of her practice, not dishonesty or moral turpitude. Considering the mitigation, the guiding case law and Harley's affirmative steps to

correct the errors that led to her misconduct, we recommend that the discipline be reduced to a six-month actual suspension, subject to a two-year stayed suspension and two years of probation.

I. SUMMARY

Harley was admitted to the Bar in 1983, and did criminal defense work for the first three years. In 1986, she began 13 years of employment as a deputy district attorney. In 1999, she left the District Attorney's office and worked briefly for a criminal defense practitioner before opening her own practice.

Harley has occasionally hired attorneys to assist with her busy criminal practice. With 100 to 220 files open at a time, she estimates that she has handled over 4,300 criminal cases in an eight-year period, many of which involved very serious crimes.

Harley's testimony contradicted that of several former clients involved in the matters before us. The hearing judge found Harley and her witnesses to be credible and concluded that she did not commit any acts of dishonesty or moral turpitude, stating: "The gravamen of her misconduct is her failure to properly manage her busy criminal practice." We agree. As summarized chronologically below, we find Harley culpable of misconduct that occurred in six client matters over a five-year period after she opened her own law office. Harley contests culpability in three of these six client matters.

(1) **The Dragos Matter** (2002). Harley incorrectly advised her client about the maximum term of imprisonment in a sex offense case.

(2) **The Eagle Matter** (2003-2005). Harley failed to return unearned fees and to provide a copy of the file to a client who hired her to expunge his criminal record.

(3) **The Cortez Matter** (2003). Harley incorrectly advised her client about the consequences of his guilty plea to child molestation charges.

(4) **The Upton Matter** (2003-2006). While her client was incarcerated, Harley did not respond to his inquiries about his appeal and habeas corpus petitions.

(5) **The Schonenberger/Bissig Matter** (2006-2007). Harley accepted fees from a third party without her client's informed written consent and failed to provide an accounting.

(6) **The Hsiao Matter** (2006). When Harley failed to attend her client's traffic trial, the court found the client guilty of a Vehicle Code violation and imposed a \$375 fine.

II. HARLEY IS CULPABLE OF MISCONDUCT IN SIX CLIENT MATTERS

A. THE DRAGOS MATTER

In 2002, Harley represented Jure Dragos, who was charged with sex offenses against minors. She incorrectly advised him that the prosecution offered a plea bargain for a *maximum* of 90-years-to-life when it was actually for a *minimum* 90-year sentence. Before Dragos entered his plea, the judge also made the same mistake when he recited the terms of the plea agreement, but neither the prosecution nor Harley corrected the error. After she withdrew as Dragos' counsel, a new attorney filed a motion to set aside the plea, arguing that Harley had misadvised Dragos. The judge denied the motion and Dragos appealed. On the basis of her incorrect advice, the Court of Appeal concluded that Harley had provided ineffective assistance of counsel. Dragos was permitted to withdraw his plea and was ultimately resentenced.

Count 7¹ – Failure to Perform Competently (Rule 3-110(A))²

Harley does not challenge the hearing judge's culpability finding. Rule 3-110 provides that "[a] member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The State Bar alleged that Harley violated this rule by incorrectly advising

¹Because we present the matters in chronological order rather than the order in which they were charged, the numbers assigned to the various counts are not listed sequentially throughout the opinion.

²Unless otherwise noted, all further references to "rule(s)" are to the Rules of Professional Conduct of the State Bar.

Dragos about the consequences of his plea, and then failing to correct the error during the court proceeding. Harley testified that she was new to private practice and was unaware of the “nuances” involved in this type of case. She admitted that she was “ineffective” as Dragos’ counsel and candidly told the hearing judge: “I just didn’t explain it to him (Dragos) correctly.”

We agree with the hearing judge that Harley’s inaccurate advice and failure to correct her error constitute reckless failure to perform. She was admittedly new to criminal defense work and inexperienced at settlement and sentencing discussions with clients. Yet she undertook to advise Dragos on a very serious criminal case involving a significant prison sentence. Regardless of her lack of experience, Harley was required to perform competently for her client. While we acknowledge that the superior court judge made the same error, the circumstances were different. The judge’s mistake occurred at a brief court proceeding during a busy calendar schedule, while Harley’s transpired after she had ample time to analyze and discuss the issues with Dragos. And she owed a fiduciary duty to her client to provide careful and accurate information about the consequences of his plea. Harley’s inexperience and carelessness do not excuse her failure to perform competently.

B. THE EAGLE MATTER

On April 29, 2002, Eric Eagle hired Harley to expunge his misdemeanor convictions for assault and shoplifting. Eagle paid her a \$1,500 nonrefundable flat fee and signed an attorney-client contract that Harley was to “provide legal services necessary to present and argue” the motion to expunge. The motion was drafted in June 2002, but was never filed because after Harley was hired, Eagle was arrested again and faced new criminal charges. Harley did not file the motion because she did not think it would be granted given Eagle’s re-arrest. Eagle was told about the decision not to file the motion and he “accepted” it. Harley did not do any further work on the case.

In 2003, Eagle contacted Harley's office about refunding his fees. He left several messages with the staff, but Harley returned only one call. She testified that Eagle was "combative" and "scary" while at her office, and that he yelled and screamed at her on the telephone. On September 5, 2003, Eagle wrote Harley a letter requesting a refund but received no response. He sent a second letter on May 24, 2005, asking for return of the \$1,500 fee and for a copy of his file. Shortly thereafter, Harley spoke to Eagle on the telephone and invited him to come into the office and "go over it [the bill] and try to reach some resolution." Eagle became angry, abruptly terminated the call and never came into the office. Harley did not refund the fee or place the money in trust, and Eagle never received a copy of his file.

Count 17 – Failure to Return Unearned Fees (Rule 3-700(D)(2))

Harley challenges the hearing judge's culpability finding. Rule 3-700(D)(2) provides that an attorney whose employment has terminated shall "[p]romptly refund any part of a fee paid in advance that has not been earned." The State Bar alleged that Harley violated this rule by failing to refund Eagle's \$1,500 when she did not perform the contracted legal services. We agree.

Harley did not complete the legal services outlined in Eagle's fee agreement. The contract required Harley to provide legal services necessary to *present and argue* the motion to expunge. The plain language of the agreement clearly required Harley to appear in superior court to make the motion. Regardless of the reason for not proceeding, Harley never presented or argued Eagle's motion to the court. The work performed in drafting the motion was of no value to Eagle without an opportunity for the court to rule on it. We find that Harley did not provide the specific legal services for which Eagle paid, and the fee was subject to a refund. (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 789 [attorney may not retain advanced fees where services specified in fee agreement not performed even though "nonrefundable retainer"]; In *the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424 [attorney may not

retain advanced fees if minimal services performed are of no value to client]; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 332 [advanced fee not earned when paid but rather when contracted-for legal services are performed].)

Even if Harley believed she was entitled to some or all of the \$1,500 for drafting the motion, she was required to take appropriate action when Eagle disputed the fee. An attorney is not entitled to set fees unilaterally. If a client contests the fee, the disputed funds must be placed in a trust account until the conflict is resolved. (Rule 4-100(A); *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar. Ct. Rptr. 752, 758.) She did not return the fees, place the money in trust or take affirmative steps to resolve the fee dispute. We therefore find Harley culpable of failing to promptly return unearned fees in violation of rule 3-700(D)(2).

Count 18 – Failure to Return Client File (Rule 3-700(D)(1))

Harley challenges the hearing judge's culpability finding. The State Bar alleged that Harley violated this rule by failing to promptly return Eagle's file upon termination of employment. We agree. An attorney whose employment has terminated is required to promptly release to a client, upon request, all papers and property. Eagle terminated Harley's employment on September 5, 2003, when he requested a refund. (See *Worthington v. Rusconi* (1994) 29 Cal.App.4th 1488, 1498 [continuity of attorney-client relationship depends on evidence of ongoing mutual relationship and acts in furtherance].) And although Eagle waited 20 months to ask for his file, this delay is not unreasonable. Harley was obligated to release Eagle's file upon his request.

C. THE CORTEZ MATTER

In 2003, Harley represented Ralph Cortez, who was charged with two counts of child molestation. Before Cortez entered his plea, Harley advised him about three sentencing issues: (1) that he would receive local/county jail time or he could withdraw his plea; (2) that he could

have his felony convictions reduced to misdemeanors; and (3) that he could ask to be relieved of his obligation to register as a sex offender after five years. These statements were wrong.

Two weeks after the plea, Cortez surreptitiously tape-recorded a conversation at Harley's office in which she made statements corroborating Cortez' claim that she had incorrectly advised him. Harley testified she did not recall the pre-plea discussion and, having suffered an accident, was under the influence of Vicodin prescription painkillers at the time of the recorded conversation.

Based on the recording, Cortez made a motion to withdraw his plea, which was granted. The judge who ruled on it did not make any finding that Harley rendered ineffective assistance of counsel and found Cortez's testimony about the pre-plea conversation only partially credible. But the judge admitted the recording and found that Harley's taped statements reiterated her incorrect statements to Cortez before the plea. The judge concluded it would "be better for the system as a whole to start over with a clean slate." Cortez went to trial and was acquitted of all charges.

Count 10 – Failure to Perform with Competence (Rule 3-110(A))

Harley challenges the hearing judge's culpability finding. The State Bar alleged that Harley violated rule 3-110(A) for giving Cortez false and/or incomplete information about the consequences of his plea. We agree. While this rule applies to attorneys' duty to communicate correct legal advice to their clients, negligent legal representation does not necessarily establish a violation. (See *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) As detailed below, however, we find that Harley's pre-plea advice to Cortez goes beyond negligence and constitutes reckless failure to competently perform.

At the time of the plea, Harley was an experienced criminal defense attorney who was familiar with sexual assault cases. Although she contends she does not remember her pre-plea

conversations with Cortez, such attorney-client discussions in a criminal case must necessarily relate to fundamental sentencing issues. And Harley's incorrect advice to Cortez had a critical adverse impact on him since he relied on it to decide whether or not to plead guilty to, and be sentenced on, child molestation charges. (Cf. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 112 [attorney violated rule 3-110(A) by failing to pay medical liens, resulting in "an adverse impact on the client, because it exposes the client to collection efforts by lienholder"].) Harley was clearly aware that accurate pre-plea advice is essential because she had previously misadvised Dragos about his sentence in a sexual assault case. We conclude that Harley is culpable of failing to correctly advise Cortez in an area of law that should have been well known to her and where she knew that the consequences of her error could have a severe effect on her client.

We reject Harley's argument that the only competent evidence about her advice came from herself and the superior court judge who granted the motion to withdraw the plea. Harley contends that the tape-recording was illegal and that Cortez's declaration in support of his motion lacked credibility. The judge found some of Cortez's testimony to be credible but did not specify which portion he believed. Cortez's declaration was admitted in the present proceedings without objection, and claimed that Harley "convinced him to change his plea" based on her incorrect advice. Since Harley does not remember the pre-plea conversation and the hearing judge found culpability on this charge, we conclude that the Cortez declaration was credible and adequate to prove the violation. We therefore do not consider the tape-recording.³

³The State Bar also alleged that Harley's false advice constituted moral turpitude in violation of Business and Professions Code section 6106, but it does not challenge the hearing judge's conclusion that Harley was not culpable. Upon review of the record, we adopt that conclusion. Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

D. THE UPTON MATTER

Andrew Upton was serving a sentence in state prison for child molestation convictions when his family hired Harley to substitute in for other counsel on his appeal and to file a habeas corpus petition. In October 2003, Upton's father executed the fee agreement on his son's behalf. Harley substituted in as counsel in the appeal and submitted an opening brief, but decided not to file a reply brief or request oral argument. The Court of Appeal affirmed Upton's conviction. Harley then filed two separate writs of habeas corpus, which were denied.

Harley did not keep Upton informed about the status of his case. She failed to respond to his nine letters requesting an update. In fact, he had to communicate directly with the appellate court to obtain information about his case. And Harley did not contact Upton even after his family and their attorney also made status inquiries.

Harley admitted that she stopped communicating with Upton but claimed it was after she had completed the actual work of his representation. She said that Upton had become abusive and she had grown "very weary of speaking to him" on the telephone. Harley also conceded that she was wrong not to notify Upton that his habeas corpus petitions had been denied.

Count 13 – Failure to Communicate (§ 6068, subd. (m))

Harley challenges the hearing judge's culpability finding. Section 6068, subdivision (m) provides that an attorney must "respond promptly 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." The State Bar alleged that Harley did not keep Upton informed of significant developments because she failed to respond to Upton's letters, to communicate with him about his case, and to discuss her decisions not to file a rebuttal brief and to waive oral argument in the appeal.

We find that Harley did not keep Upton apprised of his case and failed to respond to his inquiries. Upton repeatedly called her office from state prison but was able to speak to someone only half of the time. In his letters, he asked why Harley did not attend oral argument on the appeal, why no reply brief was filed and why no habeas petition was filed by a certain date. The letters reflect Upton's increasing frustration with Harley's lack of communication, and demonstrate that he repeatedly asked the same questions. (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855 [respondent violated § 6068, subd. (m) by failing to respond to letters from clients about respondent's intentions regarding pursuit of appeals].) We adopt the hearing judge's culpability finding.⁴

E. THE SCHONENBERGER/BISSIG MATTER

In March 2006, Walter Bissig paid Harley \$7,500 to represent his daughter, Heidi Schonenberger, in a criminal case. Harley did not obtain Schonenberger's informed, written consent for Bissig to pay the legal fees. In April 2006, Harley attended a court hearing where Schonenberger's criminal probation was reinstated and she was ordered to attend a substance abuse treatment program. In May 2006, Bissig terminated Harley's representation and requested an accounting of services and a refund of fees. Harley provided neither. In April 2007, after the State Bar investigation began, Harley provided the investigator with an accounting of services. Bissig won a "\$4,000-plus judgment" against Harley in fee arbitration, which had not been paid at the time of trial.

⁴The State Bar also alleged that Harley violated rule 3-110(A) (Failure to Perform Competently) because she did not advise Upton about the results of the habeas petition nor did she counsel him further. The State Bar does not challenge the hearing judge's non-culpability finding. Upon review of the record, we adopt the hearing judge's finding.

Count 19 – Failure to Render Accounting to Client (Rule 4-100(B)(3))
Count 20 – Accepting Fees From a Third-Party Without Client’s Proper Consent (Rule 3-310(F))

Harley does not challenge the hearing judge’s culpability findings on both counts. The State Bar alleged that she violated rule 4-100(B)(3) by not providing Bissig/Schonenberger with an accounting until October 2007, a year and a half after her services were terminated in May 2006. The State Bar also alleged that Harley violated rule 3-310(F) by accepting compensation to represent a client from a third party without obtaining the client’s informed written consent. This rule provides that an attorney “shall not accept compensation for representing a client from one other than the client unless: ¶ . . . ¶ (3) [t]he [attorney] obtains the client’s informed written consent” Upon review of the record, we adopt the hearing judge’s culpability findings for counts 19 and 20.

F. THE HSIAO MATTER

On September 15, 2006, Janie Hsiao paid Harley \$1,000 to represent her son, Herbert, in a traffic matter. They did not sign a written fee agreement and Harley did not obtain Herbert’s informed written consent authorizing his mother to pay the legal fees. Harley sent Herbert two letters – the first informed him of the date set for arraignment, and the second specified the date set for trial. Both letters stated that Herbert was not required to attend the hearings.

Neither Herbert nor Harley appeared for trial. Harley testified that she miscalendared the trial and then “forgot” about it. As a result, the trial proceeded without them and the court found Herbert guilty of a Vehicle Code violation, ordering him to pay a \$375 fine. When Harley discovered that she missed the trial, she immediately made a request to re-calendar the matter, which the court denied.

Mrs. Hsiao called Harley’s office several times to inquire about the guilty verdict. She left messages and spoke to office staff, asking to talk to Harley. Although Harley received the

messages, she did not return the calls. Finally, Mrs. Hsiao wrote Harley a letter expressing her dissatisfaction, and requested a refund of the \$1,000 fee and a response within two weeks. A month and a half later, Harley sent Mrs. Hsiao a letter of apology and a check for \$1,000. Harley delayed payment because she had “cash flow” problems.

Count 1 – Failure to Perform Competently (Rule 3-110(A))

Count 2 – Failure to Communicate (§ 6068, subd. (m))

Count 3 – Failure to Return Unearned Fees (Rule 3-700(D)(2))

The State Bar charged Harley with three violations: (1) rule 3-110(A) for failing to appear at Herbert’s trial and advising Herbert not to appear; (2) section 6068, subdivision (m) for failing to advise Herbert that she did not attend his trial and failing to respond to Mrs. Hsiao’s reasonable status inquiries on her son’s behalf;⁵ and (3) rule 3-700(D) for failing to promptly refund the unearned \$1,000 fee. The hearing judge found Harley culpable of the first two violations but not culpable of the third because she returned the entire \$1,000 within two months of Mrs. Hsiao’s demand. Neither Harley nor the State Bar challenges any of the hearing judge’s findings, and we adopt them.

III. HARLEY IS NOT CULPABLE OF MISCONDUCT IN FOUR CLIENT MATTERS

A. THE CIPRIAN MATTER

The hearing judge found Harley not culpable of two counts of misconduct related to dishonesty. Harley was charged with misleading a judge when she requested that a sentencing hearing be continued (§ 6068, subd. (d)), and misrepresenting to her client’s father that she had retained an expert witness for the sentencing hearing (§ 6106). The State Bar has not appealed

⁵While Harley had no obligation to discuss the case with her client’s mother, she did have a fiduciary duty to contact Herbert after his mother made numerous inquiries.

and, upon our own review of the record, we agree with the hearing judge that Harley is not culpable of either charge.⁶

B. THE NGUYEN MATTER

The hearing judge found Harley culpable of one charge and not culpable of another in a criminal case involving her client, Crystal Nguyen. Harley was charged with failing to maintain respect for the court (§ 6068, subd. (b)) because she sent an associate attorney to appear at a sentencing hearing when she herself was required to be present. The hearing judge found her not culpable. Harley was also charged with incompetence (rule 3-110(A)) for failing to timely submit her client's character letters for the sentencing hearing. The hearing judge found her culpable. The State Bar now asserts that Harley is not culpable on either charge, and we agree.

C. THE HERRERA MATTER

The hearing judge found Harley culpable of failing to render an accounting (rule 4-100(B)(3)) and failing to return unearned fees to Dolores Herrera. (Rule 3-700(B)(2).) Harley challenges this finding, arguing that Sterling Harwood, a contract attorney in her office, represented Herrera and that she has no professional obligation to non-clients, including Herrera. We agree that Herrera was Sterling Harwood's client, as evidenced by Harwood's actions in obtaining the retainer agreement on his letterhead, depositing Herrera's fee into his trust account and then continuing to represent Herrera after he left Harley's office. We conclude that Harley did not represent Herrera and therefore did not commit misconduct in the Herrera matter.

⁶The State Bar also alleged that Harley violated rule 3-110(A) by performing incompetently for failing to: (1) have Zac examined by an expert; (2) present expert and character testimony at Zac's sentencing; and (3) visit him in jail. No challenge is made to the hearing judge's non-culpability finding and we adopt it.

D. THE BOYD MATTER

The hearing judge found Harley not culpable of violating rule 3-700(B)(2) for failing to return unearned fees to Celeste Boyd because the refund issue became a fee dispute that has not been resolved. The State Bar does not challenge this finding and upon review of the record, we adopt it.⁷

IV. AGGRAVATION AND MITIGATION

We determine the appropriate discipline in light of all relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Harley must establish mitigation by clear and convincing evidence, while the State Bar has the same burden of proof for aggravating circumstances. (Stds. 1.2(e) & 1.2(b).)⁸

A. THERE ARE TWO FACTORS IN AGGRAVATION

The hearing judge found three factors in aggravation, and we agree with two. First, Harley committed multiple acts of wrongdoing in six client matters by failing to: perform competently; communicate with clients; render an accounting; return unearned fees; return a client's file; and avoid adverse interests by accepting fees from a third party without the client's proper consent. (Std. 1.2(b)(ii).) Second, Harley's misconduct significantly harmed Herbert Hsiao when she failed to appear for trial since he was found guilty of a Vehicle Code violation and ordered to pay \$375. (Std. 1.2(b)(iv).) However, we do not find clear and convincing evidence that Harley demonstrated indifference toward rectification of or atonement for the consequences of her misconduct in the Eagle matter when she failed to return the unearned fees. (Std. 1.2(b)(v).)

⁷Having reviewed de novo all of the arguments set forth by Harley and the State Bar, any arguments not specifically addressed in this opinion have been considered and rejected.

⁸Unless otherwise noted, all references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

The State Bar urges us to find two additional factors in aggravation as uncharged misconduct: (1) failing to obtain the consent of clients for payment of fees in the Hsiao, Ciprian and Upton matters (rule 3-310(F)) and (2) charging an illegal non-refundable flat fee for services in Ciprian, Cortez, Eagle, and Upton (rule 4-200(A)). Evidence of uncharged misconduct may be considered in aggravation where it is elicited for a relevant purpose and is based on the attorney's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) We agree with the State Bar about the first factor since Harley stipulated that she did not obtain each client's written informed consent authorizing family members to pay legal fees in the Hsiao, Ciprian and Upton matters. But we find insufficient evidence to assign aggravation for charging her clients illegal fees.

B. THERE ARE FOUR FACTORS IN MITIGATION

The hearing judge found four factors in mitigation, and we agree. First, Harley's 19 years of discipline-free practice prior to her initial misconduct in the Dragos matter in 2002 is a strong mitigating factor. (Std. 1.2(e)(i).) Second, she cooperated with the State Bar by entering into an extensive stipulation that contained facts material to culpability. (*In the Matter of Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [stipulation to facts and culpability is mitigating].) This stipulation greatly assisted the State Bar's prosecution, entitling Harley to mitigation credit. (Std. 1.2(e)(v).)

Third, Harley showed remorse and willingness to accept responsibility for her misconduct by taking corrective steps to better manage her law practice. (Std. 1.2(e)(vii).) For example, Harley now requires a separate written agreement allowing a third-party payor to contribute to the defense of her clients. She also provides a prompt accounting and sends an explanatory closing letter to all clients. We properly assign mitigating credit for these actions.

Finally, and most compelling, is Harley's strong evidence of good character. (Std. 1.2(e)(vi).) Nine witnesses testified, including three judges, an attorney, a former client, friends, and former law enforcement officers. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"].) These character witnesses have known Harley between one to 20 years and attested to her excellent reputation in the legal community and her honest character. Their opinions did not change despite knowing about the charges against her, and several witnesses have referred friends or family members to Harley for legal representation.

We expressly note the highly relevant testimony of three superior court judges, all of whom assert that Harley handles very difficult criminal cases and is an outstanding advocate for her clients. Retired Judge Ray Cunningham has known Harley over 20 years and testified that he would "rank [Harley] among the highest attorneys we have." Judge Jerome Brock, who has known Harley 18 years, testified that her reputation is "excellent," and she does "a great job with her clients." Finally, Judge Edward Lee has known Harley 20 years and testified that she is regarded as "competent and a good attorney to work with." The hearing judge found that this un-rebutted testimony demonstrated an extraordinary showing of good character from a wide range of references, and that the mitigation overall was "compelling."⁹ We agree and assign it significant weight.

Harley requests additional mitigation because she claims the State Bar delayed bringing disciplinary charges against her. While we do not condone any delay, we reject this argument as unsupported. In order for a delay to constitute a mitigating circumstance, "an attorney must demonstrate that the delay impeded the preparation or presentation of an effective defense.

⁹The State Bar concurs that the mitigation evidence is compelling.

[Citation.]” (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361.) Harley asserts that she was “prejudiced by the mere passage of time, the inevitable deterioration of witness memories, and . . . the paucity of records available from events years in the past.” However, her general claim does not establish the required showing of specific, legally recognizable prejudice.

V. LEVEL OF DISCIPLINE

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 standards for attorneys. (Std. 1.3.) No fixed formula exists for determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Our discipline analysis begins with the standards. While we recognize that they are not binding on us in every case, the Supreme Court has instructed us to follow them “whenever possible” (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11), and that they should be given great weight to promote “ “the consistent and uniform application of disciplinary measures.” ’ [Citation.]” (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

Several standards apply here, including standards 1.6 (imposing the most severe of two or more applicable sanctions); 2.2(b) (minimum three months’ actual suspension for violation of rule 4-100); 2.4 (reproval or suspension, depending upon extent of misconduct and degree of harm to client, for violation of rule 3-110(A) and § 6068, subd. (m)); and 2.10 (reproval or suspension, depending upon extent of misconduct and degree of harm to client, for other

unspecified violations). Under these standards, Harley's misconduct could result in discipline ranging from three months' actual suspension to disbarment.

In this case, it is important to chronologically review the five-year time frame during which Harley committed misconduct in order to underscore the periods of time between each act. And while some of her misconduct spanned these years as she failed to communicate or refund fees in ongoing cases, there were significant breaks of time between several of the acts of misconduct in the six client matters.

Harley committed misconduct for the first time in the Dragos matter in 2002 when she had practiced for 19 years without discipline. She misadvised her client about the prison term he would receive under a plea agreement. Beginning in 2003, Harley committed misconduct in three matters, Cortez, Eagle and Upton, with the most severe occurring in the Cortez matter. In Eagle and Upton, she inadequately attended to her clients' requests for a file, information and/or refunds. In Cortez, Harley again gave incorrect advice about the consequences of a plea in a serious sex offense case. Then in 2006, Harley committed her last two acts of misconduct. First, she forgot about and failed to attend Herbert Hsiao's traffic trial. And second, she improperly accepted fees from a third party and failed to provide an accounting to Walter Bissig.

The range of discipline for Harley's misconduct is very broad since it spans suspension to disbarment. We therefore look to case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311). Our research reveals that the Supreme Court's guiding case precedent for similar violations ranges from three to nine months of actual suspension. (See *King v. State Bar* (1990) 52 Cal.3d 307 [three-month actual suspension for repeated incompetence in two matters over four years for failing to return files, use diligence, and support the laws resulting in \$84,000 default judgment and nominal mitigation]; *Lester v. State Bar* (1976) 17 Cal.3d 547 [six months' actual suspension for incompetence and failing to refund fees in four matters over two

years and no showing of remorse, lack of candor and lack of insight into misconduct]; *Lister v. State Bar* (1990) 51 Cal.3d 1117, [nine-month actual suspension for incompetence in three matters over seven years for failing to promptly return client files, place client funds in safekeeping, maintain record of funds, render accounting, return unearned fees, communicate with client and participate in disciplinary proceedings and a prior record of discipline].

The hearing judge recommended a one-year actual suspension for Harley relying on *Segal v. State Bar* (1988) 44 Cal.3d 1077. But the attorney in *Segal* issued bad checks, which involves a lack of “common honesty,” had a prior record of discipline involving bad checks and presented only limited mitigation. We do not find *Segal* to be applicable given Harley’s lack of disciplinary record, significant mitigation and culpability findings that do not include dishonesty. Instead, looking to the nature and extent of Harley’s misconduct, the significant mitigation and her recognition of wrongdoing we conclude that a lesser actual suspension will protect the public and maintain the high standards of the legal profession. In the final analysis we determine disciplinary sanctions after considering all factors in the case. (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 796.) After evaluating those factors and the guiding case law suggesting an actual suspension between three and nine months, we recommend six months’ actual suspension, two years’ stayed suspension, and two years’ probation. We also recommend that Harley pay restitution to Bissig and successfully complete a course in law office management.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Jamie Leigh Harley be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation for two years subject to the following conditions:

1. She must be suspended from the practice of law for the first six months of probation and:
 - (a) Until she makes restitution to Walter Bissig in the amount of \$4,500, plus 10 percent interest per year from the date of the fee arbitration award (or reimburse the Client Security

Fund, to the extent of any payment from the fund to Walter Bissig, in accordance with Business and Professions Code section 6145.5), and provide proof to the Office of Probation in Los Angeles.

(b) If she remains suspended for two years or more as a result of not satisfying the preceding condition, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Std. 1.4(c)(ii).)

2. She must place \$1,500 in trust and resolve the fee dispute or offer to enter into fee arbitration with Eric Eagle, and provide proof to the Office of Probation within 60 days of the effective date of this order.
3. During the period of probation, she must comply with the State Bar Act and the Rules of Professional Conduct;
4. She must maintain, with the State Bar Membership Records Office and the State Bar's Office of Probation in Los Angeles, her 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)(1).) She must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation in Los Angeles, her current home address and telephone number. (Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Her home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) She 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;
5. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein;
7. Within six months of the effective date of the discipline, she must submit to the Office of Probation satisfactory evidence of completion of no less than three hours of Minimum Continuing Legal Education (MCLE) in law office management. This requirement is separate from any MCLE requirement, and she will not receive MCLE credit for attending the class;
8. Within one year of the effective date of the discipline, she must submit to the Office of Probation satisfactory evidence of completion the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum

Continuing Legal Education Requirement (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).

9. Her probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the end of the probationary term, if she has complied with the conditions of probation, the Supreme Court order suspending her from the practice of law for two years will be satisfied, and the suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Jamie Leigh Harley be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. RULE 9.20

We further recommend that Jamie Leigh Harley be ordered to 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 calendar days, respectively, after the effective date of the Supreme Court order herein. Failure to do so may result in disbarment or suspension.

IX. COSTS

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

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.