PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Nos. 16-O-13110 (16-O-13469; 16-O-14102); 17-O-07253 (Consolidated)
LISA LYNN MAKI,	)	
State Bar No. 158987.	)	OPINION AND ORDER

In her first disciplinary case, respondent Lisa Lynn Maki is charged with misappropriating nearly $300,000 from two clients, failing to maintain or pay client trust funds, and issuing non-sufficient funds (NSF) checks from her client trust account (CTA). After the Office of Chief Trial Counsel of the State Bar (OCTC) filed charges, Maki wrote a $100,000 NSF check from her CTA to a third client. Additional charges were filed, and the cases were consolidated for trial. The hearing judge found Maki culpable of all charges and recommended disbarment.

Maki appeals, arguing that suspension, and not disbarment, is appropriate because her mental health difficulties were responsible for her misconduct. OCTC does not appeal and supports the hearing judge's decision.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the judge's culpability, discipline, and most aggravating and mitigating findings. Maki committed acts of moral turpitude, significantly harmed her clients, and did not prove compelling mitigation. Disbarment is therefore appropriate under our disciplinary standards and comparable case law to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on September 22, 2017, alleging seven counts of misconduct (Nos. 16-O-13110 (16-O-13469; 16-O-14102)). A second NDC was filed on May 3, 2018, alleging two additional counts (No. 17-O-07253). A one-day trial took place on the consolidated NDCs on May 23, 2018. Before the trial, on May 21, 2018, the parties filed an extensive pretrial Stipulation as to Facts, Conclusions of Law, and Admission of Documents (Stipulation), in which Maki conceded culpability for four counts of moral turpitude (two counts of misappropriation and two counts of issuing NSF checks), in violation of Business and Professions Code section 6106.[1] Given Maki's concession to the most serious charges at trial and on review, our primary focus is to determine whether the remaining charges are duplicative, as Maki argues, and the appropriate level of discipline given the mitigating and aggravating circumstances.

II. FACTUAL BACKGROUND[2]

Maki was admitted to practice law in California on June 8, 1992, and has no prior discipline. The record establishes that she is a well-respected and accomplished consumer advocate attorney. We detail the facts below to provide a full history of the requests Maki's clients made for their settlement funds and Maki's responses.

A. MANGHILLIS MATTER (NO. 16-O-13110)

In July 2014, Jane Manghillis hired Maki to file a lawsuit, which was settled for $287,500 in February 2016. Maki received a check for this amount, payable to her, and deposited it into her CTA on March 8, 2016. Manghillis was entitled to $149,971.90. Maki did not pay

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

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

Manghillis in full for four months. Maki stipulated that she transferred the money to her general account to pay personal expenses.[3]

During those months, Manghillis repeatedly asked Maki for her money. On March 21, 2016, she emailed Maki explaining that if she did not receive her distribution, she would have to withdraw money from her IRA to survive. When Maki did not respond, Manghillis emailed again on March 25 and 29, noting that five weeks had passed since she signed the release for the settlement check to be sent to Maki within two weeks. Manghillis told Maki that her financial situation was "pretty desperate."[4] Maki did not pay.[5]

On April 6, Manghillis again emailed Maki, asked for her money, and reminded Maki that this was her seventh attempt to obtain a response. Later that day, Maki emailed Manghillis that she would send the funds the next day on April 7. Maki did not send the money and on April 7, her general account balance was $2,575.33, while her CTA held no money.

On April 10, Manghillis emailed Maki to inform her that the failure to pay was causing Manghillis anxiety and fear. She stated that if she did not get an answer by noon the next day, she would have to withdraw money from her IRA to survive. Maki replied the following morning that she was in court in Riverside, could give Manghillis some money through PayPal that day, and would send the remaining amount in two days. But Maki failed to send any money; her general account had approximately $1,000 and her CTA contained no money.

On the morning of April 13, Manghillis emailed Maki, requested her settlement funds, and described her emotional state:

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[3] Maki's bank records show expenditures of the settlement money on multiple occasions for personal expenses such as payroll, insurance, repairs, mortgage payments, etc.

[4] Manghillis also disclosed that she needed the money to avoid paying additional taxes on her IRA withdrawal and so that her tax preparer could finalize her taxes and make an IRA deposit.

[5] On March 31, her CTA balance was $412.50 and the general account balance was $964.26.

> There is no more time to delay. I am struggling financially as well as with the emotional anxiety of continued stress. I need to go to bed tonight knowing it's all completely over. I can't handle one more day of the stress. [¶] PLEASE get this done today. I will be fretting over this with each passing minute until I know it's done . . . that's anxiety.[6]

Approximately 30 minutes later, Maki responded: "Yes thx will send after court I'm in riverside now." At 3:44 p.m., Manghillis emailed Maki, and at 4:47 p.m., Maki responded: "I had to do in segments otherwise I have to key in each which is impossible via mobile during the day."[7] Manghillis continually checked her account, but Maki did not send any money.

The next morning, on April 14, Manghillis emailed Maki stating that she was "in a desperate financial situation with my only way out being to get my settlement money now or make it even worse for the long term."[8] Maki transferred $9,500 to Manghillis's account that day. Manghillis emailed Maki explaining that this amount did not help her and made it impossible to resolve her taxes. She demanded full payment: "I simply cannot delay receipt of my full settlement for even one more day." Maki responded by transferring another $9,500 to Manghillis. On April 16, Manghillis again demanded the full amount owed her. On April 19, she emailed that she would be filing a complaint with the State Bar.[9]

The State Bar sent Maki a letter on May 26 regarding Manghillis's complaint. On June 22, Maki paid Manghillis $100,000 from her CTA and $3,000 from her general account as interest for the delay in payment. On June 23, Maki paid Manghillis the remaining $2,741.90 of the principal from her CTA.

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[6] We note that the quoted material throughout this opinion contains errors, which are intentionally quoted.

[7] At this time, her CTA had a balance of $3,500 and the general account had $89,831.10.

[8] The CTA balance remained the same and the general account had diminished to $53,856.66 on this date.

[9] During April, Maki made five $9,500 wire payments from her general account to Manghillis for a total of $47,500.

B. CALDERWOOD MATTER (NO. 16-O-14102)

Maki represented Andrea Calderwood in a lawsuit that settled for $275,000. Maki received a check for this amount, payable to her, and deposited it into her CTA on February 26, 2016. Calderwood was entitled to receive $147,011.44. As in the Manghillis case, Maki did not pay Calderwood for four months, until the end of June 2016. Instead, Maki stipulated that she transferred the money to her general account to pay personal expenses, including payroll expenses.

Also like Manghillis, Calderwood made numerous pleas for her settlement funds, which Maki did not honor. On March 28, a month after the funds had been deposited, Maki promised to calculate the disbursements the next day. Calderwood replied, asking when she could expect the money as she was having "financial difficulty."[10] On March 29, Maki offered to pay Calderwood some money by PayPal, but did not do so. On April 20, Calderwood again requested her money, stating that she was "running out of options." She declared: "Financially, I really need the distribution." Maki responded that she would email the proposed disbursements that day and send money by PayPal. After 11:00 p.m., Calderwood had not received the disbursements so she emailed Maki requesting payment by the end of the week. Maki did not pay.

On April 21, Maki emailed Calderwood the proposed costs disbursements. Calderwood did not receive payment by April 27, so she emailed Maki again. On April 29, a paralegal from Maki's office emailed Calderwood for her bank routing numbers for Maki to wire the money that day. Calderwood provided the information, but Maki did not send the money.

On May 2, Calderwood again inquired about the transfer. She received an email from the paralegal asking for the routing information that Calderwood had provided the prior week. On May 3, Calderwood emailed Maki asking if the transfer would be done that day, adding, "I've

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[10] Calderwood testified that the delay in payment (1) forced her to list her house for rent on Airbnb and get a studio apartment, (2) incur credit card debt to make ends meet though she had never had a credit card, and (3) suffer "constant panic and worry" about her finances.

put my rent check in the mail and it would really help." On May 4 and 6, Calderwood sent emails asking for updates. When she did not receive a response, she sent another email detailing the numerous times she had contacted Maki about the funds. She stated: "What else can I do besides file a complaint? Should I come in person? I'll do anything." The paralegal replied, "Ms. Maki has notified me that the payment shows pending on her account. If it doesn't clear this weekend, she may have to cut you a check next week." Calderwood responded that she would keep an eye on her account. In fact, Maki had not transferred the funds.[11]

On Monday, May 9, Calderwood contacted Maki stating that she still had not received the funds and that "I absolutely need the payment immediately." She followed up the next day by phone and by email. On Tuesday, Maki responded: "Sorry been in bed sick all day this will all be cleared by Thursday I have to go to bank tomorrow." On Thursday, Maki sent Calderwood an email with the subject line: "funding will hit this afternoon after 1pm or friday before 1pm my apologies." No transfer was made.

On Monday, May 16, Calderwood again inquired about her money, and indicated that she would come to the office the next day. On Tuesday, she emailed asking what time Maki would be there, but the paralegal said that Maki would not be in. On May 20, Maki transferred $2,000 to Calderwood's account. Calderwood responded by email, refusing the partial payment and demanding all of her funds. She asked if her money had been mishandled, to which Maki responded later that day:

> You are correct I have messed everything up. I am doing everything I can to get your money to you but it will not be by midnight tonight. I am not in the office and will not be next week either. I will get you your money next week. I understand that I owe it to you and I will abide by this. There is nothing my office staff can do. I have received your message and will do all in my power to comply. I again am very, very sorry.

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[11] On this date, Maki's CTA had a balance of $0 and the general account balance was $6,801.62.

Calderwood asked for immediate payment and said: "Next week is too late as I will be careless and homeless." She emailed again and asked for an explanation. Maki responded with the exact same message from her previous email.

On Monday, May 23, Calderwood sent two emails asking about the settlement funds. On May 26, she emailed that she was bringing her completed complaint to the State Bar the next day if the funds were not transferred by midnight. She continued: "The funds were mishandled, which is acknowledged in writing more than once. This is serious and can be cause for being disbarred and I'm surprised it isn't being taken seriously." The paralegal responded a few hours later that Maki was in the hospital. Maki was not in the hospital.

On June 29, Calderwood sent another email to Maki. She stated: "I'm really struggling financially. I have no idea what I'm gonna do. I'm about to lose everything (as I've repeatedly explained), if that means anything at all. Please please let me know ASAP what the plan is. I'll even drive to someone's office to pick up a check." Maki then paid Calderwood $147,011.44 from her CTA on June 30, 2016.

C. NSF CHECKS FROM APRIL 2016 (NO. 16-O-13469)

In a matter unrelated to Manghillis or Calderwood, a check for $5,000 was presented for payment from Maki's CTA on April 4, 2016. The balance was $2,750. The bank honored the check, resulting in a negative CTA balance of $2,250. On April 5, another check for $2,585.59 was presented for payment from Maki's CTA. Due to the negative balance of $2,250, the bank returned the check unpaid.

D. POMERANTZ MATTER (NO. 17-O-07253)

After the first NDC was filed on September 22, 2017, Maki committed further trust fund violations. On October 13, 2017, she received a settlement check for $150,000 on behalf of her

client, Ron Pomerantz, who was entitled to receive $100,000. After Maki deposited the check into her CTA, the balance was $180,896.99.

On October 16, 2017, Maki made five transfers from her CTA to her general account totaling $100,000, which left $80,896.99 in her CTA. On October 19, Maki issued a check to Pomerantz for $100,000 from her general account, which had fallen to $1,322.92 by the end of that day. Pomerantz did not cash the check; Maki testified she believed that he did not receive it.

On or before November 20, 2017, Maki issued Pomerantz another $100,000 check, this time from her CTA, and post-dated it for November 22. Pomerantz attempted to deposit it on November 20, but Maki's bank returned it on November 21 for insufficient funds. The CTA balance on November 21 was $3,500 and on November 30 was $0.

On December 4, 2017, nearly two months after receiving the settlement check, Maki paid Pomerantz $55,000 through wire transfer from her general account. The following day, she paid him another $50,000 by the same means.[12]

III. MAKI IS CULPABLE ON ALL COUNTS[13]

The first NDC charged Maki as follows: count one—moral turpitude for misappropriating $149,971.90 from Manghillis, in violation of section 6106;[14] count two—failure to maintain those funds in trust, in violation of rule 4-100(A) of the Rules of Professional Conduct;[15] count three—

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[12] Maki transferred $105,000 to Pomerantz, $5,000 of which she described as a "courtesy" to compensate for the delay and inconvenience.

[13] Although the hearing judge discussed Maki's bank records from December 2015, we do not consider them because the earliest charged misconduct began in February 2016.

[14] Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

[15] All further references to rules are to the Rules of Professional Conduct that were in effect from September 14, 1992, to October 31, 2018, unless otherwise noted. Rule 4-100(A) provides that funds received by attorneys on behalf of a client must be deposited into a CTA.

failure to pay those funds promptly, in violation of rule 4-100(B)(4);[16] count four—moral turpitude for issuing two NSF checks in April 2016, in violation of section 6106; count five—moral turpitude for misappropriating $147,011.44 from Calderwood, in violation of section 6106; count six—failure to maintain those funds in trust, in violation of rule 4-100(A); and count seven—failure to pay those funds promptly, in violation of rule 4-100(B)(4). The second NDC charged Maki as follows: count one—moral turpitude for issuance of a $100,000 NSF check to Pomerantz, in violation of section 6106; and count two—failure to maintain Pomerantz's $100,000 in trust, in violation of rule 4-100(A).

Maki stipulated that she was culpable of the following four violations: misappropriation involving moral turpitude in the Manghillis and Calderwood matters (counts one and five of first NDC) and issuing checks without sufficient funds involving moral turpitude (count four of first NDC and count one of second NDC). The hearing judge found her culpable of these stipulated violations, and we find that the record supports them.

IV. MAKI'S REQUEST TO DISMISS COUNTS AS DUPLICATIVE DENIED

The hearing judge found Maki culpable of the remaining charges for failing to maintain funds in trust for Manghillis and Calderwood (counts two and six of first NDC); failing to promptly pay client funds to Manghillis and Calderwood (counts three and seven of first NDC); and failing to maintain Pomerantz's funds in trust (count two of the second NDC). Maki challenges the judge's finding for these five counts, asserting that they should be dismissed as duplicative of the moral turpitude charges. We reject her argument, as analyzed below.

Maki argues for dismissal of the rule 4-100(A) charges (failure to maintain funds in trust), citing to *In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464, 472.

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[16] Rule 4-100(B)(4) provided that attorneys must "[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the member which the client is entitled to receive."

There, we dismissed a section 6068, subdivision (d), charge (seeking to mislead a judge) as duplicative of a section 6106 moral turpitude charge for misrepresentation. But more recently, *In the Matter of Moriarty*, (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520, we did not dismiss a section 6068, subdivision (d), charge where the same intentional misconduct proved culpability for a violation of section 6106 (moral turpitude for misrepresentation). Instead, we viewed it as a single offense involving moral turpitude and assigned no additional weight to the duplicative charge in determining discipline. *Moriarty* is guiding because such duplicative charges that are not dismissed may have deterrent and educational effects for attorneys and the public. An attorney should be held accountable for all misconduct to maintain the highest professional standards and preserve the public's confidence in the legal profession. Maki is not prejudiced as we do not consider the duplicative rule 4-100(A) charges in determining discipline.

Next, we agree with the hearing judge that Maki's violation of rule 4-100(B)(4) for failing to make timely disbursements of the settlement proceeds to Manghillis and Calderwood was related to, but not duplicative of, the moral turpitude charges. Failing to promptly pay clients for months, despite their repeated requests, involves conduct different from that alleged in the misappropriation charges. (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 504 [rule 4-100(B)(4) violation for payment delay is separate from violation for rule 4-100(A) and § 6106 misappropriation].) Thus, the rule 4-100(B)(4) charges should not be dismissed.

V. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[17] requires OCTC to establish aggravating circumstances

[17] Further references to standards are to this source.

by clear and convincing evidence.[18] Standard 1.6 requires Maki to meet the same burden to prove mitigation.

A. AGGRAVATION[19]

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

The hearing judge found Maki's multiple violations to be an aggravating factor. Maki does not challenge this finding, and we assign moderate weight. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

2. Significant Harm to Clients (Std. 1.5(j))

The hearing judge found that Maki's misconduct caused significant financial and emotional harm to Manghillis and Calderwood. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) As detailed in the facts, Maki harmed Manghillis and Calderwood by depriving them of their settlement funds when they were financially desperate.

Maki concedes her clients were harmed but contends that the harm was not significant enough to constitute aggravation. She argues that her clients' emotional harm was attributable to the loss of employment underlying their lawsuits, that she disbursed a partial payment of $47,500 to Manghillis within five weeks of receiving the settlement funds, and that overall she paid restitution relatively quickly and with additional remuneration. These arguments fail. Maki caused harm, as previously detailed, when she failed to promptly pay her clients even though they essentially begged her for their money due to desperate financial circumstances. (*In the*

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[18] 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.)

[19] We do not assign additional aggravation under standard 1.5(d) for dishonesty to her clients in delaying payment as we considered those facts in determining culpability for Maki's intentional misappropriation of client monies and her failure to promptly pay them.

Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [substantial harm where attorney's misconduct deprived client of funds at time of desperate need]; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 413 [significant client harm for six-month delay in distributing $5,618 in medical malpractice settlement proceeds].) We find that the harm Maki caused her clients warrants substantial aggravation.

B. MITIGATION

1. No Record of Prior Discipline (Std. 1.6(a))

The hearing judge "substantially reduced" mitigation for Maki's 24 years of discipline-free practice because her misconduct was "extremely serious" and not aberrational. The judge cited *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029, and relied on a former version of standard 1.6(a) that included an analysis of the seriousness of an attorney's misconduct. Current standard 1.6(a) offers mitigation where there is an "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur."

We agree with Maki that the hearing judge applied the wrong standard. But the judge was nonetheless correct in diminishing the mitigating weight. Maki's misconduct did not occur during a single period of aberrant behavior. And after disciplinary charges were filed and she claimed her emotional difficulties had stabilized, she committed similar trust account violations in October 2017. Nonetheless, Maki's discipline-free practice is lengthy and deserving of some mitigation for her 24 years of unblemished law practice.

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

Mitigation is available for extreme emotional difficulties if: (1) Maki suffered from them at the time of her misconduct; (2) expert testimony establishes they were directly responsible for the misconduct; and (3) the difficulties no longer pose a risk that Maki will commit future misconduct. The hearing judge assigned no credit for Maki's emotional difficulties because he

found that she did not prove they were directly responsible for her misconduct and, even if they were, no evidence established that she would not commit future misconduct. We agree.

Maki asserts that her misconduct was caused by "an extremely serious mental health crisis resulting from an unexpected adverse reaction to her prescription psychotropic medications that severely impaired her cognitive functioning." She testified she has been treated for bipolar disorder for years and has functioned well after being prescribed medication. She described a manic episode that caused distraction, confusion, and panic during the time of her misconduct in the Caldwell and Manghillis matters (February through June 2016). She does not clearly recall handling the settlement funds, stating it was just "one big mess, one big blur." Her doctor changed her medication, which eventually caused her to be depressed. She testified that during this depression, she did not clearly recall handling Pomerantz's settlement funds. Thereafter, her medications were again changed, and Maki testified she was feeling better and hopeful that her depression and bipolar disorder had stabilized.

Maki's testimony of confusion when she misappropriated funds in 2016 is not consistent with her other actions during this time. As the hearing judge noted, Maki was able to move large amounts of money into and out of her CTA. This action is inconsistent with her testimony that she was unaware of the details and management of her CTA during the relevant times. She also conducted other litigation activities and admitted to Calderwood that she "messed everything up" and was "very, very sorry."

We further find that the expert letters Maki presented at trial were generally summary in nature and did not prove that her mental difficulties caused her misconduct. Those letters included: (1) a June 20, 2016 one-page letter from Maki's treating psychiatrist, David Fogelson, M.D., briefly stating that Maki was "partially disabled due to mental illness" from February 1 to June 19, 2016 (during the time of her misconduct in the Calderwood and Manghillis matters);

(2) a March 7, 2017 one-page letter from Dr. Fogelson asserting that Maki is compliant with therapy, that her inadequate medication may have contributed to her disability from February to June 2016, and that she has been in full remission since July 2016; (3) an April 18, 2017 prelitigation evaluation from Richard S. Sandor, M.D., stating that Maki's judgment was impaired by her bipolar disorder when she misappropriated funds, she made restitution when her condition improved and her judgment returned, and she is now functional;[20] (4) a February 15, 2018 one-page letter from Deborah Finklestein, M.D., Maki's treating physician for four months, stating that Maki's ethical failure was "likely causally related" to cognitive impairment from a side effect of her medication; and (5) a March 20, 2018 one-page letter from Kathleen Mojas, Ph.D., confirming that Maki has attended weekly therapy sessions since October 2017.

That Maki suffers from a bipolar condition is clear. But neither her testimony nor the experts' letters clearly and convincingly established that her condition was directly responsible for her 2016 and 2017 misconduct. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigation credit where attorney failed to establish a causal nexus between emotional difficulties and misconduct].) Like the hearing judge, we assign no mitigation credit for emotional difficulties.

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

Maki's Stipulation is a mitigating circumstance. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) It was extensive as to facts, preserved court time and resources, and acknowledged culpability for the four moral turpitude violations. The hearing judge assigned substantial weight in mitigation for Maki's cooperation, which OCTC does not challenge. "[M]ore extensive weight in mitigation is accorded those who, where appropriate,

[20] The letters from Dr. Fogelson and Dr. Sandor were prepared before Maki committed misconduct in the Pomerantz case in late 2017. Thus, we do not know what the doctors' opinions would be if they knew Maki mishandled her CTA and wrote a $100,000 NSF check after they had pronounced she was fully recovered from her 2016 manic episode.

willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) We agree with the judge's finding that Maki is entitled to substantial mitigation for her cooperation.

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

Maki is entitled to mitigation if she establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge "reduced dramatically" the weight accorded most of Maki's character references given their lack of full awareness of her misconduct. We agree and assign nominal weight.

Fourteen character references—including seven attorneys, two family members, three friends, an employee, and one former client—presented letters and declarations attesting to Maki's exceptional character. These references, representing a broad spectrum of the community, described Maki as compassionate, honest, dedicated, ethical, generous, and highly respected. The seven attorneys included peers and colleagues with impressive backgrounds and prominent positions in the legal community. One attorney also testified on Maki's behalf. All seven attorneys affirmed her exemplary moral character, record of excellent work and service, and strong commitment to the legal profession. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].)

However, the character references do not demonstrate awareness of the extent of Maki's misconduct, as the standard requires. The NDCs in this proceeding were filed on September 22, 2017, and May 3, 2018. The letters and declarations, however, are dated between April and November 2017, most of which preceded the filing of formal charges against Maki and were prepared before Maki committed the misconduct in the Pomerantz matter in late 2017. (*In re*

Aquino (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].) Like the hearing judge, we find that the mitigating weight afforded Maki's good character evidence is diminished by the witnesses' lack of full knowledge of the charged misconduct. We therefore assign minimal mitigating weight.

5. Pro Bono Work and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) We assign substantial weight in mitigation for Maki's pro bono work and community service. Her character references detailed her ongoing commitment. She has served on the boards of various foundations and bar associations, including the Legal Aid Foundation of Los Angeles, the Clare Foundation, the Beverly Hills Bar Association, and Consumer Attorneys of California. She also served as president of Consumer Attorneys Association of Los Angeles and served on its executive committee for nine years during which she implemented mentoring and volunteer initiatives. Maki has supported several Los Angeles-based charitable organizations by contributing time and financial support. She was also honored by Imagine LA as a recipient of its highest award for her commendable charitable efforts. Maki's proven dedication to pro bono work and community service deserves substantial mitigation credit. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

6. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is "made without the threat or force of administrative, disciplinary, civil or criminal proceedings." (Std. 1.6(j).) The hearing judge did not assign mitigation for restitution, and we agree. Maki argues she is entitled to credit because she repaid the misappropriated funds to Manghillis and Calderwood before disciplinary charges were filed. But standard 1.6(j) provides for mitigation where restitution is paid without the threat

of disciplinary proceedings, not simply before disciplinary charges are filed. Manghillis filed a State Bar complaint and Calderwood threatened to do so before Maki paid her clients in full. Thus, Maki is not entitled to mitigation credit for paying restitution. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution paid under threat or force of disciplinary proceedings does not have any mitigating effect].)[21]

VI. 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. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Standard 2.1(a) applies as it specifically deals with intentional misappropriation. It provides that disbarment is the presumed sanction for such misconduct "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[22]

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[21] The hearing judge noted that Maki paid Manghillis and Calderwood with money that she borrowed from a colleague pursuant to a promissory note. We do not consider this fact in our mitigation analysis since the record did not establish that payment on the note is overdue.

[22] Standard 2.11 also applies and provides that disbarment or suspension is the presumed sanction for an act of moral turpitude, depending on, among other things, the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim. Since the most severe discipline is found in standard 2.1(a), we focus our analysis there. (See std. 1.7(a) [if attorney commits two or more acts of misconduct and standards specify different sanctions for each act, most severe sanction must be imposed].)

Maki intentionally misappropriated a significant amount of money, nearly $300,000. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant].) And the mitigation we assigned to her lack of prior record, cooperation, good character, and community service is not compelling nor does it clearly predominate over her serious misconduct in three client matters, multiple acts of misconduct, and significant client harm in aggravation. (See *Grim v. State Bar* (1991) 53 Cal.3d 21, 33, 35–36 [attorney disbarred for willful misappropriation of $5,500 in client funds, despite cooperation and good character evidence attested to by 10 witnesses].)

Maki's misappropriation of client trust funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38), even for a first-time act of misappropriation. (See *Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

In addition, Maki's misconduct was surrounded by dishonesty. When her clients repeatedly asked about their settlement funds, Maki delayed payment by lying, making false assurances, and transferring small amounts of money. All the while, her CTA and general account had insufficient funds, and she knew her clients were experiencing financial and emotional difficulties.

Maki's primary argument—that she is entitled to significant mitigation because her emotional difficulties were directly responsible for her misconduct—is not persuasive. During the four-month payment delay, Maki focused on many tasks without cognitive difficulty. For example, she accepted and deposited settlement funds, transferred them to her general account, used them to pay personal expenses, engaged in other litigation work, repeatedly made detailed excuses for non-payment to her clients, and admitted to Calderwood that she mishandled the

money and had "messed everything up." Further, Maki did not pay the full amount to both clients until they threatened involvement by the State Bar. Moreover, Maki continued to mismanage her CTA even after the first NDC was filed. This continuing misconduct causes concern, and places Maki at serious risk for future misconduct.

The hearing judge properly relied on misappropriation cases for guidance, including *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273. Song misappropriated $112,293 over three years for his personal use. He received substantial mitigation credit for his community service and pro bono work, cooperation with the State Bar, good character, 12 years of discipline-free practice, and payment of restitution. However, like Maki, he did not prove full recovery from the emotional problems he claimed caused his misconduct. Maki attempts to distinguish her misconduct from Song's, arguing her misappropriation lasted for months, not years. We find no distinction because Maki committed additional misconduct even after these proceedings began. Maki also argues that she has accepted responsibility for her actions while Song did not. Though Maki has admitted her misconduct, both she and Song chose personal financial obligations over duties they owed clients. (*Id.* at p. 282.)

Maki argues that disbarment is too severe. She contends the hearing judge relied on distinguishable cases and did not mention the favorable cases she cited in her posttrial brief. There, Maki discussed several misappropriation cases where disbarment was recommended, including: *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 ($20,000); *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 ($40,000); *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 ($29,000); *Chang v. State Bar* (1989) 49 Cal.3d 114 ($7,000); *Read v. State Bar* (1991) 53 Cal.3d 394 ($4,000); and *Kennedy v. State Bar* (1989) 48 Cal.3d 610 ($10,000). Maki asserts these cases merited disbarment because the misappropriations were coupled with significant aggravating factors, little to no mitigation, and other misconduct that Maki did not commit.

Maki also contends that she was always candid and did not mislead her clients, unlike many attorneys in the cases cited. She is incorrect. First, these cases are distinguishable since Maki misappropriated significantly more money. And second, Maki lied to and misled her clients for months, making her dishonesty akin to that found in some of these cases.

Maki also attempts to distinguish her case from *In re Abbott* (1977) 19 Cal.3d 249 and *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, two cases cited by the hearing judge as examples of disbarment for first-time misappropriations. Maki asserts that her misappropriation did not involve lies and deceit, as in *Abbott*, or misrepresentations to clients, as in *Blum*. We have found otherwise. *Abbott* ($30,000) and *Blum* ($55,000) also involved significantly less misappropriation than in Maki's case.

Finally, Maki compares *McKnight v. State Bar* (1991) 53 Cal.3d 1025 to this matter. McKnight was actually suspended for one year and placed on probation for seven years. He had no prior record of discipline, misappropriated $17,000, presented compelling mitigation including his undiagnosed manic-depressive condition, and was not disbarred. (*Id.* at pp. 1037–1039.) We find *McKnight* distinguishable as Maki did not receive mitigation credit for emotional difficulties, failed to prove compelling mitigation, and misappropriated significantly more money.

Despite Maki's request for a suspension of two to three years, we do not recommend a more lenient sanction than disbarment. Past accomplishments do not preclude disbarment when an attorney engages in dishonest behavior and misappropriates client monies. Maki chose to fulfill her personal financial needs over honoring her ethical responsibilities to her clients and continued to mismanage her CTA even after the present case was filed. Many attorneys experience financial and emotional difficulties. "While these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities . . . ." (*In the Matter of Spaith*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 522.) Under the circumstances here, we find no

reason to deviate from the standard that calls for Maki's disbarment. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].)

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Lisa Lynn Maki be disbarred from the practice of law and that her name be stricken from the roll of attorneys admitted to practice law in California.

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

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Lisa Lynn Maki be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective August 24, 2018, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 7, 2019, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED JUNE 7, 2019

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

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

ELLEN ANNE PANSKY
PANSKY MARKLE ATTORNEYS AT LAW
1010 SYCAMORE AVE UNIT 308
S PASADENA, CA 91030 - 6139

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

Alex J. Hackert, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 7, 2019.

Julieta E. Gonzales
Court Specialist
State Bar Court