

Filed January 2, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 10-O-00334
)	
ELIZABETH M. BARNSON KARNAZES,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 118922.)	
_____)	

This case involves serious overreaching of the attorney-client relationship under the guise of parental concern. Respondent Elizabeth M. Barnson Karnazes used the legal system to further her desire to control her adult son, who was also her client. In doing so, she lost sight of her ethical obligations and committed serious misconduct, including misappropriating over \$57,000 of his settlement funds through conversion, commingling over \$100,000 of her personal funds with his, and filing a lawsuit directly adverse to him. After her son filed a complaint with the State Bar’s Office of the Chief Trial Counsel (State Bar), Karnazes compounded her misconduct by conditioning the release of his funds on his agreement not to cooperate with the State Bar’s investigation. In the end, Karnazes withheld her son’s settlement funds for more than three years and released them only four days before her disciplinary trial.

The State Bar filed a Notice of Disciplinary Charges, charging Karnazes with 17 counts of misconduct in this one matter. The hearing judge found Karnazes culpable of nine counts, including misappropriation and trust account violations, for her refusal to distribute funds to her son. Karnazes proved only her good character in mitigation, which the hearing judge did not find compelling when weighed against her prior record of discipline, her multiple acts of

misconduct, the significant harm she caused her son, and her lack of remorse. The hearing judge recommended disbarment.

Karnazes appeals. She argues the hearing judge denied her a fair trial, should have exonerated her of all charges, and should have afforded her more mitigation. The State Bar supports the disbarment recommendation.

Although we find fewer violations than the hearing judge (see generally Cal. Rules of Court, rule 9.12 [we must conduct independent review]), the record fully supports culpability for the most serious charge of misappropriation based on Karnazes's refusal to distribute settlement funds for over three years. Furthermore, the extensive aggravating factors are most troubling, including Karnazes's overreaching that permeates this case. Her misconduct is serious, and her complete lack of remorse indicates a high risk that she will commit future misconduct. We adopt the hearing judge's recommendation that Karnazes be disbarred in order to best protect the public, the courts, and the legal profession.

I. CONSTITUTIONAL AND PROCEDURAL ISSUES RAISED ON REVIEW

Karnazes claims her constitutional rights were violated during the disciplinary proceeding as she did not receive a "fair and impartial trial." In particular, she asserts: (1) the hearing judge made findings contrary to the evidence, improperly admitted hearsay evidence, and refused to admit all of Karnazes's offered evidence; (2) the hearing judge was biased because she is a single mother like Karnazes and is "presently under investigation for activities with [a public figure], which affected her appointment to the bench and other matters;" (3) State Bar Court judges are disqualified due to a financial interest in the outcome of disciplinary proceedings; (4) the hearing judge violated her Fifth Amendment right against self-incrimination; and (5) she had ineffective assistance of counsel. However, for most of these claims, Karnazes fails to identify the specific constitutional provision that was violated, and even when she does cite one, she fails to provide

facts from the record to support her claim. We reject all of Karnazes's claims because they lack merit.¹

Karnazes alleges inaccurate factual findings, but she fails to specify those she contends do not conform to evidence presented at trial. She therefore waives such factual disputes. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived].) Likewise, Karnazes's claim that the hearing judge improperly admitted or excluded evidence does not entitle her to relief unless she can establish the rulings were erroneous and prejudicial. (See *Stuart v. State Bar* (1985) 40 Cal.3d 838, 845 [showing of specific prejudice before procedural errors will invalidate determination of hearing panel].) Since Karnazes did not designate the evidence she claims was erroneously admitted or demonstrate its prejudicial impact, it is impossible to determine the validity of her claim. Karnazes identifies only Exhibit E (mental disorder questionnaire form for her son) as evidence that was improperly excluded. Again, she does not explain how its exclusion specifically prejudiced her. Therefore, we are unable to find that Karnazes was denied a fair trial due to erroneous evidentiary rulings.

Karnazes's claims of judicial bias are also unfounded. A judge is disqualified from a case based on "[b]ias or prejudice toward a lawyer in the proceeding" or when "[a] person aware of the acts might reasonably entertain a doubt that the judge would be able to be impartial." (Code Civ. Proc., § 170.1(a)(6) [grounds for disqualification]; see Rules Proc. of State Bar, rule 5.46(A) [judge must be disqualified when Code Civ. Proc., § 170.1 applies].) Even if the evidence in the record supported Karnazes's assertions that the hearing judge is a single mother or that she was under investigation in an unrelated matter, Karnazes does not explain how these circumstances establish bias or would cause a person to doubt the judge's impartiality.

¹ We have considered and rejected as meritless her additional claims not specifically addressed in this opinion.

Karnazes’s claim that State Bar Court judges are disqualified due to financial interest in the outcome of disciplinary proceedings through assessment of disciplinary costs also lacks merit. State Bar Court judges’ salaries are derived from annual attorney membership dues, not from costs assessed after imposition of discipline. (*In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 474.) “Thus, personal financial interest does not dictate the outcome of disciplinary proceedings or the imposition of disciplinary costs.” (*Ibid.*)

Claiming that the hearing judge violated her Fifth Amendment right against self-incrimination, Karnazes fails to identify specific questions where she asserted that right and the judge directed her to answer. (See *Black v. State Bar* (1972) 7 Cal.3d 676, 688 [attorney does not have complete immunity from testifying and may decline to answer *specific* questions on ground that testimony would be incriminating].) Similarly, Karnazes fails to specify how she was “coerced” to violate the privacy rights and the attorney-client privilege of her clients. We decline to fill the evidentiary void in these arguments, and reject them as unsupported by the record.

Finally, Karnazes’s claim of ineffective assistance of counsel is unavailing. “[T]here is no constitutional right to the assistance of counsel in State Bar proceedings.” (*Walker v State Bar* (1989) 49 Cal.3d 1107, 1116.) Thus, there is no defense of ineffective assistance of counsel in disciplinary proceedings. (*Ibid.* [right to effective assistance of counsel depends on demonstrated right to counsel].)

II. FINDINGS OF FACT²

A. Karnazes's Attorney-Client Relationship with Her Son

On January 31, 2005, Karnazes signed a fee agreement to provide legal services to her son, Zachary Karnazes,³ who had turned eighteen one day earlier. Karnazes agreed “to provide all reasonable and necessary legal services in handling” Zachary’s claims of a “personal injury, breach of contract, educational, criminal or quasi-criminal nature” The agreement did not specify a particular lawsuit or claim against a person or entity.

Under the fee agreement, Zachary agreed to reimburse Karnazes for costs and expenses, and then pay a 50 percent contingency fee on any remaining recovery. Zachary also gave Karnazes “power of attorney to execute all documents connected with [Zachary’s] causes including . . . checks, and all other documents that [Zachary] could properly execute.”

Additionally, Zachary gave Karnazes “power of attorney . . . to establish a trust on [Zachary’s] behalf at [Karnazes’s] discretion to place [Zachary’s] recovery money into for [his] benefit.”

Karnazes represented Zachary in at least three lawsuits. In *Karnazes v. Mountain Homes Youth Ranch* (MHYR lawsuit), Karnazes sued the defendants for injuries Zachary allegedly suffered while in a drug treatment program. In *Karnazes v. Odyssey School* (Odyssey lawsuit), Karnazes sued the defendants for injuries Zachary allegedly suffered when a school administrator abused him during a camping trip. In *Karnazes v. Moore* (Moore lawsuit), Karnazes sued the defendants for injuries Zachary allegedly suffered when the defendant physically abused Zachary.

² The State Bar must prove misconduct by clear and convincing evidence. (*Arden v. State Bar* (1987) 43 Cal.3d 713, 725.) 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.)

³ We refer to Zachary by his first name to avoid confusion, not out of disrespect.

B. Karnazes Refuses to Distribute Settlement Funds to Zachary

In 2009, Karnazes settled the MHYR and Odyssey lawsuits for \$40,000 and \$60,000, respectively. By May 26, 2009, she deposited the entire \$100,000 into her client trust account (CTA). On June 29, 2009, she deposited an additional \$694.50 in her CTA on Zachary's behalf as payment for his worker's compensation disability claim, which was unrelated to the lawsuits.⁴

Karnazes had given Zachary two advances totaling \$7,500 against his share of the expected recovery in the lawsuits. Therefore, as of June 29, 2009, after deducting costs and attorney fees, Zachary was entitled to \$33,739.45.⁵

After the \$5,000 advance, Zachary repeatedly asked Karnazes in person and by telephone for the remainder of his funds. When this failed, he sent her written requests for his money on October 12, 15, and 26, and November 25 and 30, 2009. In his requests, Zachary told Karnazes he needed his settlement money for basic necessities such as food, housing, clothing, and medical treatment. At the time, Zachary had been unemployed since May 2008 and was living on disability payments. He had to travel by bus to and from medical appointments, could not afford his own telephone, and ate free meals at a soup kitchen. Despite Zachary's requests for payment, Karnazes did not distribute his funds. Instead, she accused him of hating her and abandoning her when she needed him most.

⁴ There is no evidence that Karnazes claimed costs or attorney fees against these funds.

⁵ Pursuant to the fee agreement, this amount is based on the disability claim and Zachary's 50% share of the settlement after deducting costs:

\$ 15,952.75	MHYR settlement (50% of \$40,000 - \$8,094.50 costs)
+ 24,592.20	Odyssey settlement (50% of \$60,000 - \$10,815.60 costs)
+ 694.50	Disability claim
- 2,500.00	August 17, 2006 advance
- <u>5,000.00</u>	June 1, 2009 advance
\$ 33,739.45	Balance due

According to Karnazes's accounting, she calculated Zachary's share of the MHYR settlement to be only \$11,964.57 because she claims \$10,000 of it was paid to her as a plaintiff in the matter. Her claim is not supported by the record. We conclude the entire \$40,000 settlement was intended for Zachary, making his share \$15,952.75.

C. Karnazes Commingles Personal Funds with Entrusted Funds

On August 6, 2009, Karnazes deposited into her CTA a check for \$97,750 that she drew against her personal home equity account. She immediately withdrew \$50,000, leaving \$47,750 in her CTA. On November 27, 2009, she deposited an additional \$22,500 of her own funds into her CTA. Karnazes claims she intended to use the money to create a special needs trust for Zachary, but admits she neither created the trust nor gave him the money. She testified Zachary refused to sign documents necessary to establish the trust. Ultimately, she withdrew these funds for her own use, and testified that the money “came out gradually over time because [she] needed [it] to live on.”

Karnazes believes that the prohibition against commingling is senseless. She testified that “if it’s your money and you’re leaving it in there . . . how in the world does that hurt the State Bar when the State Bar is drawing interest on it? It makes no sense to me why that would be wrong.”

D. Karnazes Petitions the Court for Appointment as Conservator of Zachary’s Estate After He Complains to State Bar

In June 2010, Zachary filed a complaint with the State Bar based on Karnazes’s refusal to disburse his funds. Although Karnazes was aware of the complaint, she still refused to distribute the funds. Instead, on October 14, 2010, she petitioned San Mateo County Superior Court to appoint her conservator of Zachary’s estate. At the time, she still represented him in the Moore lawsuit. Karnazes asserted in the petition that Zachary required a conservator because he was adjudicated 100% disabled for mental health reasons and suffered from major depression, post-traumatic stress disorder, anxiety, and chronic pain. At her disciplinary trial, Karnazes testified that she petitioned the court because Zachary’s mental health issues diminished his capacity to properly handle his finances, and he was a danger to himself.

Zachary did not want a conservator. He testified that he felt awful when he learned of his mother's petition because it brought back difficult memories from his childhood when Karnazes placed him in a mental institution against his will. Even though he is now well over eighteen, Zachary views the petition as proof that his mother is "still trying to take away my right to exist and to be independent and still trying to tell the world that I'm crazy." Despite the financial hardship, Zachary obtained his own attorney and filed an objection to the petition, emphasizing that he was a 24-year-old who had lived independently for several years. And although he had struggled with a challenging physical disability, no evidence established that he was developmentally disabled, was suffering from any other cognitive impairment, or was 100% disabled.

On March 4, 2011, the superior court denied Karnazes's petition with prejudice. The judge concluded Zachary was capable of making "informed decisions in his own best interests" and "has the capacity to make his own financial decisions and insure that he has food, clothing and shelter" The court of appeal affirmed the superior court decision, and the California Supreme Court denied Karnazes's petition for review.

E. Karnazes Refuses to Pay Final Settlement Funds to Her Son

In 2010, Karnazes obtained a default judgment in the Moore lawsuit for approximately \$410,000, which was later reduced to \$56,995 by the superior court. On March 21, 2011, Karnazes received the \$56,995 from Moore's insurance company and deposited it into her CTA. She endorsed the check by simulating Zachary's signature followed by her own. Karnazes claimed \$9,481.60 in costs and \$23,756.70 in fees, resulting in Zachary's share being \$23,756.70. Since she still had not disbursed any of his remaining funds from the MHYR and Odyssey settlements or the worker's compensation disability claim, Karnazes owed Zachary a total of \$57,496.15 (\$33,739.45 + \$23,756.70).

On March 29, 2011, Karnazes had a cashier's check for \$63,000 drawn against her CTA made payable to Zachary. On June 14, 2011, she offered to give him the \$63,000 if he agreed to release his right to any disputed funds from the settlements, and to abide by a non-disparagement clause prohibiting him from discussing the terms of the resolution. At the time Karnazes made the settlement offer, she knew that Zachary had filed a complaint with the State Bar almost a year before, and that the superior court had denied her petition for conservatorship.

Zachary refused her offer. Karnazes claims she kept the cashier's check in a safe until November 9, 2011, instead of canceling it and returning the funds to her CTA. She continues to insist that holding Zachary's money in the form of a cashier's check is no different than maintaining the funds in her CTA.

On June 21, 2012, four days before her disciplinary trial, Karnazes paid Zachary \$53,507.97 as his share of the settlement proceeds and provided him an accounting that omitted multiple withdrawals from her CTA and overstated her attorney fees. The records Karnazes maintained to support the accounting also failed to cover the entire period that she held Zachary's funds. Even assuming the costs she claimed were accurate, Zachary was entitled to \$3,988.18 more than Karnazes gave him.

III. CULPABILITY

The State Bar charged Karnazes with 17 violations based on her misconduct during her representation of Zachary. Ultimately, we find Karnazes culpable of 7 of those 17 charged violations.⁶ Her serious misconduct can be categorized into three broad areas: (1) trust account violations; (2) failure to maintain proper records; and (3) pursuing interests adverse to her client.

⁶ The hearing judge dismissed seven counts that are not in dispute, and we adopt the dismissals: count three (failure to notify client of receipt of funds); count nine (maintaining an unjust action); count ten (encouraging an unjust action); count thirteen (moral turpitude); count fourteen (failure to timely withdraw attorney funds in trust); count fifteen (failure to competently perform); and count seventeen (failure to cooperate). As discussed below, we dismiss two

A. Karnazes Committed Serious Trust Account Violations⁷

Misappropriation: Count Seven (Bus. & Prof. Code, § 6106)⁸

Section 6106 makes it a cause for disbarment or suspension when an attorney commits “any act involving moral turpitude, dishonesty or corruption” When an attorney withholds funds from a client without authority to do so, such conduct represents clear and convincing proof of misappropriation in violation of section 6106. (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033.) In count seven, the State Bar alleged Karnazes committed an act involving moral turpitude in violation of section 6106 when, among other things, she converted Zachary’s funds by refusing to pay him the majority of his share of the settlements for more than three years. The hearing judge dismissed this count finding that the misconduct was better charged as rule violations. We disagree, and find Karnazes’s misappropriation of funds clearly supports a finding of moral turpitude. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [discipline analysis properly focused on § 6106 violation because it supports same or greater discipline than rule violation].)

Karnazes asserts that Zachary authorized her under the fee agreement to retain his settlement funds to establish a special needs trust. Her defense is unavailing because the facts clearly show that Karnazes knew by at least 2009 that Zachary had withdrawn any authority for her to create such a trust. In fact, she acknowledges that Zachary refused to assist her in doing so. He repeatedly requested his settlement proceeds to pay for the basic necessities of food, housing, and medical treatment. Yet Karnazes withheld his funds without his consent for more than three years. She continued to refuse to pay him even after Zachary filed a State Bar

additional counts as duplicative and another one for lack of evidence, dismissing a total of 10 counts.

⁷ For ease of analysis, we consider the counts out of numerical order.

⁸ All further references to sections are to this source unless otherwise indicated.

complaint and the superior court denied her petition for a conservatorship. Since she had no legitimate grounds to keep Zachary's funds, we find Karnazes's conversion of them for over three years amounted to misappropriation in violation of section 6106.⁹ (See *Johnson v. State Bar* (1993) 12 Cal.App.4th 1561, 1565-1566.)

Failure to Maintain Funds: Count Six (Rules Prof. Conduct, rule 4-100(A))¹⁰

Rule 4-100(A) provides that “[a]ll funds received or held for the benefit of clients . . . shall be deposited in one or more identifiable bank accounts labeled ‘Trust Account,’ ‘Client’s Funds Account’ or words of similar import” In count six, the State Bar alleged that Karnazes failed to maintain Zachary’s settlement funds in trust in violation of rule 4-100(A). We agree.

Between March 21, 2011, and June 20, 2012, Karnazes should have maintained at least \$57,496.15 in her CTA on Zachary’s behalf. However, on March 29, 2011, she withdrew his funds from her CTA and obtained a cashier’s check for \$63,000 made payable to him. When Zachary refused to sign a settlement agreement, Karnazes claims she locked the cashier’s check in a safe. She did not return Zachary’s money to her CTA until November 9, 2011. Even if we accept Karnazes’s claim that she kept the cashier’s check in a safe, holding client “ ‘funds in the form of cashier’s checks, or even in cash [does not satisfy the requirement] that all clients’ funds be deposited in a designated account’ ” (*Vaughn v. State Bar* (1972) 6 Cal.3d 847, 855, quoting *Black v. State Bar* (1962) 57 Cal.2d 219, 227.) Thus, between March 29, 2011, and November 9, 2011, Karnazes failed to hold Zachary’s funds in trust in violation of rule 4-100(A).

⁹ In count eight, the State Bar alleged that Karnazes’s failure to pay Zachary was a violation of rule 4-100(B)(4). However, her refusal to pay is the basis for our moral turpitude finding in count seven. Thus, we do not adopt the hearing judge’s culpability finding on count eight, and instead dismiss it with prejudice as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose is served by duplicative allegations].)

¹⁰ All further references to rules are to this source unless otherwise indicated.

Commingling: Count Five (Rule 4-100(A))

With limited exceptions, rule 4-100(A) provides that “No funds belonging to the [attorney] shall be deposited [in the CTA] or otherwise commingled” The State Bar alleged Karnazes commingled funds in violation of rule 4-100(A) when she deposited her own funds into her CTA. We agree.

Karnazes commingled funds in 2009 when she deposited over \$100,000 of her own money in her CTA. She asserts she intended to use the money to fund a special needs trust for Zachary. However, “[t]he rule leaves no room for inquiry into the depositor’s intent.” (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 23.) Furthermore, Karnazes never created the trust or gave Zachary the money. Instead, she gradually depleted these funds to pay for her own personal living expenses. This evidence proves Karnazes commingled client and personal funds in violation of rule 4-100(A). (See *Clark v. State Bar* (1952) 39 Cal.2d 161, 167-168 [commingling committed when attorney and client money is intermingled and its separate identity lost so that it may be used for attorney’s personal expenses].)

B. Karnazes Failed to Maintain Proper CTA Records

Failure to Maintain Records of Client Funds: Count One (Rule 4-100(B)(3))
Failure to Render Appropriate Accounting: Count Two (Rule 4-100(B)(3))

Rule 4-100(B)(3) requires an attorney to “[m]aintain complete records of all funds . . . of a client coming into the possession of the [attorney] . . . and render appropriate accounts to the client regarding them”¹¹ The State Bar charged that Karnazes violated this rule because she did not maintain a written ledger, journal, reconciliation, and all bank statements and cancelled

¹¹ Effective January 1, 1993, the Board of Trustees adopted standards that govern what records an attorney must maintain. These records include (a) a written ledger that sets forth the date, amount, and source of all funds received and payee of all funds disbursed on a client’s behalf; (b) a written journal for each bank account that sets forth the date, amount, and client affected by each debit and credit and the current balance in such account; (c) all bank statements and canceled checks for each bank account; and (d) each monthly reconciliation of (a), (b), and (c). (Standards to rule 4-100.)

checks for client funds (count one), and because she failed to provide an appropriate accounting to Zachary for the funds she received on his behalf (count two). We find her culpable of violating this rule under both counts.

Karnazes produced a written ledger and a separate bank journal dating from January 2009 through February 2011. However, she failed to indicate in the ledger that she paid Zachary advances of \$2,500 in August 2006, and \$5,000 in June 2009. Nor did she provide a written ledger or bank journal for the period from March 2011 to November 2011. Thus, Karnazes failed to maintain complete and accurate records of Zachary's funds in violation of rule 4-100(B)(3).

Furthermore, when Karnazes paid Zachary his share of the settlements in June 2012, she provided him an inaccurate accounting of the costs and fees deducted from the proceeds. For example, she overstated the fee she was entitled to in the MHYR lawsuit when she treated 25% of the settlement as her recovery (see footnote 5). Also, the accounting did not disclose all withdrawals she claims she made on Zachary's behalf. According to Karnazes's ledger, she withdrew cash on Zachary's behalf on three separate occasions: \$2,000 in April 2009, \$1,000 in August 2009, and \$2,000 in September 2009. She failed to disclose any of these withdrawals in her accounting and thereby hindered Zachary's ability to dispute them. These discrepancies are further evidence of Karnazes's violation of rule 4-100(B)(3).

C. Karnazes Pursued Actions Adverse to Zachary's Interests

Failure to Withdraw when Mandatory: Count Twelve (Rule 3-700(B)(2))

Rule 3-700(B)(2) requires an attorney to withdraw from employment if the attorney "knows or should know that continued employment will result in violation of these rules [of professional conduct] or of the State Bar Act" In count twelve, the State Bar charged that Karnazes violated rule 3-700(B)(2) when she continued to represent Zachary in the Moore

lawsuit after she assumed a position directly adverse to him by petitioning the superior court to appoint her as conservator over his estate. We agree.

“When an attorney . . . assumes a position inimical to the interests of his client, he violates his duty of fidelity to his client. [Citations.]” (*Hulland v. State Bar* (1972) 8 Cal.3d 440, 448.) Zachary did not want a conservator appointed and Karnazes’s actions forced him to retain another attorney to resist her efforts, resulting in additional emotional and financial hardship. Karnazes was required to withdraw from representing him in the Moore lawsuit, and her failure to do so constitutes a violation of rule 3-700(B)(2).¹²

Seeking Agreement Not to Cooperate: Count Sixteen (§ 6090.5, subd. (a)(2))

Section 6090.5, subdivision (a)(2), makes it cause for discipline if an attorney agrees or seeks an agreement that a client “withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the [State Bar].” In count sixteen, the State Bar alleged Karnazes sought such an agreement when she asked Zachary to sign a release that included a nondisparagement clause.¹³ The hearing judge correctly found Karnazes culpable as charged.

When Karnazes proposed the nondisparagement clause to Zachary, she was aware that he had filed a complaint against her with the State Bar. Zachary’s complaint was based on Karnazes’s retention of his funds. But the agreement she sought from him would have

¹² The hearing judge also found Karnazes culpable of count eleven, which charged her with failing to support California law in violation of section 6068, subdivision (a), because she breached her “duty of client loyalty” when she petitioned for conservatorship while still representing Zachary. However, these same facts form the basis for culpability under count twelve, which we find more clearly defines the misconduct. Therefore, we reverse the hearing judge’s culpability finding on count eleven and dismiss it with prejudice as duplicative. (See *Bates v. State Bar, supra*, 51 Cal.3d at p. 1060.)

¹³ The clause stated: “The Parties agree that in the event of any inquiry regarding this former dispute with the other party, they shall state that all of Zachary’s claims have been resolved and that he is not at liberty to discuss the terms of that resolution. Zachary further agrees not to disparage [Karnazes], her business, or any of her officers or employees.”

prohibited him from discussing with the State Bar the facts underlying his complaint. Such information was relevant to the State Bar's investigation and ultimate prosecution of Karnazes for various trust account violations. Therefore, Karnazes violated section 6090.5 by seeking that agreement.

No Moral Turpitude for Allegation of Unauthorized Signature: Count Four (§ 6106)

In count four, the State Bar alleged Karnazes committed an act involving moral turpitude when she signed Zachary's name on the Moore check without his consent. The hearing judge concluded Karnazes did not have authority to endorse checks on Zachary's behalf and therefore found Karnazes culpable as charged. We disagree.

“An attorney's general authority to pursue and collect a claim does not include the implied authority to endorse the client's signature on negotiable instruments payable to the client. . . . Any such endorsement authority must be expressly granted. [Citations.]” (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 794.) Under the fee agreement, Zachary expressly gave Karnazes “power of attorney to execute all documents connected with [Zachary's] causes including . . . checks, and all other documents that [Zachary] could properly execute.” (Italics added.) We conclude that this provision gave Karnazes a special power of attorney to sign Zachary's name on checks.

The State Bar contends the fee agreement's special power of attorney provision was no longer valid when Karnazes endorsed the Moore settlement in March 2011. However, the State Bar did not clearly and convincingly prove that Karnazes had withdrawn from representing Zachary, that he terminated her representation of him in the Moore lawsuit, or that he revoked the special power of attorney. More importantly, there is no proof that Karnazes intended any fraud by her actions. Under these circumstances, we conclude Karnazes did not violate section 6106 and dismiss this count with prejudice. (See *In the Matter of Lazarus* (Review Dept. 1991)

1 Cal. State Bar Ct. Rptr. 387, 397 [in absence of fraudulent intent § 6106 is not violated when based solely on fact that attorney simulated client's endorsement on check pursuant to power of attorney before depositing check in CTA].)

IV. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)¹⁴ Similarly, Karnazes has the same burden to prove mitigation. (Std. 1.2(e).)

A. Five Factors in Aggravation

The hearing judge found four aggravating factors: (1) a prior record of discipline; (2) multiple acts of misconduct; (3) significant client harm; and (4) indifference. With the exception of her prior record of discipline, Karnazes argues there was no evidence of any aggravation. We conclude the record sufficiently establishes each aggravating factor the hearing judge found and, in addition, we find that Karnazes's misconduct was surrounded by overreaching.

1. Prior Record of Discipline (Std. 1.2(b)(i))

On January 28, 2010, a hearing judge ordered Karnazes publicly reprovved after finding that her misdemeanor conviction for violating California Penal Code section 602, subdivision (o) (trespass) involved misconduct warranting discipline. (*In the Matter of Karnazes* (January 28, 2010) Cal. State Bar Ct. No. 08-C-12723.) Karnazes's conviction stemmed from criminal conduct she committed at two stores. In November 2007, Karnazes entered a Sears department store in San Mateo, California, wearing a Santa Claus cap, a large black purse, and snow boots. She placed several items from the electronics department in her purse, as well as a digital camera, memory card, and audio splitter from the camera department and a pair of gloves from

¹⁴ All further references to standards are to this source.

the hardware department. Karnazes bought some items in the hardware department but left the store without paying for the merchandise in her purse. A Sears loss prevention employee stopped Karnazes at her car and escorted her back to the store's security office. There, the employee recovered the unpurchased merchandise from Karnazes's purse. When a San Mateo police officer arrived, Karnazes became agitated. She told the officer she was going to kill herself because she could lose her license to practice law over the incident. Karnazes was taken to a hospital for observation.

The next month, Karnazes entered a Radio Shack store in Foster City, California. The store manager observed her leave the store with a color printer cartridge that she had not purchased. Then Karnazes collided with another vehicle when she tried to drive away from the store. When the police arrived, an officer asked Karnazes to give him the cartridge, which she retrieved from her car.

The district attorney charged Karnazes with a misdemeanor violation of Penal Code section 487, subdivision (a) (grand theft) in the Sears matter and a misdemeanor violation of Penal Code sections 484/490.5 (theft from a merchant) in the Radio Shack matter. In both cases, Karnazes pled not guilty by reason of insanity. Two court-appointed doctors evaluated her and concluded she was sane at the time she took the merchandise. In October 2008, the district attorney amended the charges to include a misdemeanor trespass violation. Karnazes pled nolo contendere to the trespass charge and the theft charges were dismissed.

In the prior discipline matter, Karnazes was afforded significant weight in mitigation for her 23 years of discipline-free practice. In addition, the hearing judge found that Karnazes suffered from "severe major depression and post-traumatic stress disorder [which] were directly responsible for the . . . misconduct." The judge concluded that Karnazes "has since managed to successfully treat and control her depression and post-traumatic stress disorder through

psychotherapy and antidepressants.” The State Bar did not prove any factors in aggravation. The public reproof was effective March 5, 2010, requiring Karnazes to comply with discipline conditions for two years. We consider this prior record a serious aggravating factor, especially since she was on disciplinary probation during much of the time she committed the current misconduct.

2. Multiple Acts of Misconduct (Std. 1.2(b)(ii))

Karnazes committed multiple trust account violations, failed to withdraw from representing Zachary when it was mandatory for her to do so, and improperly sought an agreement that Zachary not cooperate with the State Bar’s investigation. Her misconduct was widespread and spanned over three years. These violations sufficiently prove multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered aggravating as multiple acts of misconduct].)

3. Significant Client Harm (Std. 1.2(b)(iv))

When Zachary first requested his settlement funds in 2009, he had been unemployed for over a year and lived only on his disability payments. He could not afford a telephone and was forced to seek free meals at a soup kitchen. He informed Karnazes he desperately needed his funds to pay for basic necessities such as food, housing, clothing, and medical treatment. Despite his pleas, she did not promptly release the funds. Her delay significantly harmed Zachary. We give this aggravating factor significant weight due to the depth of harm she caused her son. (See *Bates v. State Bar, supra*, 51 Cal.3d at pp. 1058, 1061 [attorney’s misappropriation of \$1,229.75 “was especially harmful” because amount was significant and meant to reimburse client for personal injuries].)

4. Indifference/Lack of Remorse (Std. 1.2(b)(v))

The hearing judge found Karnazes to be indifferent toward rectification or atonement for the consequences of her misconduct for two reasons: (1) she refused to recognize the harm she caused Zachary; and (2) she showed no insight into the wrongfulness of her actions. We agree.

Karnazes continues to deny that her actions harmed Zachary. This contention wholly ignores the record. The evidence adduced at trial overwhelmingly established that he suffered significant harm—financially, physically, and emotionally. Her refusal to acknowledge this damage reflects her indifference.

Karnazes also has repeatedly shown a lack of insight into her wrongdoing. She equated placing a \$63,000 cashier's check in a safe with maintaining funds in her CTA. At trial, she questioned the validity of the prohibition against commingling. And on appeal, she asserts that she “was honoring her fiduciary duty” of loyalty to Zachary by seeking the conservatorship while remaining his attorney. We also find that Karnazes displayed indifference when she paid Zachary just four days before trial and well after disciplinary proceedings commenced. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 700 [payment of restitution only after pressure of disciplinary proceedings demonstrates lack of insight into misconduct].) Karnazes's adamant refusal to accept the impropriety of her actions causes us grave concern that her misconduct will continue. Therefore, we give significant weight to this factor.

5. Overreaching (Std. 1.2(b)(iii))

Karnazes was so focused on controlling her son that she was blinded to the larger issue of her overreaching. Ignoring his desperate need for his funds, Karnazes utilized her position as Zachary's attorney to escalate the pressure she applied on him over a three-year period when she continued to refuse payment, and ultimately attempted to take control by becoming conservator

of his estate. This conduct illustrates the danger of an attorney, trained in persuasion and in a superior position to exert influence, who uses such skills and circumstances to force a client—in this case, her son—to bow to her wishes. Karnazes’s abuse of her position as an attorney to gain control over Zachary is troubling, and clearly demonstrates overreaching. (See, e.g., *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 284 [attorney overreached when he profited from concealment of material information]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 244 [exploitation of superior knowledge to detriment of client constituted moral turpitude].)

B. One Factor in Mitigation

We adopt the hearing judge’s sole mitigation finding—Karnazes’s evidence of good character. However, like the hearing judge, we afford this factor moderate weight. In her opening brief, Karnazes contests only the hearing judge’s failure to afford her credit for good faith, which we decline to consider in mitigation.¹⁵

1. Modest Evidence of Good Character (Std. 1.2(e)(vi))

Karnazes presented ten character witnesses consisting of an attorney, doctor, nonattorney Social Security representative, and seven former clients. These witnesses testified that Karnazes is a competent lawyer and concerned parent. However, few witnesses offered their opinion of her honesty or integrity or her general reputation in the community. Furthermore, most of the witnesses had only superficial knowledge of the charges levied against her. (Std. 1.2(e)(vi) [witnesses must be aware of “full extent” of alleged misconduct].) Therefore, we assign only modest weight to this factor in mitigation.

¹⁵ In her rebuttal brief, however, Karnazes sought additional mitigation for pro bono work, financial difficulties, mental health issues, and changes in her office management. We decline to consider these additional mitigating factors since she waived these issues when she chose not to raise them in her opening brief. (Rules Proc. of State Bar, rule 5.152(C).)

2. No Mitigation for Good Faith (Std. 1.2(e)(ii))

Karnazes contends she acted in good faith when she refused to distribute Zachary's funds so she could establish either a special needs trust or conservatorship. "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. [Citations.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Even if Karnazes's belief were honestly held, it was unreasonable for her to pursue the conservatorship while representing Zachary in the Moore lawsuit or to withhold his funds after the court denied her petition with prejudice. The hearing judge properly denied mitigation for good faith.

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 professional standards for attorneys. (Std. 1.3.) 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.) We begin with the standards, which our Supreme Court instructs us to follow whenever possible. (*Id.* at p. 267, fn. 11.)

Standard 2.2(a) is the most severe sanction applicable to Karnazes's misconduct.¹⁶ It calls for disbarment when an attorney willfully misappropriates entrusted funds. If the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, a minimum one-year actual suspension may be imposed in lieu of disbarment. The

¹⁶ Standard 1.6(a) directs that when multiple sanctions apply, the one imposed shall be the most severe. These standards also apply to Karnazes's misconduct: 2.2(b) (three-month suspension for commingling, failing to account, or failing to maintain records), 2.3 (actual suspension or disbarment for committing acts of moral turpitude), and 2.10 (reproval or suspension for failing to withdraw when mandatory and seeking agreement not to cooperate).

facts in this case do not support deviating from the disbarment presumption under the standard. First, the \$57,496.15 Karnazes refused to distribute, and the \$3,988.18 she still owes Zachary, are significant amounts. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [misappropriation of \$1,355.75 not insignificant].) Second, the mitigation is not predominantly compelling. To the contrary, the aggravation significantly outweighs the mitigation.

Karnazes's prior record of discipline discloses that she has been engaging in dishonest acts since 2007. She knew as early as 2008 that her law license was in jeopardy when her record of conviction was referred to the State Bar Court. Rather than conform to ethical standards, she continued to engage in serious misconduct in 2009 while representing her son. And her misconduct continued during the time she was on probation for her prior discipline record. We also weigh heavily Karnazes's indifference to the significant harm she caused her son, her untimely restitution, and her refusal to acknowledge the wrongfulness of her actions. These aggravating factors establish a high risk that Karnazes may engage in other professional misconduct if permitted to continue practicing law. Under such circumstances, disbarment has been the usual discipline, is clearly called for in this case, and is supported by comparable case law. (See *Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129 [disbarment where attorney misappropriated \$7,000 and posed risk of future misconduct due to indifference and lack of candor]; *Harford v. State Bar* (1990) 52 Cal.3d 93, 96-97, 102-103 [disbarment where attorney misappropriated \$32,500 from three clients, had one prior private reproof, and paid untimely restitution or no restitution at all]; *Grim v. State Bar* (1991) 53 Cal.3d 21, 30, 32, 36 [disbarment where attorney misappropriated \$5,546 and had one prior private reproof but took nearly three years to pay restitution and only under pressure of disciplinary proceedings].)

VI. RECOMMENDATION

We therefore recommend that Karnazes be disbarred and that her name be stricken from the roll of attorneys licensed to practice in this state. We also recommend that she be ordered to make restitution to Zachary Karnazes (or the Client Security Fund if it has paid him and any restitution owed to the Client Security Fund shall be enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)) in the amount of \$3,988.18 plus ten percent interest per year from June 21, 2012. We further recommend that she be ordered to comply with the provisions of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order in this matter. Finally, we recommend that the State Bar be awarded costs in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

VII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, she properly ordered Karnazes to be involuntarily enrolled as an inactive member of the State Bar as required by section 6007, subdivision (c)(4). The hearing judge's order became effective on October 25, 2012, and Karnazes has been on involuntary inactive enrollment since that time, and she will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.