Case No. S265240

SUPREME COURT OF THE STATE OF CALIFORNIA

GREGORY HARPER et. al.

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent,

PETITION FOR REVIEW

APPEAL FROM A MODIFIED DECISION OF THE REVIEW DEPARTMENT

OF THE STATE BAR COURT OF THE STATE OF CALIFORNIA

ATTORNEY FOR PETITIONER
GREGORY HARPER IN PRO PER
3060 El Cerrito Plaza, Suite 100
El Cerrito, California 94530
Tel: 510.878.8341 Email: ghlaw@pacbell.net

Case No. S265240

SUPREME COURT OF THE STATE OF CALIFORNIA

GREGORY HARPER et. al.

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent,

PETITION FOR REVIEW

APPEAL FROM A MODIFIED DECISION OF THE REVIEW DEPARTMENT

OF THE STATE BAR COURT OF THE STATE OF CALIFORNIA

ATTORNEY FOR PETITIONER
GREGORY HARPER IN PRO PER
3060 El Cerrito Plaza, Suite 100
El Cerrito, California 94530
Tel: 510.878.8341 Email: ghlaw@pacbell.net

TABLE OF CONTENTS **Page**

STATEMENT OF ISSUES PRESENTED.....2

TABLE OF AUTHORITIES.....5

WHY REVIEW SHOULD BE GRANTED.....6

FACTUAL AND PROCEDURAL BACKGROUND.....11

LEGAL DISCUSSION.....12

CONCLUSION.....16

VERIFICATION.....17

CERTIFICATE OF WORD COUNT.....17

STATEMENT OF ISSUES PRESENTED

I. THE STATE BAR REVIEW DEPARTMENT DID NOT RESPOND ADEQUATELY TO THE ORDER FOR REMAND FROM THE CALIFORNIA SUPREME COURT

A. THE REVIEW DEPARTMENT'S RESPONSE OF AN INSUFFICIENT RECORD IS INADEQUATE.

1. The Review Department Denied Petitioner Due Process by refusing to hear his timely filed Motion for Restoration to Active Status before rendering the decision on Remand.

2. The Review Department Abused its Discretion in Refusing to Exercise its Authority to Order that Additional Data be Examined and Provided to Petitioner Regarding Disparate Discipline of Black Male Attorneys.

3. The Review Department Erred in Assuming the Supreme Court's Remand Did not Contemplate the Review Department taking Steps Necessary to Facilitate Substantive Review of Petitioners Disparate Impact Claim Against Black Male Attorneys.

4. A court in addressing an allegation of disparate impact must conduct a disparate impact analysis.

II. DISPARATE IMPACT

A. THE STATE BAR STUDY ON DISCRIMINATION IN THE DISCIPLINARY PROCESS IS ADMISSIBLE AS NEWLY DISCOVERED EVIDENCE SUFFICIENT FOR ADDITIONAL FACTUAL FINDINGS.

1. The State Bar disciplinary process study is prima facie evidence of disparate impact and should have been considered.

2. The State Bar disciplinary study is evidence which should have been provided to the Petitioner during discovery and, is an admission against interest and is admissible as later discovered evidence.

III. THE STATE BAR DISCIPLINARY STUDY SHOULD HAVE BEEN CONSIDERED AS EVIDENCE OF DISPARATE IMPACT

A. THE PETITIONER WAS DENIED DUE PROCESS TO ACCOMPLISH

THE GOAL OF THE SUPREME COURT'S ORDER.

B. THE STATE BAR POSSESSED NEWLY DISCOVERED EVIDENCE WHICH SHOULD HAVE BEEN TURNED OVER TO THE PETITIONER DURING DISCOVERY.

1. The new evidence would have shown Black male attorneys are:

a. Sole practitioners

b. Overwhelmingly not employed by law firms

c. Black clients complain about Black lawyers more than other clients

d. When complained of are subject to more stringent investigations and discipline.

TABLE OF AUTHORITIES **Page**

CASES

US Supreme Court

Mathews v. Eldridge 424 U.S. 319, 333 (1976).....12

Ricci v. DeStefano, 557 U.S. 557 (2009).....13,16

Texas Department of Housing and Community Affairs et. al. v.....15

Inclusive Communities Project, Inc. et.al. 576 U.S. ___ ,135 S. Ct. 2507;
192 L. Ed. 2d 514 (2015)

Watson v Ft. Worth Bank and Trust, 48 US 977 (1988).....13

California Supreme Court

In re Brown 17 Cal.4th 8739 (1998)..... 15

People v Williams 58 Cal. 4th 197(2013).....15

People v Williams 57 Cal.2d 263 (1962)..... 14

California Court of Appeal

Frank v County of Los Angeles, 149 Cal. App. 4th 430(2007).....14

Jumaane v. City of Los Angeles, 241 Cal.App.4th 1390 (2015).....13

Miscellaneous

Report on Disparities in the Discipline System, to Members of 6,7,10
Board of Trustees, Public agenda item 705
Farkas November 19, 2019

Report on Consideration of Recommendations to Implement.....6.7.10
Changes to Address Key Findings of the Disparities in
the Discipline System Study State Bar of California Board of Trustees
Public agenda items 701,702
Robertson, July 16, 2020

WHY REVIEW SHOULD BE GRANTED

Forty six percent (46%) of all Black male attorneys in California have had a state bar complaint made against them contrasted against thirty two percent (32%) for their White counterparts. California is the only state with a state bar court adjudicating complaints against attorneys. Once subject to the state Bar disciplinary system, Black male attorneys are disbarred at a rate of over four times than that of White male attorneys.[1]

Petitioner's State Bar Court trial was held in February, 2019 and resulted in Petitioner's disbarment. Petitioner appealed to the State Bar Review Department who sustained the State Bar Court ruling. However, with the results of a study in hand that was commissioned by the State Bar itself that admitted that Black male attorneys were suffering a "disparate impact," in discipline, the Review Department ignored the study not even acknowledging the Petitioner's disparate claim with a footnote.

This Court directed the State Bar Review Department to address Petitioner's disparate impact claim against Black male Attorneys because they blatantly ignored the claim in their initial decision. The fact that the Review Department simply acted as though the claim was never made is evidence in and of itself of a discipline system that has an

[1] *See Report on Disparities in the Discipline System, to Members of Board of Trustees," Farkas November 19, 2019, Public agenda item 705 and; "Consideration of Recommendations to Implement Changes to Address Key Findings of the Disparities in the Discipline System Study" Robertson, July 16, 2020 Public agenda items 701,702* (Exhibits C and D attached hereto.)

unconstitutional blind spot for the plight of Black Male Attorneys.[2] With the results of a study in hand that was commissioned by the State Bar itself

and admitting that Black male Attorneys were suffering a "disparate impact," the Review Department felt comfortable enough to ignore the Remand directive and not even acknowledge the Petitioner's disparate claim with a footnote.

Petitioner sought relief from this Court and accordingly, his Petition for Review was granted and the case was remanded back to the State Bar Review Department to address Petitioner's disparate impact claim it ignored in its initial decision.

The empirical facts from this study show that once subject to the State Bar disciplinary system, Black male attorneys are disbarred at a rate of over four times than that of White male attorneys.[3]

In this case, the Petitioner's State Bar Court trial was concluded prior to September 2019, when the study findings were released to the Board of Governors of the State Bar of California. Indeed, this "new evidence" surfaced prior to the instant petition to the State Bar Review Department and included in the petition papers. With this new evidence in hand, the State Bar Review Department should have remanded the case back to State Bar Court, exercising its power to administer justice in a manner consistent with this State's commitment to racial equality, avoiding an inference of bias and impropriety. Instead, the Review Department proceeded as if there was nothing to see.

---

2 Farkas and Robertson supra

[3]Farkas and Robertson supra

However, this Court was vigilant, recognized the affront, and ordered the Review Department to address the Petitioner's claim, a claim supported by the State Bar's own study. Notwithstanding being given a second chance to address this serious claim in the midst of unprecedented acknowledgment of the effects of systemic racism in America, the State Bar Review Department took the position that this Court was not ordering it to address the Petitioner's substantive claims, which could have only been addressed by obtaining the additional data that the State Bar Study identified.

More telling is the Review Department's ignoring Petitioner's Motion for Restoration to Active Status to address and argue his position as to why the remand required that he be able to enhance and/or augment the record after being provided with data. (See motion attached as Exhibit B). This motion was calendared by the Review Department prior to the Review Department rendering its further decision.

However the Review Department rendered a decision before giving the Petitioner an opportunity to present and argue the issue. The Review Department had the power to order further discovery or remand the case back to State Bar Court for further factual findings based on new evidence stemming from the study. Again, faced with the Petitioner's legitimate and rational claims, they were ignored.

The State Bar Review Department took the position that this Court was not ordering it to address the Petitioner's substantive claims, which could have only been addressed by obtaining the additional data that the State Bar Study identified. This, in

other arenas would justify a claim of "pattern and practice" of ignoring claims of racial bias of which the State Bar is charged with preventing.

The Petitioner's Motion for Restoration to Active Status sought additional data to also shed light on the apparent reluctance of the Review Department to address claims of racial disparity, and a connection between bias in State Bar disciplinary decisions as to Black Male Attorneys.

This Court should either grant review of this petition or remand with further instructions consistent with the initial remand that sought a substantive inquiry into Petitioner's claims of racially disparate impact, identified by the State Bar itself.

The California Supreme Court ruled 7-0 en banc to grant the Petition remanding it to the review department to address the Petitioner's unaddressed claim of disparate impact. (See Exhibit E Remand Order.) The review department subsequently issued a modified order with an unsupported conclusory statement that there is no disparate impact relative to the Petitioner's discipline.[4] The Petitioner also filed a motion to address the need for a disparate impact analysis by the state bar court to comply with the remand order which was denied as being moot.

Notwithstanding, pursuant to the recommendations of the initial study to address disparate impact, disparate treatment and discipline of Black male attorneys the state bar commissioned further studies by Dr. Christopher Robertson of Boston University and the

[4]See Exhibit B September 25, 2020 Modified Order

University of Arizona. The additional studies further acknowledged problems with how complaints are handled especially as they relate to Black male attorneys. The studies articulated particular issues with attorney client trust account (IOLTA) complaints and disparities when a Black attorney is involved.

Additionally, the two studies opined the use of prior complaints over five (5) years old was inappropriate and called for a less restrictive means to achieve the purpose of the state bar disciplinary system even calling for in the instance of a trust account complaint the issuance of a warning letter instead of prosecution.[5] The state bar accepted those findings and called for further study and changes in the disciplinary system.[6]

Review should be granted because the State Bar Review Department did not comply with the California Supreme Court's remand order. After the studies were presented to the State Bar it had prima facie evidence of disparate impact. Without a disparate impact analysis the review department's unsupported conclusory statement that no disparate impact exists is inadequate to address the Petitioner's claim that the discipline recommended is because of disparate impact.

Once the data supporting disparate impact was available to the state bar it was incumbent to either have further study for a proper disparate impact analysis. Here, the State Bar is awaiting further analysis for more changes regarding disciplinary policy.

Notwithstanding the fact evidence was presented to support a prima facie showing

[5]Farkas and Robertson supra recommendations.
[6] Id

of disparate impact the review department was compelled to conduct a disparate impact analysis. Such analysis is required when a party presents sufficient data, usually statistical analysis showing the disparate impact on a protected group. To address disparate impact, a court must employ a disparate impact analysis often necessarily reviewing data supplied from one or more parties to the case. Here, the State Bar possessed data which should have been turned over to the Petitioner in pre trial discovery and at minimum, should have been considered by the review department after it was cited and presented by the Petitioner and when it was made available to the State Bar Board of Governors. The study data is sufficient for a prima facie case of disparate impact and by the State Bar's own admission should have been examined further. The review department instead made an unsupported conclusory statement that no disparate impact exists.

FACTUAL AND PROCEDURAL BACKGROUND

Following the decision of the State Bar Court Hearing Department the Petitioner appealed the decision to the State Bar Review Department. In appealing the decision the Petitioner proffered his representation that considering precedent, his discipline was unwarranted, unduly harsh and discriminatory due to the disparate impact caused by the state bar's disciplinary process as evidenced by the newly discovered evidence data presented to the State Bar Board of Governors during the pendency of this Petitioner's matter.

The study is sufficient evidence of a finding of a prima facie case of disparate impact requiring an analysis by the Review Department which failed to do so thus denying the Petitioner his due process rights. Given the amount of time required to properly address the disparate impact analysis, the Petitioner filed a motion to be restored to active status pending a review of the data or other actions by the review department.

LEGAL DISCUSSION

IV. THE STATE BAR REVIEW DEPARTMENT DID NOT RESPOND ADEQUATELY TO THE ORDER FOR REMAND FROM THE CALIFORNIA SUPREME COURT IN DENYING THE PETITIONER'S MOTION

A. THE STATE BAR HAS NOT RESPONDED PROPERLY. THE REVIEW DEPARTMENT'S RESPONSE OF AN INSUFFICIENT RECORD IS INADEQUATE.

1. A court in addressing an allegation of disparate impact must conduct a disparate impact analysis.

In its remand Order the California Supreme Court mandated the Review Department address the previously unaddressed issue of disparate impact as related to the disciplinary proceedings regarding Petitioner. In its response to the remand Order, the Review Department merely provided there is no evidence of disparate impact on the record. The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner. *Mathews v. Eldridge (1976) 424 U.S. 319, 333.* This response by the Review Department falls short of the requirements of addressing the Respondent's claim of disparate impact.

V. DISPARATE IMPACT

A. THE STATE BAR STUDY ON DISCRIMINATION IN THE DISCIPLINARY PROCESS IS ADMISSIBLE AS NEWLY DISCOVERED EVIDENCE SUFFICIENT FOR ADDITIONAL FACTUAL FINDINGS.

1. The initial State Bar disciplinary process study (Farkas) is prima facie evidence of disparate impact and should have been considered.

2. The initial State Bar. disciplinary study is evidence which could have been provided to the Petitioner during discovery and, are admissions against interest and admissible as later discovered evidence.

3. The follow up studies and recommendation are additional evidence of disparate impact and should have been considered by the State Bar.

It is well settled in order to succeed on a disparate impact theory, a plaintiff must establish a "prima facie" case of discrimination. Initially, the plaintiff must demonstrate by statistical evidence that the challenged policy or practice, although neutral on its face, has a discriminatory effect on persons of a protected class. *Ricci v. DeStefano, 557 U.S. 557 (2009)* In *Watson v Ft. Worth Bank and Trust, (1988) 48 US 977*. The United States Supreme Court held in addressing a disparate impact claim, a conclusory statement without analysis such as that proffered by the review department is insufficient. Justice O'Connor in her majority opinion provided, to address a claim of disparate impact a court must at least employ a disparate impact analysis. Id at 48 US 978. (Also see *Jumaane v. City of Los Angeles, 241 Cal.App.4th 1390 (2015)*

[disparate impact regarding disciplinary process of law enforcement officers] and, *Frank v County of Los Angeles, (2007) 149 Cal. App. 4th 430, 440-441* [Disparate impact after party submitted evidence of disparate impact]. Once a prima facie case is presented with statistical data such as the discipline study the review department was compelled to conduct that analysis. Id.

Here, there is no prohibition applicable to the review department to consider evidence that was not propounded to the hearing department. Indeed, newly discovered evidence may be considered in this case. *(See People v Williams 57 Cal.2d 263 1962 re: exculpatory evidence available to prosecutor)*

III. THE STATE BAR DISCIPLINARY STUDY SHOULD HAVE BEEN CONSIDERED AS EVIDENCE OF DISPARATE IMPACT

A. THE PETITIONER WAS DENIED DUE PROCESS TO ACCOMPLISH THE GOAL OF THE SUPREME COURT'S ORDER.

B. THE STATE BAR POSSESSED NEWLY DISCOVERED EVIDENCE WHICH SHOULD HAVE BEEN TURNED OVER TO THE PETITIONER DURING DISCOVERY.

1. The newly discovered evidence would have shown Black male attorneys are:
    a. Overburdened Sole practitioners
    b. By and large not employed in law firms
    c. Black clients complain more than other clients
    d. When complained of are subject to more stringent investigations and discipline.

Newly discovered evidence may be considered in the interest of justice if it was not available, beyond the reach of the propounding for no good cause or should have

been provided by a party during discovery. Denial of such is a denial of due process. *People v Williams 58 Cal. 4th 197(2013); In re Brown (1998) 17 Cal.4th 873* .

Here, the State Bar possessed the initial and follow up studies, failed to provide the initial study during discovery, and failed to utilize it or the subsequent follow up studies or recommendations notwithstanding the Petitioner cited the initial study during the pendency of his appeal. Once a party makes a prima facie case of disparate impact, without opposition the issue may be conceded.

However late, the State Bar studies provide the statistical data showing disparate impact as well as attendant statements and admissions of disparate impact in its disciplinary process. Given the amount of time necessary to adequately respond the Petitioner filed a motion to facilitate the Court's remand order to address the issue of disparate impact. The remand should have caused an examination of the State Bar's evidence of disparate impact relative to the disciplinary process.

STANDARD OF REVIEW

The United States Supreme court adduced the evolving standard for disparate impact in *Texas Department of Housing and Community Affairs et. al. v. Inclusive Communities Project, Inc*. et.al. 576 U.S. ___ ,135 S. Ct. 2507; 192 L. Ed. 2d 514 by extending it to a previously untouched area of disparate impact and its effect on a protected group. It appears that was an intent of the California Supreme Court considering the state Bar's own data.

Here, the State bar can avail itself of the opportunity to show that there is "an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs." *Ricci v. DeStefano*, 557 U. S. 557, 578. The State Bar here in its opposition to the Motion for Restoration adopted the Review Department's unsupported assertion that there is no disparate impact present. Had the State Bar released or made available the discovery of racially discriminatory disparate impact during the discovery period of Petitioner's case, Petitioner could have fully explored and developed the claim independently.

CONCLUSION

Notwithstanding, the State Bar provided uncontroverted and sufficient statistical data via its own studies admitting its disciplinary process has a disparate impact on Black male attorneys. Moreover, the studies, which were not available during the trial but were made available during this process are admissible as after acquired newly discovered evidence that is relevant to the instant matter. Considering the forgoing, Petitioner therefore requests Review of this Petition.

Dated: November 20, 2020

Respectfully submitted,
/s/ Gregory Harper
GREGORY HARPER

VERIFICATION

I, GREGORY HARPER, declare:

I am the PETITIONER in the above-entitled matter. I have read the foregoing PETITION FOR REVIEW and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on November 23, 2020, at El Cerrito, Contra Costa County, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/Gregory Harper

GREGORY HARPER

CERTIFICATE OF WORD COUNT

(Rule 8.204)

I, Gregory Harper, Petitioner in Pro Per certify pursuant to the California Rules of Court, that the word count for this document is 3403 words, excluding the tables, this certificate, and any attachment permitted under rule 8.204(d). This document was prepared in WordPerfect, and this is the word count generated by the program for this document. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed, at El Cerrito, California, on November 24, 2020.

/s/Gregory Harper
GREGORY HARPER
Petitioner in Pro Per

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	No. 17-O-01313
	)	
GREGORY HARPER,	)	OPINION AND ORDER
	)	
State Bar No. 146119.	)	
	)	

This is Gregory Harper's third discipline case, all involving client trust account (CTA) violations. He is charged with three counts of misconduct related to the improper handling of his CTA in one client matter, including misrepresentation to the State Bar. His client disputed the amount of his attorney fees and eventually complained to the State Bar. Instead of holding the disputed funds in his CTA, as required, Harper withdrew money, which caused his CTA balance to fall below the requisite amount. When asked by the State Bar about the complaint, he misrepresented that he had maintained the necessary funds in his CTA. The hearing judge found him culpable as charged and recommended he be disbarred.

Harper appeals, mainly disputing the factual basis for culpability. The Office of Chief Trial Counsel of the State Bar (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. Harper committed acts of moral turpitude and did not prove compelling mitigation. Disbarment is therefore appropriate under our disciplinary standards to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On October 22, 2018, OCTC filed a three-count Notice of Disciplinary Charges (NDC) charging Harper with (1) failing to maintain client funds in his CTA, in violation of rule 4-100(A) of the Rules of Professional Conduct;[1] (2) misappropriation, in violation of Business and Professions Code section 6106;[2] and (3) misrepresentation, in violation of section 6106. On February 4, 2019, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). Trial was held on February 19, 21, and 22, and posttrial closing briefs followed. The hearing judge issued her decision on May 23, 2019.

II. FACTUAL BACKGROUND[3]

A. DeJoie Disputes Fee

In June 2015, Evigne DeJoie hired Harper to represent her in two matters relating to eviction proceedings, which Harper ultimately settled for a combined total of $59,000. On November 7, 2016, Harper received the settlement funds on DeJoie's behalf, and deposited them into his CTA on November 17. On November 23, he withdrew $37,913 from his CTA in the form of a cashier's check payable to DeJoie. Along with the check, he provided a settlement disbursement form that stated that he was withholding $19,667 of the funds for attorney fees and $1,420 for sanctions incurred during the litigation. DeJoie disputed these amounts. On November 30, Harper sent DeJoie notice of her right to request fee arbitration, which she

---

[1] All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted. Rule 4-100(A) provides, in part, that when a client disputes the portion of funds that an attorney has a right to receive, then the disputed portion "shall not be withdrawn until the dispute is finally resolved."

[2] All further references to sections are to this source. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

[3] The factual background is based on the Stipulation, trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

submitted on February 7, 2017. DeJoie and Harper settled the matter after participating in arbitration on July 28, 2017.

B. Harper's Misrepresentation to the State Bar

On February 8, 2017, DeJoie submitted a complaint to the State Bar. On May 2, the State Bar sent Harper a letter, requesting his reply to the allegations. On June 13, Harper responded: "Evigne disputed my entitlement to any fee whatsoever. Thus, I have left the disputed amount of $21,087.00 ($19,667.00 in fees and $1,420.00 for payment of sanctions) in my trust account." However, his bank records show that his CTA balance repeatedly fell below $21,087 from December 2016 through June 2017.[4] On June 12, 2017, the balance was $5,600.22. At trial, Harper testified that he maintained the entire $21,087 in his CTA from November 23, 2016 through July 28, 2017, and he was unaware that his CTA dropped below the requisite amount. He also testified that he reviewed his CTA bank statements monthly.

The hearing judge found Harper's testimony not credible. We give this credibility finding great weight. (Rules Proc. of State Bar, rule 5.155(A).)

III. CULPABILITY

A. Count One: Failure to Maintain Client Funds in CTA (Rule 4-100(A)) Count Two: Misappropriation (§ 6106)

The NDC alleges that DeJoie disputed the amount Harper was entitled to keep when he disbursed settlement funds to her on November 23, 2016. Count one charges Harper with violating rule 4-100(A) for failing to maintain a CTA balance of $21,087 on behalf of DeJoie. Count two charges Harper with a moral turpitude violation for misappropriation of $20,593.39 of DeJoie's funds between November 23, 2016, and May 8, 2017. The hearing judge found Harper

[4] On December 22, 2016, Harper's CTA balance was $20,598.85, and on December 23, it dropped to $16,368.85. While he had over $21,087 in the CTA in January and February 2017, it dipped to $18,271.67 on March 8, 2017, and was as low as $5,341.67 during the month of March. In April, it fell to $15,843.49, and to $493.61 in May.

culpable on both counts. We agree. The judge correctly determined that Harper should have maintained $21,087, and thus he misappropriated $20,593.39[5] through gross negligence.

When a trust account balance drops below the amount the attorney is required to hold for a client, a presumption of misappropriation arises. The burden then shifts to the attorney to show that misappropriation did not occur and that he was entitled to withdraw the funds. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) After DeJoie disputed the attorney fees and sanctions on November 23, 2016, Harper was required to maintain $21,087 in his CTA for her.

On review, Harper argues that the Stipulation was ambiguous as to the date of the fee dispute. He asserts that it did not begin on November 23, 2016, as stated in the Stipulation and as found by the hearing judge. Harper contends that the dispute began in February 2017 when DeJoie requested fee arbitration. The Stipulation states, "On November 23, 2016, DeJoie met [Harper] at his residence, where [Harper] gave DeJoie the $37,913 cashier's check, and a settlement disbursement form. The disbursement form stated that [Harper] was withholding $19,667 of the settlement for attorney's fees and $1,420 for sanctions incurred during the litigation. DeJoie disputed the amount withheld for attorney's fees and the retention of funds to pay sanctions."

Harper concedes that the Stipulation states that DeJoie disputed the fees on November 23, 2016, but he argues that it was not Evigne DeJoie, but her father (with the same last name), who disputed the fees on that date. We reject Harper's argument as the record supports the factual finding that the fee dispute with DeJoie arose in November. DeJoie's father is not mentioned in the Stipulation, which is not ambiguous and clearly asserts that DeJoie disputed the fees on November 23, 2016. The hearing judge accepted the facts as stipulated by

[5] This figure represents $21,087 (the disputed amount) minus $493.61 (the lowest CTA balance during the relevant time period).

the parties, as do we. (*In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884, 886 [unless parties' stipulation has been set aside, "it remains binding on the parties, and the facts recited in the stipulation are deemed established for purposes of this proceeding"].) In addition, Harper was directly asked at trial if the fee dispute occurred on November 23. He responded that Evigne DeJoie disputed the fees, as stated in the Stipulation.[6] Harper must accept these facts. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510–511 [attorney in disciplinary proceeding must accept facts to which he has stipulated].)[7]

The balance of the CTA fell below the required amount in December 2016 and in March, April, May, and June 2017. Harper did not rebut the presumption of misappropriation. He wrote several checks from the CTA, some to himself, which caused the CTA to dip below $21,087. Therefore, he is culpable of grossly negligent misappropriation under count two.

As to count one, we affirm the hearing judge's finding that Harper violated rule 4-100(A) by failing to maintain $21,087 in his CTA on behalf of DeJoie. Client funds in a CTA must be maintained until the balance owed to the client is settled. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 277–278.) Like the judge, we assign no additional weight in discipline because this count is duplicative of the misappropriation violation. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

B. Count Three: Misrepresentation (§ 6106)

Count three alleges that Harper wrote to a State Bar investigator on or about June 13, 2017, maintaining that the $21,087 in disputed funds were kept in his CTA when he knew that statement was false and misleading. The NDC alleges that a violation of section 6106 may result

---

[6] On the first day of trial, OCTC asked, "So I'd like you to explain now when you understood there to be a fee dispute between yourself and Evigne DeJoie." Harper replied, "Now I understand that it was on November 23rd, I believe, that we said in the stipulation."

[7] Harper also testified that he knew when he delivered the check to DeJoie that she was dissatisfied with the amount. One week later, he notified her of her right to seek fee arbitration.

from intentional conduct or grossly negligent conduct. The hearing judge found that Harper violated section 6106 by intentionally misrepresenting that the funds had remained in the CTA.[8] We agree.

In the statement attached to the June 13 letter, Harper wrote, ". . . I have left the disputed amount of $21,087 ($19,667.00 in fees and $1,420.00 for payment of sanctions) in my trust account."[9] He contends that he was referring to the amount in his CTA at the time of the State Bar's inquiry letter, May 2, 2017, not the entire time the fees were in dispute. Therefore, he asserts that he is not culpable of the misrepresentation charged in count three. We reject this argument. Harper testified that he reconciled his client ledgers and his bank statements every month. We agree with the hearing judge that if that were true, it "would have revealed that DeJoie's disputed funds did not remain in his account in December 2016, and March and April 2017." Harper also testified that he reviewed his bank statements before sending the June 13 letter.[10] He claimed that even after doing so, he still believed that he was correct in asserting that he had maintained $21,087 on behalf of DeJoie since November 23, 2016. Harper's belief was not reasonable and he should have known that his statement was false and misleading. Harper's statement to the investigator was a misrepresentation that he knew was false and misleading, and constitutes moral turpitude. (*Grove v. State* Bar (1965) 63 Cal.2d 312, 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction to be drawn between "concealment, half-truth, and false statement of fact"].) Therefore, we find that his

---

[8] We give great weight to the hearing judge's finding as to intent. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155.)

[9] The June 13 letter was sent by Samuel C. Bellicini, Harper's attorney. It states that DeJoie "timely received her $37,913.00 share of the $59,000.00 settlement proceeds, and the balance in dispute, $21,087.00 has remained in Mr. Harper's CTA . . . ."

[10] On June 13, 2017, his CTA balance was around $5,600.

response to the State Bar's inquiry letter constituted intentional misconduct in violation of section 6106.

IV. AGGRAVATION AND MITIGATION

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

A. Aggravation

1. Prior Records of Discipline (Std. 1.5(a))

Harper has two prior records of discipline. On April 13, 1994, he received a stayed suspension of 90 days and an 18-month period of probation including conditions. (State Bar Court Nos. 91-O-04542; 92-O-20050; Supreme Court No. S037840.) Harper stipulated to misconduct in two matters. In the first matter, 16 checks drawn on Harper's CTA were returned for insufficient funds in 1991, he used his CTA as a personal account, and he failed to properly maintain his banking records. In the second matter, Harper failed to promptly deliver settlement funds, which had been removed from his CTA for approximately two months in 1992, and he commingled funds in his general account. He stipulated to violations of rule 4-100(A) in both matters. There were no aggravating circumstances and he received mitigation for lack of harm, cooperation, extraordinary good character, and hiring an accountant to help him properly maintain his bank accounts.

His second discipline involved three client matters. On February 6, 2003, the Supreme Court ordered Harper actually suspended for six months and placed on probation for two years with conditions, including attending State Bar CTA School. (State Bar Court Nos. 99-O-10958; 99-O-12126; 01-O-03596; Supreme Court No. S111512.) In the first matter, two checks drawn on Harper's CTA were returned for insufficient funds in 1998, he commingled funds in his CTA, and wrote personal checks from his CTA. He stipulated to a rule 4-100(A) violation. In the

second matter, he failed to adequately supervise an employee who stole over $10,000 of entrusted client funds. Harper stipulated to a violation of rule 3-110(A) for failing to perform legal services with competence. In the third matter, Harper failed to promptly deliver funds to which the client was entitled until almost six years after he had collected the funds, in violation of rule 4-100(B)(4). He received aggravation for his prior record of discipline, which included similar misconduct, and for multiple acts of misconduct. Harper was afforded mitigation for excessive delay of the disciplinary proceedings.

The hearing judge assigned aggravation for Harper's two prior records of discipline, but did not specify any weight. We conclude that they merit substantial aggravating weight. The two previous disciplinary matters involved misconduct similar to that in the current matter, and, in the second discipline, he was required to attend CTA School. This indicates that his prior disciplines did not rehabilitate him, causing concern about future misconduct. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444.)

2. Multiple Acts of Wrongdoing (Std. 1.5(b))

Harper repeatedly allowed his CTA balance to drop below the amount he was required to maintain on behalf of DeJoie. The hearing judge assigned moderate aggravation and we agree. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts]; see also *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [multiple acts in aggravation for one count of moral turpitude where attorney made 11 misrepresentations over an 18-month period].)

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

Aggravating circumstances may include "uncharged violations of the Business and Professions Code or the Rules of Professional Conduct." (Std. 1.5(h).)[11] The hearing judge found uncharged misconduct for commingling under rule 4-100(A) and moral turpitude under section 6106 because Harper acknowledged at trial that he paid one client's obligations with another one's funds, believing the practice was ethical as long as the payments were documented. We find this analysis unclear as it does not point us to evidence that commingling occurred.

When funds of multiple clients are deposited into a CTA, they become fungible assets that are used regardless of their original ownership. The essence of commingling, however, is that the attorney is improperly combining his or her own funds with those of the clients. "Commingling is committed when a client's money is intermingled with that of the attorney and its separate identity lost." (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 123.)

Upon our independent review of the record, we do not find clear and convincing proof of uncharged misconduct. It was established at trial that Harper allowed his CTA to fall below the requisite amount, as charged under counts one and two. Since there is no other evidence of an additional commingling violation, we assign no aggravation under standard 1.5(h).

4. Pattern of Misconduct (Std. 1.5(c))

Though OCTC did not seek review, it argues in its responsive brief that we should find a pattern of misconduct because this is Harper's third disciplinary matter related to his handling of client funds. To establish aggravation for a pattern of misconduct, the pattern must involve serious misconduct with a common thread over an extended period of time. (Std. 1.5(c); *Young*

[11] OCTC argued in its closing brief at trial for aggravation under standard 1.5(h) because Harper used his CTA for "any desired purpose throughout the month" and left unearned fees in the account. However, it abandoned this argument in its responsive brief on review.

v. State Bar (1990) 50 Cal.3d 1204, 1217.) OCTC seeks to include Harper's *prior* records of discipline in order to establish the pattern.[12] We decline to find a pattern as an additional factor in aggravation. We have considered Harper's prior records of discipline in aggravation under standard 1.5(a), and have recognized their similarity in determining the appropriate level of discipline. Further aggravation would be duplicative and an overemphasis of the import of the prior matters.

5. Indifference Toward Rectification or Atonement for the Consequences of Misconduct (Std. 1.5(k))

OCTC also argues on review that Harper should receive aggravation for failure to accept responsibility due to his attempt to disavow the Stipulation in his opening brief. Harper's denial of culpability despite the Stipulation establishes his indifference and lack of remorse regarding the consequences of his misconduct. (See *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [finding of additional aggravation for indifference where attorney continued to deny culpability despite stipulation that established conduct as charged].) We assign substantial aggravation for Harper's indifference.

B. Mitigation

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

Harper may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) Nine witnesses, including three attorneys, testified at trial regarding Harper's good character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr.

---

[12] OCTC cites *Twohy v. State Bar* (1989) 48 Cal.3d 502, 512–513 and *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 564, fn. 15. These cases are distinguishable from the present matter. In *Twohy*, a pattern was established due to the involvement of his drug addiction as a common thread in each instance of the past and present misconduct. In *Kaplan*, we recognized the holding in *Twohy*, but elected not to apply it as there was sufficient indicia of a pattern without reliance on prior discipline.

309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) All of the witnesses were aware of the full extent of the misconduct and attested that the charges in the NDC did not change their high opinion of Harper. In addition, most knew that he had been disciplined twice before. Each of the witnesses has known Harper for a considerable length of time, at least 25 years, and some for much longer. They praised his integrity, honesty, and skills as a lawyer. We affirm the hearing judge's determination that Harper is entitled to substantial mitigation for his good character.

2. Candor and Cooperation with State Bar (Std. 1.6(e))

Harper's Stipulation is a mitigating circumstance. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) The hearing judge assigned nominal weight for the Stipulation. She stated that "the timing and nature of the stipulation, which admitted facts that were easily proven, obviated very little in terms of OCTC's preparation for trial." (Cf. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if facts assisted prosecution of case].) On review, Harper asserts that the Stipulation is ambiguous as to the date of the fee dispute and contradicts his trial testimony. As found above, this argument is without merit. His challenge of the facts in the Stipulation causes concern and, therefore, we assign no mitigation under standard 1.6(e).

3. Community Service

Community service is a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Harper testified that he mentored young attorneys and represented juveniles in criminal proceedings by court appointment. He stated that he invites high schoolers to intern at his law practice, particularly those with criminal records who faced difficulty in finding employment. Harper also testified that he has dedicated himself to his community by serving on various Berkeley city and neighborhood commissions. As chairman of the Housing Advisory

Committee, he oversaw housing funds, developed policy, and lobbied for the city. Harper testified that he currently serves on Berkeley's Fair Campaign Commission, and has done so for three years, where he reviews campaign contribution complaints and develops rules for campaign finance in Berkeley. His character witnesses also highlighted his commitment to Berkeley and his neighborhood, and two testified that they served on city commissions with him. Harper also stated that he has served on the California Lawyers Association's Tax Procedure and Litigation Committee since 2009 and was a published author in the California Journal of Tax Litigation. We find that he is entitled to substantial weight in mitigation for his community service. (Cf. *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

V. DISBARMENT IS THE APPROPRIATE 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.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Considering Harper's record of two prior disciplinary

matters, we also look to standard 1.8(b),[13] which states that disbarment is appropriate where an attorney has two or more prior records of discipline if (1) an actual suspension was ordered in any prior disciplinary matter; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Harper's case meets two of these criteria. First, he was actually suspended for six months in his second disciplinary matter. Second, we find that the similarity of his misconduct in his prior and current disciplinary matters demonstrates his unwillingness or inability to conform to his ethical responsibilities.[14]

Standard 1.8(b) does not apply if (1) the most compelling mitigating circumstances clearly predominate; or (2) the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. These exceptions do not apply here. Harper has considerable mitigation, particularly his good character evidence and community service, but it does not clearly predominate over the serious aggravating circumstances. And the misconduct in the present matter occurred over ten years after his previous misconduct.

We next consider whether any reason exists to depart from the discipline called for by standard 1.8(b). We acknowledge that disbarment is not mandatory in a third disciplinary matter, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [analysis under former std. 1.7(b)]; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [to fulfill purposes of attorney discipline, "nature and chronology" of prior record must be examined].) Standard 1.8(b) is not applied reflexively, but "with an eye to the nature and extent of the prior record. [Citations.]" (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 289.) Deviating

[13] Standards 2.1(b) and 2.11 are also applicable. Standard 2.1 provides for actual suspension for misappropriation involving gross negligence. Standard 2.11 provides for disbarment or actual suspension for an act of moral turpitude.

[14] All three of Harper's disciplinary matters involve violations related to his CTA.

from standard 1.8(b) requires the court to articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Harper has not identified an adequate reason for us to depart from applying standard 1.8(b), and we cannot discern any. His present misconduct is similar to his past wrongdoing. His misconduct does not overlap with his prior violations, demonstrating that he fails to adhere to his professional duties after being disciplined twice. Further, even after attending CTA School, he has committed another CTA violation. Unlike his priors, however, Harper's present misconduct involves moral turpitude violations. His 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.) Moreover, his misrepresentation to the State Bar is of serious concern. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [misleading statements are troubling and oppose fundamental rules of ethics—common honesty—without which profession is "worse than valueless" in administration of justice].) When an attorney makes a misrepresentation, it "diminishes the public's confidence in the integrity of the legal profession." (*Ibid.*)

Given the nature and chronology of Harper's violations, we find no reason to depart from the presumptive discipline of disbarment under standard 1.8(b). The State Bar Court has had to intervene three times to ensure that Harper adheres to the professional standards required of those who are licensed to practice law in California. He has failed to meet his professional obligations since the early 1990s and did not present compelling mitigation. We conclude that further probation and suspension would be inadequate to prevent him from committing future misconduct that would endanger the public and the profession.

VI. RECOMMENDATION

We recommend that Gregory Harper be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice law in California.

We further recommend that Harper 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.

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Gregory Harper be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective May 26, 2019, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.

CERTIFICATE OF SERVICE

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

I am a Program Supervisor of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 14, 2020, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED APRIL 14, 2020

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:

GREGORY HARPER
3060 EL CERRITO PLZ. #100
EL CERRITO, CA 94530-4011

☒ courtesy copy, by email, addressed as follows:

GREGORY HARPER at ghlaw@pacbell.net

MANUEL JIMENEZ at Manuel.Jimenez@calbar.ca.gov

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

Manuel Jimenez, Office of Chief Trial Counsel, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 14, 2020.

Jasmine Guladzhyan
Program Supervisor
State Bar Court

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

En Banc

In the Matter of	)	17-O-01313
	)	
GREGORY HARPER,	)	ORDER
	)	
State Bar No. 146119.	)	
	)	

THE COURT:*

It is ordered that the opinion filed herein on April 14, 2020, which was not certified for publication, be modified as follows:

On page two, insert a second paragraph to Section I. Procedural Background, as follows:

"On April 14, 2020, we issued our opinion. On June 15, 2020, Harper filed a petition for review in the Supreme Court. On August 12, 2020, the Supreme Court remanded the matter to us to consider "Harper's unaddressed claim that his discipline is based on a theory of disparate impact." Pursuant to the remand, this modified opinion addresses Harper's claim."

On pages 15-17, insert new section titled Section VI. Consideration of Claim of Disparate Impact on Remand.

This modification does not alter any of the factual findings or legal conclusions set forth in the opinion, and it does not extend any deadlines. (Cal. Rules of Court, rule 8.264(c) [modification of reviewing court that does not change appellate judgment does not extend finality date of decision].)

* Before Purcell, P. J., Honn, J. and McGill, J.

CERTIFICATE OF ELECTRONIC SERVICE

[Gen. Order 20-04; Code Civ. Proc., § 1013b, subds. (a)-(b)]

I, the undersigned, certify that 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, on September 25, 2020, I electronically served a true copy of the following document(s):

ORDER FILED SEPTEMBER 25, 2020

by electronic transmission on that date to the following:

GREGORY HARPER
ghlaw@pacbell.net

Kimberly G. Anderson
Kimberly.Anderson@calbar.ca.gov

I hereby certify that the foregoing is true and correct.

Date: September 25, 2020

Julieta E. Gonzales
Court Specialist
State Bar Court of California
Julie.Gonzales@calbar.ca.gov

Gregory Harper, In Pro Per
3060 El Cerrito Plaza Suite #100
El Cerrito, California 94530
Telephone : (510) 704-0494
Email: ghlaw@pacbell.net

Gregory Harper
Appellant/Respondent In Pro Per

STATE BAR COURT
REVIEW DEPARTMENT – SAN FRANCISCO

In the Matter of
GREGORY HARPER

Member No. 146119

A Member of the State Bar.

_____/

Case No.: 17-0-01313

MOTION FOR RESTORATION TO ACTIVE STATUS AND DECLARATION OF GREGORY HARPER IN SUPPORT THEREOF:

REQUEST FOR ORAL ARGUMENT

TO: THE HONORABLE PRESIDING JUDGE, AND TO THE ASSOCIATE JUDGES OF THE REVIEW DEPARTMENT OF THE STATE BAR COURT AND TO ALL OTHER PARTIES AND COUNSEL OF RECORD:

Respondent GREGORY HARPER, acting in Pro Per, hereby requests immediate retroactive exoneration and dismissal of all charges, restoration to active status pending The Review Department's directive by the California Supreme Court[1] to address Respondents claim of racially discriminatory disparate impact against African-American male attorneys with respect to the application of State Bar's policies, practices and procedures. Because the Review Department will be unable to meet the due process requirements imposed by the California

[1]See attached forthwith

Supreme Court without further investigation, including, but not limited to, following the recommendations set forth in the State Bar Study[2] that identified the disparate impact and Respondent's ability to obtain data for an independent analysis to determine if Respondent's claim meets the standards set forth in *Texas Department of Housing and Community Affairs et. al. v. Inclusive Communities Project, Inc*. et.al. 576 U.S. ___ ,135 S. Ct. 2507; 192 L. Ed. 2d 514 which provides the Respondent herein be given an opportunity to show that there is "an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs." *Ricci v. DeStefano*, 557 U. S. 557, 578; *United States v. Giles*, 300 U. S. 41, 48. All of this will be a time consuming endeavor and Respondent should not be further punished by the process of getting to the truth. Had the State Bar released or made available the discovery of racially discriminatory disparate impact during the discovery period of Respondent's case, Respondent could have fully explored and developed the claim independently. Since that was not the case, the California Supreme Court has mandated that the claim now be addressed and obviously it cannot be addressed without it being developed appropriately. Indeed, Respondent has advised the State Bar and Review Department in a correspondence[3] dated September 2, 2020 as to what will be required to meet due process requirements to comply with the California Supreme Court's mandate. Hence, during the pendency of developing the claim for proper adjudication, Respondent requests to be placed on the active rolls of attorneys pending compliance with the California Supreme Court's directive.

Said request is made to the Review Department in the above referenced matter, case no. 17-0-01313 pursuant to the En Banc Order the California Supreme Court filed August 12,

---

[3]See attached forthwith

2020 for Remand to the Review Department to consider the unaddressed issue of disparate impact of the state bar disciplinary process and the discipline imposed herein and Rule of Court 9.17 and sections 5.151 through 5.160 of the Rules of Procedure of the State Bar of California.

Appellant/Respondent further reserves their rights as to this matter and, alternatively opposes any opposition to in this matter.

Dated: September 21, 2020

_____

GREGORY HARPER

DECLARATION OF GREGORY HARPER

I GREGORY HARPER DO HEREBY DECLARE, I am the Appellant/ Respondent in the above mentioned case and can and will attest to the facts stated herein are within my personal knowledge:

1. My fee dispute matter was tried in State Bar Court in February, 2019 notwithstanding having been resolved at fee arbitration on August 7, 2017. It is widely known that common State Bar policy and practice would have suspended investigation of the fee dispute pending arbitration and closed the case after the parties resolved the case in arbitration. To pursue Respondent in this case was also suspect in that the client had waived her right to arbitration by failing to file timely but the Respondent participated anyway.

2. Nevertheless, after the matter was mutually resolved to the satisfaction of the Parties, the State Bar conducted an almost two year investigation largely, concentrating on interviews with the father of the complaining client who was a convicted union embezzler whose true issue related to his demand to be compensated for "working on" the instant and another related, but different case.

3. There were other irregularities during the case that Respondent believes would not be tolerated in a case against a White Male, including, but not limited to State Bar personnel being overheard bragging about how often they get the then retiring Black Judge overturned. It is ironic that this Judge believed that the instant case should not have been heard.

4. Additionally, the trial Judge had her daughter in the court room and allowed conversations between her daughter and attorney James Cook SBN 300212, an

adversary of Respondent Harper in another unrelated case, who sought to influence the proceedings. Cook was allowed to harass witnesses, offer the State Bar prosecutor assistance with the case and, the Judge did not disclose its relationship with Cook. Cook also listed the investigator, the complaining party and her father as witnesses in that case and, had his clients appear at Respondent's trial and have conferences with the prosecutor during recesses granted by the court. Moreover, the prosecutor, Carla Chung, without a complaining party, pressured Respondent with threats of further prosecution if I pursued an Appeal.

5. Had I been made aware of the finding timely, I would have more fully developed a claim for disparate impact beyond the State Bar Study that was ultimately released upon which I based my claim and which the California Supreme Court has mandated the Review Department address properly.

6. I alleged I was subjected to discriminatory discipline as a result of the disparate impact of the application and utilization of the State Bar disciplinary system on African-American male attorneys. I was disbarred with the rationale for disbarment based upon remote prior discipline from 1992 and 2003, yet White males were treated more favorably under similar circumstances.

7. I was held ineligible to practice and removed form the active rolls of attorneys licensed to practice retroactively to May 25, 2019 and have been ineligible to practice law for 15 months since then as the discipline recommendation of disbarment.

8. The study commissioned by the State Bar itself, presented to the Board of Trustees of the State Bar of California November 14, 2019 by Dag MacLeod of the State Bar of

California[4] (*See Discrepancies by Race and Gender in Attorney Discipline by the State Bar of California: an Empirical Analysis by George Farkas Distinguished Professor School of Education University of California, Irvine* discovered a racially discriminatory disparate impact in discipline against African-American Male attorneys. It also concluded additional study was required. During the course of the investigation of me and my subsequent defense, I was unaware that a State Bar Study had discovered racially discriminatory disparate impact with respect to State Bar discipline against African American males. Had I been made aware of these findings, even prior to the release of the study, I would have fully developed my disparate impact claim, independent of the study.

9. I filed an Appeal with the State Bar Review Department and my Appeal was denied.

10. I also raised the issue of disparate impact on appeal.

11. The trial hearing department court and review department failed to consider the issue of disparate impact.

12. Accordingly, I filed a Petition for Review of the Supreme Court of California, and on August 12, 2020, the California Supreme Court remanded my case to the Review Department to consider the issue of disparate impact of the disciplinary process.

13. Via correspondence dated September 2, 2020, I advised the State Bar Office of Chief Trial Counsel and the Review Department that properly addressing the issue of disparate impact will require a review of all the decisions of the Hearing Judge and Review

---

[4]Also see *Discrepancies by Race and Gender in Attorney Discipline by the State Bar of California: an Empirical Analysis* by George Farkas Distinguished Professor School of Education University of California, Irvine; *New California Bar Study finds racial disparities in lawyer discipline*. ABA Journal November 8, 2019, San Francisco Chronicle, November 8, 2019 Sacramento Bee November 8, 2019,

Panel Judges as well as data related to cases handled by the case investigator and prosecutors involved in my case. This information is critical in addressing the additional questions the State Bar commissioned study indicated should be investigated, including whether the State Bar has a "bias free decision-making process" at each level that impacts discipline.

14. In light of the Supreme Court Remand Order, I request restoration to active status and retroactive exoneration pending the process because I have already suffered over 15 months of being disbarred. It is an unreasonable hardship to bear given the Supreme Court's directive and the time in which it will take to comply.

I declare and verify under penalty of perjury pursuant to the laws of the State of California, executed in Contra Costa County, California on September 21, 2020.

_____
GREGORY HARPER
Appellant/Respondent

FILED

OCT - 1 2020

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

En Banc

In the Matter of	)	17-O-01313
	)	
GREGORY HARPER,	)	ORDER
	)	
State Bar No. 146119.	)	
	)	

On September 21, 2020, respondent Gregory Harper filed a motion for restoration to active status and dismissal of all charges based on the Supreme Court's remand order filed August 12, 2020. In his motion, respondent also included a request for oral argument. On September 29, 2020, the Office of Chief Trial Counsel of the State Bar filed a response in opposition, asserting that respondent's motion is moot.

Lacking good cause, respondent's requests are denied as moot considering we have filed a Modified Opinion and Order on September 25, 2020, addressing the Supreme Court's remand order.

PURCELL

Presiding Judge

CERTIFICATE OF ELECTRONIC SERVICE

[Gen. Order 20-04; Code Civ. Proc., § 1013b, subds. (a)-(b)]

I, the undersigned, certify that 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, on October 1, 2020, I electronically served a true copy of the following document(s):

ORDER FILED OCTOBER 1, 2020

by electronic transmission on that date to the following:

GREGORY HARPER
ghlaw@pacbell.net

KIMBERLY G. ANDERSON
Kimberly.Anderson@calbar.ca.gov

I hereby certify that the foregoing is true and correct.

Date: October 1, 2020

Julieta E. Gonzales
Court Specialist
State Bar Court of California
Julie.Gonzales@calbar.ca.gov

State Bar Court No. 17-O-01313

S262388

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GREGORY HARPER on Discipline.

The petition for review is granted and the matter is remanded to the State Bar Review Department for consideration of Harper's unaddressed claim that his discipline is based on a theory of disparate impact.

Cantil-Sakauye
Chief Justice

Chin
Associate Justice

Corrigan
Associate Justice

Liu
Associate Justice

Cuéllar
Associate Justice

Kruger
Associate Justice

Groban
Associate Justice

PROOF OF SERVICE
Case Name: HARPER v STATE BAR
Case No. S265240

I, declare:

I am over the age of eighteen years and not a party to the cause of action. My business address is 3060 El Cerrito Plaza #100, El Cerrito, CA 94530, I served the documents described as **PETITION FOR REVIEW** on the interested parties in this matter by true copy thereof as follows:

Service of the above document(s) was effectuated by the following means of service: General Counsel, State Bar of California, 180 Howard Street, San Francisco, CA 94105, State Bar Court, 845 South Figueroa Street, Los Angeles, CA 90017.

[x] **By First Class Mail** -- I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service. It is deposited with the United States Postal Service in the ordinary course of business on the same day it is processed for mailing. I caused such envelope(s) to be deposited in the mail at El Cerrito, California. The envelope was mailed with postage thereon fully prepaid.

[ ] **By Personal Service** -- By causing to personally deliver a true copy thereof in a sealed envelope.

[ ] **By Overnight Delivery Service** -- I caused such envelope(s) to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. The envelope was deposited with the express service carrier with delivery fees paid or provided for.

[ ] **Facsimile Transmission** -- I served the documents in this matter via facsimile transmission to:

[ ] **Electronic Transmission** -- I served the documents in this matter via electronic transmission to:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and executed November 25, 2020, at Berkeley, California.

PHYLLIS CARR