PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed March 11, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 09-O-12950 (10-O-05470)
	)	
VICTOR STEPHEN HALTOM,	)	OPINION
	)	
A Member of the State Bar, No. 155157.	)	
	)	

Victor Stephen Haltom, a criminal defense attorney, is charged with 11 counts of misconduct involving his work on habeas corpus proceedings for two clients. The hearing judge found Haltom culpable of five counts of misconduct, including: (1) failure to perform with competence; (2) failure to inform a client of significant developments; (3) moral turpitude by misrepresentation; (4) failure to maintain respect for the court; and (5) improper withdrawal from representation. The hearing judge recommended a two-year stayed suspension, subject to two years' probation, after considering two factors in aggravation (multiple acts of misconduct and harm) and five factors in mitigation (no prior record, cooperation, good character, pro bono work, and remorse). The hearing judge concluded that Haltom "became overwhelmed by a heavy caseload of complex criminal matters," and his misconduct was "severely at odds with the strong testimony and other evidence regarding his good character and his years of dedicated service to the legal profession and to clients."

Haltom seeks review. He admits that he failed to properly communicate with both clients but claims the Office of the Chief Trial Counsel of the State Bar (State Bar) did not prove the other charges. He requests an admonition.[1]

[1] On June 14, 2012, we dismissed the State Bar's untimely request for review.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find less culpability but more aggravation than the hearing judge found. Haltom is culpable of four counts of misconduct for failure to perform with competence, failure to inform two clients of significant developments, and gross negligence amounting to moral turpitude. In both matters, Haltom did not fulfill his professional responsibilities to his incarcerated clients. Yet we agree with the hearing judge that his mitigation is compelling, and therefore relevant to determining the proper discipline. Guided by this mitigation, the standards,[2] and comparable case precedent, we recommend a one-year stayed suspension and one year of probation as the proper discipline to protect the public, the courts, and the legal profession.

I. THE COLE MATTER (09-O-12950)

A. FINDINGS OF FACT[3]

In 2002, Theodore Cole was convicted of first-degree murder as the driver of the getaway car for his co-defendant, who killed the owner of a lunch truck during an attempted robbery. Cole was sentenced to life in prison without the possibility of parole. In 2004, the appellate court affirmed his conviction, and the California Supreme Court denied review.

In April 2005, Cole's mother, Janet Berger, met with Haltom about her son's case. She claimed Cole was innocent because someone else had driven the getaway car. After their meeting, Haltom emailed Berger to explain various time constraints for filing a habeas corpus petition. He informed her that a federal petition would be due by August 10, 2005, one year after Cole's conviction became final. He also explained that he would need to file a state habeas petition before he could proceed in federal court, and that he must proceed diligently with the

[2] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

[3] The hearing judge's factual findings were based largely on Haltom's Stipulation as to Facts; Admission of Documents. We adopt those findings and add relevant facts from the record.

state petition because the superior court could deny it for lack of diligence if he delayed past one year after Cole's June 15, 2004 conviction.[4] Haltom told Berger: "Hence, any state petition would be presumed untimely if not filed by June 15, 2005. . . . Bottom line: in order to get your son's case ready for presentation, a lot of work needs to be conducted, and there is not a great deal of time within which to do that work." Haltom knew the investigation would not be done in time to meet the state and federal deadlines, but he thought a claim for Cole's factual innocence would not be strictly bound by these deadlines.

On April 18, 2005, Berger hired Haltom to investigate and evaluate her son's case for a possible habeas corpus challenge. They agreed that Berger would pay a flat fee of $12,500 for legal services, and investigative costs that would be approximately $5,000. After Berger made a $10,000 partial payment, Haltom began reviewing 6,000 pages of trial record and hired two investigative firms. Three months later, in July 2005, Haltom emailed Berger that the investigators' bills had reached $8,000. Since she had paid him only $10,000 for both legal and investigative fees, he requested an additional $10,000. Berger paid $4,000 in August 2005, but still owed $6,500.

In September 2005, after the state and federal deadlines had passed, Haltom received the investigation reports. The investigation produced two witness declarations stating that Cole's cousin had lied when she implicated Cole in the murder. However, both witnesses had serious credibility issues and drug problems. Haltom offered Berger copies of the investigative reports and one investigator's "game plan" for further work. In January 2006, Berger paid Haltom $500, leaving a balance of $6,000.

[4] California law directs petitioners to file petitions for habeas corpus " 'as promptly as the circumstances allow. . . .' [Citation.]" (*In re Clark* (1993) 5 Cal.4th 750, 765, fn. 5.) Claims substantially delayed without justification may be denied as untimely. (*Ibid.*)

In April, May, June, and July 2007, Berger sent five emails to Haltom inquiring about Cole's case. Haltom did not respond until July. He invited Berger to call him and reminded her that he had advanced investigative costs that were due.

Thereafter, Haltom and Berger met to discuss the witness declarations. He told her that they provided only a "glimmer of hope" for success. Even so, Berger wanted to proceed. Haltom agreed to prepare and file the habeas petition if Berger paid the $6,000 that she owed him. On October 19, 2007, Berger emailed Haltom: "I do not have a lot of money and do not make a lot but since we have waited this long I will be able to give you the $6000.00 [*sic*] with my income tax money this year. If there is even a smidgit [*sic*] of hope for my son I have to do this. . . . I will contact you as soon as I get this money together."

Nine months later, on July 13, 2008, Berger emailed Haltom that she would send $6,000 the following day. On July 30, 2008, Haltom told Berger he received the money and would resume work on Cole's matter. At the time, Haltom had several other cases pending, including his first death penalty appeal.

In October 2008, Haltom met with Berger and her daughter about Cole's case. In November 2008, Haltom emailed Berger telling her that he would file the habeas petition in state court under an equitable tolling provision. He intended to explain to the court that the petition had been delayed due to Berger's lack of funds and his busy work schedule. On November 30, 2008, Berger signed the declaration Haltom prepared to file with the petition.

Throughout 2009 and 2010, Haltom spent most of his time on other cases, but periodically worked on Cole's matter by re-reading the transcripts, conducting legal research, formulating the factual innocence argument, and preparing a draft habeas petition. During this period, Berger emailed Haltom on numerous occasions asking about progress on her son's case and expressing her dissatisfaction with his lack of communication and the delay in filing the

petition. In Haltom's email responses, he made several grossly inaccurate estimates of when he would complete the petition:

> I'm working on Ted's case. Hopefully, I will have the petition ready for filing in the next few weeks. I'll send you a copy when it is done. (February 10, 2009)
>
> I have already put quite a bit of work into the habeas petition in Ted's case. When it's ready for filing, I'll send copies to you and Ted. (April 14, 2009)
>
> It [the habeas petition] is close to being done. (June 2, 2009)
>
> I'm in trial out of county. I'll be done in a couple weeks, and I'll be filing Ted's brief shortly thereafter. (July 30, 2009)
>
> I've been working on Ted's case. His case is a complex case. Completion of the habeas petition in his case is taking longer than expected. However, progress is being made. (January 15, 2010)
>
> I'm hard at work on your son's case. It is a big project. When I finish, his case will be well-presented. (January 18, 2010)

Frustrated with Haltom's delay, Berger filed a State Bar complaint, about which the State Bar informed Haltom on July 8, 2010. Three months later, on September 29, 2010, Haltom filed a cursory, five-page "shell" petition in state court – more than two years after Berger had paid him $6,000. The petition presented two claims (newly discovered evidence and ineffective assistance of trial counsel) in skeletal form. It requested the court to defer its decision for four months so that Haltom could "present a fully developed petition to support the allegations in this cursory shell petition." Haltom claimed that he was "unable to fully develop the habeas petition" due to "numerous large, time-consuming obligations."[5]

[5] In the petition, Haltom detailed the work he performed on other criminal cases from 2008 to 2010: (1) two-month high publicity manslaughter jury trial in 2009; (2) habeas petition and traverse filed in 2009 and 2010; (3) 21-page appellant's brief and 14-page reply brief filed in 2009 and 2010; (4) 60-page appellant's brief and 31-page reply brief filed in 2009 and 2010; (5) petition and reply filed in the U. S. Supreme Court in 2010; (6) 384-page appellant's brief filed in 2009 and 2010 in death penalty appeal; (7) 63-page appellant's brief filed in 2010; and (8) 32-page habeas pleading filed in 2010.

The superior court denied the petition on November 1, 2010. The court found it to be procedurally without precedent because shell petitions are unique to death penalty cases. The court also determined that the petition lacked merit because: (1) it was untimely; (2) Cole did not qualify for the newly discovered evidence exception; (3) the interviews supporting the petition were conducted by Cole's counsel more than five years earlier; (4) counsel's busy work schedule did not excuse the delay and his request for additional time evidenced lack of due diligence; (5) the witness declarations were incompetent because they did not attest to the truth of each witness's statement to the investigator; and (6) the declarations did not constitute unerring evidence of Cole's innocence and would not have been reasonably likely to make a difference in the outcome of the trial.

In November 2010, Haltom wrote to Cole about the court's decision and met with him in prison for the first time. Haltom admitted he delayed filing the state petition and offered to conduct further investigation and file another habeas petition free of charge. The following month, Berger told him she wished to pick up Cole's file. In July 2011, after disciplinary charges were filed, Haltom refunded Berger $6,000 fee plus $1,800 interest.

B. CONCLUSIONS OF LAW

Count One: Failing to Act Competently (Rules Prof. Conduct, rule 3-110(A))[6]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The State Bar alleged that Haltom violated this rule by: (1) giving incompetent legal advice about filing a prompt habeas petition and failing to exercise due diligence; (2) filing an improper "shell" petition reflecting no serious work; and (3) filing witness declarations that did not contain competent evidence to support a habeas corpus petition. The hearing judge found Haltom culpable, and we agree.

[6] All further references to rules are to the California Rules of Professional Conduct unless otherwise noted.

To find a violation of rule 3-100(A) in this context, we must determine that Haltom acted "in reckless disregard of a client's cause" and not merely that he acted negligently. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155, fn. 17.) In view of Cole's status as an incarcerated defendant and the due diligence requirement to obtain habeas relief, Haltom's meager and incomplete efforts for over two years (from 2008 to 2010) constituted a reckless failure to perform. (See, e.g., *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [six-month delay in filing bankruptcy petition, despite need for prompt action to protect clients from creditors, is reckless failure to perform]; *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar. Ct. Rptr. 631, 641-642 [over two-month delay in obtaining temporary restraining order to protect client from harassing telephone calls is reckless failure to perform].)

Our record supports the superior court's ruling that Haltom failed to perform diligently. From the outset, Haltom knew that his due diligence was essential to a successful petition. Yet, despite his criminal law expertise, he filed an untimely and procedurally deficient shell petition. He also presented stale interviews and incompetent supporting declarations. As the superior court noted, "[t]hat the counsel has been busy on other matters does not excuse the delay, and counsel's request for further time further evidences the lack of exercise of due diligence." We consider the superior court's findings and generally give them a strong presumption of validity if they are supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [noting civil findings must be assessed independently under clear and convincing standard in discipline proceedings].)[7] Accordingly, we find that Haltom failed to competently perform legal services for Cole.

[7] 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.)

Count Two: Moral Turpitude – Misrepresentation (Bus. & Prof. Code, § 6106)[8]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar alleged that Haltom committed acts of moral turpitude in his six emails to Berger "by making statements to the effect that he was actively working on the case when this was not true." The hearing judge found these emails to contain false representations amounting to moral turpitude.

We find that the record does not establish that Haltom *intentionally* made false statements to Berger in his emails. He credibly testified that despite his heavy case load, he worked on Cole's case periodically during 2009 and 2010. Haltom denied that he lied to Berger in the emails because he believed in good faith at the time he wrote them that he could complete the petition within the deadlines he set. After reviewing all the emails, he acknowledged that he looked "like a jerk" for continuing to promise overly optimistic dates for completing and filing the petition. Specifically, he testified: "It's a flaw of mine, I guess, being overly optimistic in my own ability to get things done within the time that I set for myself to do it."

The State Bar offered as rebuttal evidence the superior court's findings that Haltom failed to act with due diligence in filing an untimely and procedurally incompetent shell petition and in requesting additional time to prepare a proper habeas petition. As discussed below, we do not condone Haltom's dilatory conduct or his erroneous assessments of his ability to complete the habeas petition. But we must resolve all reasonable doubts as to Haltom's testimony in his favor (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240). In doing so, we conclude that the State Bar did not clearly and convincingly prove that Haltom's emails contained intentional misrepresentations.

[8] All further references to sections are to the Business and Professions Code.

However, we find that Haltom was grossly negligent in repeatedly making unrealistic projections about completing and filing Cole's petition. For over a year, Haltom misstated his progress on Cole's case in his emails to Berger, knowing that she communicated regularly with her son and that Cole was becoming increasingly anxious about when the petition would be filed.[9] "Some cases have said that gross negligence involves moral turpitude in that such conduct is a breach of [an attorney's] fiduciary duty, but in each instance there was misrepresentation or other improper action, and the statements must be read in the light of the additional facts. [Citations.]" (*Call v. State Bar* (1955) 45 Cal.2d 104, 109.) Here, we find that Haltom's grossly negligent representations amount to moral turpitude because he made them in the context of habitually disregarding Cole's legitimate interests in the progress and timely filing of his habeas petition. (See *Grove v. State Bar* (1967) 66 Cal.2d 680, 683-684 [habitual disregard of client's interests, even when grossly negligent or careless rather than willful and dishonest, constitutes moral turpitude].)

Count Three: Failing to Inform Client of Significant Developments (§ 6068, subd. (m))

Section 6068, subdivision (m), requires an attorney to promptly respond to reasonable client status inquiries and to keep clients informed of significant developments in matters for which the attorney has agreed to provide legal services. The State Bar alleged that Haltom failed to advise Cole and his mother that he was not working diligently on the case. The hearing judge

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[9] For example, Berger wrote in her March 18, 2009 email: "I am getting a little worried I have emailed you twice and I have not received an answer, are still working on Ted's case. He has just asked me every week end if I have heard from yo and I would like to give him some good news about the brief." (*Sic*.)

Then on January 15, 2010, Berger emailed Haltom: "I have written several e-mails but got no response, and Ted had written you and no response. . . . If you review, your e-mails to me I have at least 10 telling me you will be finished and this goes back to July 22 2008. . . . I am getting worried that nothing is being done to help my son. . . . I have let it go because I want you to do the best job you are able to do, but now I am frustrated and so is my son." (*Sic*.)

dismissed this charge as inconsistent with her finding in Count Two that Haltom made false representations to Berger about the progress of his work on Cole's petition.

We find Haltom culpable of failing to promptly, adequately, and accurately communicate with Cole as early as September 2008, when Berger suggested in an email that Haltom contact her son in prison.[10] However, Haltom did not meet with Cole in prison until November 2010, after the petition had been denied. Also, he failed to communicate accurate information to Berger and Cole about his need to file a shell petition and to request more time from the state court to file the full petition. "The serious nature of [Haltom's] repeated failure to communicate with his [client] exacerbates the seriousness of his failure to provide competent legal services." (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 547, 565.)

Count Four: Failing to Return Unearned Fees (Rule 3-700(D)(2))
Count Five: Improper Withdrawal from Employment (Rule 3-700(A)(2))

Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until, among other things, all reasonable steps have been taken to avoid foreseeable prejudice to the client's rights. This includes giving due notice to the client and allowing time to locate and employ other counsel. Rule 3-700(D)(2) requires an attorney, when terminated, to promptly refund an advance fee that has not been earned.

The State Bar alleged that Haltom effectively withdrew from employment when he "ceased working on the case over a period of years." The State Bar also alleged that Haltom failed to promptly refund Berger's unearned $6,000 advance fee. The hearing judge found Haltom culpable of Count Five [withdrawal from representation] but not culpable of Count Four [failure to return unearned fee] because this conduct was encompassed in Count Five. We

[10] On September 30, 2008, Berger emailed Haltom that she was concerned about his lack of communication with her son: "I not sure if you are going to start the case or talk to me before you start the case. And if you will ever talk to Ted, maybe you could have a telephone conversation with him. But if that is not necessary that is fine. No hurry when ever you have time is fine thank you so much." [*Sic.*]

conclude Haltom is not culpable of either count. The State Bar did not prove that Haltom improperly withdrew from representing Cole since he continued to work on his case, albeit in a very limited way, until he filed the shell petition in 2010. Nor did the State Bar prove that Haltom failed to earn any portion of his $6,000 fee. We dismiss Counts Four and Five with prejudice.

II. THE HOLSOME MATTER (09-O-12950)

A. FINDINGS OF FACT

In 2001, Glen Holsome was convicted of spousal rape and false imprisonment. He was sentenced to life in prison. In 2002, the appellate court affirmed his conviction, and the California Supreme Court denied review in 2003.

On May 10, 2004, two days before the one-year deadline in federal court, Holsome filed a pro per petition for habeas corpus in the U. S. District Court for the Eastern District (Sacramento). The petition advanced claims that the trial court improperly told the jury about his convictions for sexual assault, incorrectly admitted evidence of prior domestic violence, and imposed an unlawful sentence.

In August 2004, the federal district court appointed Haltom to represent Holsome. After several continuances, Haltom timely filed an amended petition for habeas relief on April 7, 2005, asserting two distinct grounds: (1) the trial court improperly informed the jury of Holsome's past convictions for sexual assault; and (2) the trial court improperly utilized jury instructions about Holsome's prior sexual misconduct that had recently been held unconstitutional in *Gibson v. Ortiz* (9th Cir. 2004) 387 F.3d 812 (*Gibson* claim.)

In August 2005, the Deputy Attorney General (AG) handling the case moved to dismiss the newly raised *Gibson* claim because it had not been exhausted at the state level. The federal magistrate judge dismissed the *Gibson* claim as unexhausted on March 28, 2006, but stayed the

proceedings and ordered Haltom to: (1) "file a state court petition within thirty (30) days of the filed date of this order;" and (2) "file a notice of completed exhaustion within thirty (30) days after ruling by the state supreme court." Shortly thereafter, new developments in the law rendered the *Gibson* claim meritless. Haltom realized that Holsome's "case was doomed to fail," and that filing a state petition alleging *Gibson* error would be frivolous.

Haltom's problems arose when he failed to notify his client or the federal court after he determined in May 2006 that he could not ethically file a meritless state exhaustion petition. He testified that he dreaded putting the "final nail in the [client's] coffin" by telling Holsome that he had no case. Haltom admitted to "a failure on my part to calendar an obligation to inform the court . . . and I should have also communicated that to the client." After procrastinating about telling his client and the court, Haltom eventually forgot to do so. The hearing judge found his testimony credible given his overwhelming caseload.

According to Haltom, Holsome wrote "hundreds" of unanswered letters to him during the course of his representation. Haltom stated that time would not permit him to answer them, although he could not explain why Holsome's correspondence did not remind him of the need to notify Holsome and the court that he was not going to file the state exhaustion petition. Finally, in December 2007, Haltom wrote to Holsome. He apologized for the delay and, even though he had filed nothing on Holsome's behalf, told him: "[W]e are simply waiting for a decision in your case. . . . I'll let you know when we receive a decision from the court."

By the summer of 2008, two years after the federal court stayed the case, Holsome grew frustrated with Haltom's lack of communication and wrote to the district court asking for another attorney. The federal magistrate judge ordered Haltom to update the case. On July 18, 2008, Haltom filed a one-page document stating he did not file the state exhaustion petition and lifting the stay appeared appropriate. On July 29, 2008, the district court lifted the stay, struck the

Gibson claim of jury instruction error, directed the AG's office to file a response within 30 days, and ordered Haltom to file a reply 30 days thereafter. After Holsome sent the court several additional letters, the federal magistrate judge issued an order on October 22, 2008, expressing that Haltom had "apparently dropped the ball" and had not filed any pleading since the July 29 order. The order provided Holsome a choice of three options: (1) continue with Haltom as his attorney; (2) proceed in pro per; or (3) contact the Federal Defender's Office for possible substitution of counsel. The judge considered, but did not impose, sanctions against Haltom.

Holsome then wrote to attorney Carol Wiggins at the Federal Defender's Office to ask for her assistance. Wiggins wrote back: "As much as I would like to be able to help you, I just do not think your potential "*Gibson v. Ortiz*" claim has any chance of success, so at this point in the case there is nothing I would do differently than Mr. Haltom has done." Wiggins also wrote to the federal magistrate judge: "I do not think there are any legal issues my office could pursue that Mr. Haltom has not fully examined . . . I do not believe our office would address the substance of any potential issues any differently than Mr. Haltom."

In late December, Haltom visited Holsome in prison for the first time. He discussed the habeas petition and finally explained that the law had "evolved in such a way that the wind was taken out of our sails of our only viable claim, your *Gibson* claim." Haltom told him that the habeas petition would be denied. Holsome decided to keep Haltom as his attorney and asked him to contact eyewitnesses for another possible challenge to his case. Haltom agreed, attempted to talk to witnesses, and followed up with a letter to Holsome.

Neither Haltom nor the AG filed objections to the federal magistrate judge's dismissal recommendation. In May 2009, the district court denied Holsome's habeas petition.

At his disciplinary trial, Haltom admitted that he put off telling Holsome the bad news about his *Gibson* claim until he finally forgot about it. He accepted full responsibility for failing

to communicate with his client and the court, calling his actions "a blunder," "an omission," "an oversight," "an error" and "my mess." He concluded: "I should have done it. I didn't do it." Haltom also described being humiliated before the federal judge, and did not request court-appointed counsel fees.

B. CONCLUSIONS OF LAW

Count Six: Failing to Act Competently (Rule 3-110(A))

The State Bar alleged that Haltrom acted incompetently by failing to file the state exhaustion petition, to perform any services between May 2006 and July 2008, to file a reply or traverse, or to file objections to the court's recommendation that the habeas petition be denied. The hearing judge found Haltom not culpable because he: (1) made a legally sound decision not to file the state exhaustion petition; (2) could not have performed any legal service that would have led to a favorable outcome; and (3) had no meritorious argument to make in response to the AG's return to the amended habeas petition. We agree. Haltom testified that he did not file the state exhaustion petition because it was meritless. The State Bar did not present any evidence to contradict Haltom's position. We therefore dismiss Count Six with prejudice.

Count Seven: Failing to Obey a Court Order (§ 6103)
Count Eight: Failing to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

Section 6103 provides, in pertinent part, that willful disobedience of a court order constitutes cause for suspension or disbarment. Section 6068, subdivision (b), provides that an attorney must maintain respect for the courts and its judicial officers. The State Bar alleges Haltom is culpable of both counts because he failed to comply with the federal court's order to file the exhaustion petition, or seek relief from that requirement, and failed to notify the court of any filing. The hearing judge found Haltom not culpable of failing to obey the court order, but

culpable of failing to maintain respect for the court by not informing it of any filing. We find Haltom not culpable on both counts.

The State Bar's position that Haltom failed to obey the court's order and disrespected the court is not supported by the evidence. Before an attorney may be disciplined under section 6103, the State Bar must prove by clear and convincing evidence that the attorney willfully disobeyed or violated a court order. (*In the Matter of Respondent X* (Review Dept 1997) 3 Cal. State Bar. Ct. Rptr. 592, 603.) And section 6103 requires a precise level of willfulness, namely, that the attorney, " ' "knew what he was doing or not doing *and* that he intended either to commit the act or to abstain from committing it." [Citations.]' " (*King v. State Bar* (1990) 52 Cal.3d 307, 314, italics added.)

Here, the federal court's order to file the state petition was permissive and not mandatory. Haltom credibly testified that he did not intentionally disregard the order because he believed filing the state petition would be unethical as a frivolous filing. Nor did Haltom purposefully disrespect the court by failing to notify it he had decided not to file the petition. The hearing judge found that Haltom simply forgot, given his heavy caseload. (Rules Proc. of State Bar, rule 5.155(A) [factual findings entitled to great weight].) Based on this evidence, we conclude Haltom did not willfully disobey or disrespect the court. We dismiss Counts Seven and Eight with prejudice.

Count Nine: Moral Turpitude (§ 6106)

The State Bar alleged that Haltom committed an act of moral turpitude when he: (1) violated the federal district court's orders to file a state court petition and a notice of completion of filing; (2) failed to seek relief from the "requirement" that he file the exhaustion petition; and (3) failed to notify the court he had filed the exhaustion petition. The hearing judge found Haltom not culpable noting: "An allegation of violating section 6106 is a grave charge and

should not be alleged lightly. The State Bar has offered no evidence to support a charge of dishonesty regarding Haltom's failure to notify the court that he had not filed the exhaustion petition." We agree, and dismiss Count Nine with prejudice.

Count Ten: Failing to Respond to Reasonable Client Inquiries (§ 6068, subd. (m))

The State Bar alleged that Haltom failed to advise Holsome between May 8, 2006 and June 20, 2008 that he would not file the exhaustion petition or perform any other services. The hearing judge found Haltom culpable, and we agree. For two years, Haltom failed to communicate to his client that he had decided not to file the exhaustion petition. This decision clearly represented a significant development that Holsome had a right to know. "Under the State Bar Act and Rules of Professional Conduct clients have the right to expect that attorneys will reasonably supervise the progress of cases for which they accept responsibility. [Citation.]" (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 612.) Haltom therefore violated section 6068, subdivision (m).

Count Eleven: Improperly Withdrawing from Employment (Rule 3-700(A)(2))

The State Bar alleged that Haltom effectively withdrew from employment when he: (1) stopped working on the case from May 2006 to July 2008; (2) violated the court orders requiring him to file the exhaustion petition; (3) failed to communicate these developments to Holsome; (4) failed to file a reply or traverse; and (5) failed to perform any further services. The State Bar further alleged that Haltom failed to take steps to avoid foreseeable prejudice to his client's rights. The hearing judge found these allegations to be the same as those set forth in Count Six (Failure to Perform with Competence) and Count Ten (Failure to Inform Client of Significant Developments), and dismissed this count. We agree. As the hearing judge reasoned, Haltom's failure to communicate does not provide sufficient evidence to support a conclusion

that he effectively withdrew from employment or caused prejudice to Holsome's legal rights. We dismiss Count Eleven with prejudice.

III. AGGRAVATION AND MITIGATION

The offering party bears the burden to prove aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)), while Haltom has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. THREE AGGRAVATING FACTORS

The hearing judge found two aggravating factors: multiple acts of misconduct and financial harm to Berger. We give limited weight to the first factor, and do not agree that the State Bar proved economic harm to Berger. However, we find additional aggravation for harm to Cole, Holsome, and the federal court, and for an uncharged violation of rule 3-310(f) when Haltom accepted legal fees from Berger without obtaining Cole's written consent.

1. Multiple Acts (Std. 1.2(b)(ii))

Haltom is culpable of four counts of misconduct in two client matters over two years. This is sufficient to constitute multiple acts in aggravation. (*In the Matter of Bach, supra,* 1 Cal. State Bar Ct. Rptr. at pp. 646-647.)

2. Significant Harm (Std. 1.2(b)(iv))

Haltom's misconduct caused significant harm to his clients. Since Cole and Holsome were incarcerated, they had limited ability to keep apprised of their attorney's efforts or the status of their cases. Haltom's unwillingness to communicate in a forthright manner forestalled them from discovering the status of their matters. In fact, Haltom's letter to Holsome that they were simply awaiting a decision from the court on his case was misleading, since Haltom did not intend to file further pleadings. Most importantly, Haltom's failure to provide his clients accurate and timely information about their cases precluded them from seeking other counsel or

making any reasoned decision as to their best interests. Although Cole and Holsome may not have ultimately been exonerated, they were entitled to have their day in court in a timely manner.

In addition, Haltom's failure to monitor the status of the Holsome matter resulted in harm to the administration of justice because it caused disruption and delay of court proceedings. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 48 [unnecessary delay of appellate process for two years constitutes harm to administration of justice]. Moreover, Haltom's inaction substantially impacted the underpinnings of the criminal justice system, which relies on appointed counsel to act diligently to protect a defendant's right to a full and fair trial. (See *In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1710 [discussing importance of appointed counsel to indigent clients in juvenile dependency hearings].) We assign significant aggravating weight to the harm Haltom caused.[11]

3. Uncharged Misconduct (Std. 1.2(b)(iii))

Haltom testified he accepted legal fees from Berger on behalf of Cole. But Haltom did not communicate with Cole in prison until after he had accepted the fee and the case was over. Thus, Haltom violated rule 3-310, which requires him to obtain his client's informed written consent before he accepts compensation from another person. Such uncharged misconduct is properly considered in aggravation. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [evidence of uncharged misconduct may be considered in aggravation].)

B. FIVE MITIGATING FACTORS

The hearing judge found five factors in mitigation: (1) no prior record of discipline; (2) candor and cooperation; (3) extraordinary showing of good character; (4) extensive pro bono

[11] We disagree with the hearing judge that Haltom caused Berger significant financial harm because he delayed returning the $6,000 fee she paid him in July 2008 for three years, until July 2011. Berger testified she earned between $47,000 and $57,000 during the relevant period and considered her son's petition a priority. The State Bar did not prove that Berger suffered specific economic harm.

activities and community service; and (5) remorse and recognition of wrongdoing. We adopt all five factors and agree with the hearing judge that they constitute compelling mitigation, even when weighed against our additional findings in aggravation.

1. No Prior Disciplinary Record (Std. 1.2(e)(i))

Standard 1.2(e)(i) provides that mitigation shall be considered for the "absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious." It is established that "[p]rior exemplary conduct and a distinguished career may be relevant as factors indicative of the probability that misconduct will not likely recur. . . . [Citation.]" (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.) Haltom's misconduct was limited to two cases in two years weighed against 14 years of discipline-free practice. He has sincerely acknowledged wrongdoing and testified he has reduced his caseload to better manage his practice, making future misconduct unlikely. We therefore find Haltom's lack of prior record to be relevant and assign it significant weight in mitigation. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant mitigation for over 10 years of discipline-free practice].)

2. Candor and Cooperation (Std. 1.2(e)(v))

Spontaneous candor to victims and cooperation with the State Bar are mitigating factors. (Std. 1.2(e)(v).) Haltom is entitled to limited mitigation for entering into a comprehensive Stipulation as to Facts; Admission of Documents. This stipulation assisted the State Bar's prosecution of this case, even though Haltom did not admit culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

3. Good Character (Std. 1.2(e)(vi))

Standard 1.2(e)(vi) requires "an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who

are aware of the full extent of the member's misconduct." Haltom presented impressive evidence of his good character through his own testimony, and the testimony and declarations of eight attorneys, one investigator, and two long-term friends. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorney testimony receives serious consideration due to "strong interest in maintaining the honest administration of justice"].)

Haltom testified that he was admitted to the Bar in 1991, and became a certified criminal law specialist in 2003. He has worked on at least 75 habeas corpus cases, was lead attorney on 25 published appellate cases, and is qualified to take federal court criminal case appointments and death penalty appeals in the California Supreme Court. He presented a letter from 2005, in which the Judicial Council commended him for his "exemplary work" in an appeal involving constitutional issues that were recognized in a published opinion.

Haltom's witnesses uniformly attested to his honesty, integrity, skill, and dedication as an attorney.[12] He expressed remorse to many witnesses for not maintaining contact with his clients and the federal court. Although the witnesses were informed about the charges, none changed their positive opinions about Haltom. We expressly note the testimony of several witnesses.

John Duree, who was Haltom's co-counsel in the discipline case, has known him for over 20 years and leases an office in the same suite. He believes Haltom to be "widely considered the best post-conviction attorney in Sacramento."

Mark Reichel is a private attorney who practices criminal law and refers work to Haltom. The two met 15 years ago at the Federal Public Defender's Office. Reichel stated: "My opinion of Mr. Haltom is really the same as is shared by the relevant legal community. You know,

[12] We reject the State Bar's assertion that Haltom's witnesses "did not provide any persuasive reasons other than their acquaintanceships for believing Haltom has good character." Several witnesses based their opinions on directly observing Haltom while he was in trial, interacting with clients, presenting oral argument, or preparing cases.

there's not a more honest and moral and ethical attorney in Sacramento, and I'm willing to put up the money on a wager for anyone you can bring in here to sit in the chair and say opposite."

Dina Santos, a former prosecutor, is a criminal defense attorney in Sacramento who has known Haltom for 10 years. Santos seeks advice from Haltom because he is "extremely competent" and goes "above and beyond" for his clients. As a member of the selection committee for a magistrate judge opening, she encouraged Haltom to apply, noting that he has the "highest level of honesty."

Jeffrey Rosenblum is an attorney who shares the office suite with Haltom. He has known him for 20 years, has observed him work exceedingly long hours for his clients, and considers him to be "honest and honorable."

4. Pro Bono and Service to the Legal Community

Pro bono and community service is a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Haltom has successfully prosecuted a number of difficult criminal trials and appeals pro bono or for greatly reduced fees. His legal service to others is entitled to significant mitigation. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigating weight assigned for demonstrated legal abilities and zeal in undertaking pro bono work.].)

5. Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii))

Haltom demonstrated recognition of and sincere remorse for his wrongdoing. He repeatedly admitted that he failed to promptly communicate with the federal court, Holsome, Cole, and Cole's family. He took responsibility for his failures, has shown insight into his tendency to procrastinate, and has taken steps to avoid future problems, such as paring down his caseload and "doing what I can to better myself, better my practice of law." We assign significant mitigation to this factor.

IV. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

We begin with the standards, which the Supreme Court instructs us to follow "whenever possible." (*In re Young, supra*, 49 Cal.3d at p. 267, fn. 11.) But the standards do not mandate a particular discipline. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) In fact, the court is "not bound to follow the standards in talismanic fashion" and may consider circumstances peculiar to the offense and the offender. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

Several standards apply here, but we focus on 2.3, which is the most severe.[13] This standard provides that culpability for moral turpitude, fraud, or intentional dishonesty must result in actual suspension or disbarment depending on the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member's practice of law. Here, Haltom's lack of diligence harmed both clients and the administration of justice, was directly related to the practice of law, and involved moral turpitude due to his gross negligence.

Given the broad range of discipline called for in the standards, we also look to case law for guidance. Like the hearing judge, we find three cases involving criminal defendants to be most instructive: *Borré v. State Bar* (1991) 52 Cal.3d 1047; *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459; and *In the Matter of Riordan, supra,* 5 Cal. State Bar Ct.

[13] Standard 1.6(a) directs that when the misconduct calls for different sanctions, we apply the most severe.

Rptr. 41. The discipline imposed in these cases ranges from a stayed suspension to two years' actual suspension.

In *Borré*, an attorney for 14 years without discipline failed to keep his client informed of significant developments, abandoned his client, intentionally deceived his client about the status of the case, improperly withdrew from employment, and made a reckless representation to the Court of Appeal. In addition, the attorney misled the State Bar investigator, created a fabricated letter to cover up his misconduct, and lied about it under oath. Discipline included a two-year actual suspension.

In *Nees*, an attorney with no mitigating circumstances who failed to participate in the disciplinary hearing abandoned a habeas corpus petition of an incarcerated client and failed to perform competently, to respond to client inquiries for three years, to return client files, to return unearned fees, and to cooperate with the State Bar. Discipline included a six-month actual suspension continuing until restitution was complete.

In *Riordan*, an attorney with 17 years of discipline-free practice and significant mitigation failed to perform competently in a death penalty appeal. The attorney failed to file an opening brief after receiving eight extensions over two years, and orders from the Supreme Court directing that it be filed. Sanctions were imposed, which the attorney failed to report to the State Bar. We found that the attorney was overwhelmed by his caseload and his misconduct was at odds with the strong testimony of his character witnesses. Discipline included a six-month stayed suspension and a one-year probation.

We agree with the hearing judge that *Riordan* is most comparable to Haltom's circumstances. Like the attorney in *Riordan*, Haltom became overwhelmed by a heavy caseload of complex criminal matters and allowed his clients' cases to languish for an unacceptably long time. In doing so, Haltom caused harm to his clients and the administration of justice. But,

unlike the attorney in *Riordan*, Haltom's conduct involved moral turpitude based on his gross negligence. Even so, as the hearing judge correctly noted, not every violation of section 6106 mandates an actual suspension or disbarment. (See *In re Silverton* (2005) 36 Cal.4th 81, 92 [standards entitled to great weight but do not provide for mandatory disciplinary outcomes]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220-221 [one-year stayed suspension and probation for section 6106 violation for intentionally misleading settlement judge]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159 [public reproval for section 6106 violation for misleading bail commissioner in pre-standards case]; *Mushrush v. State Bar* (1976) 17 Cal.3d 487 [public reproval for section 6106 violation for making false statements while representing debtor in bankruptcy proceeding in pre-standards case].)

None of Haltom's circumstances can excuse his failure to perform his professional responsibilities on behalf of his incarcerated clients. Yet, as the hearing judge found, his "failure to communicate in a straightforward manner with Cole and Holsome, as well as his failure to proceed diligently, did not arise from venal considerations." Further, Haltom's misconduct was limited to a single two-year period, similar to the circumstances in *Riordan*. Most significantly, we have given great weight to Haltom's evidence in mitigation, which is compelling. As contemplated by the express language of standard 1.2(e), such mitigation establishes that "the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in [the] standards for the particular act[s] of professional misconduct found or acknowledged." Thus, although standard 2.3 prescribes an actual suspension as the appropriate discipline for an act of moral turpitude, here we recommend a one-year stayed

suspension and a one-year probation as adequate discipline to protect the public and the courts, and to maintain high standards for the legal profession.[14]

V. RECOMMENDATION

We recommend that Victor Stephen Haltom be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year on the following conditions:

1. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

2. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

[14] We find no merit to Haltom's procedural challenges that: (1) the hearing judge erred by denying Haltom's request to conduct discovery; (2) the hearing judge erred by denying Haltom's request to continue his case; and (3) the State Bar's letter dated September 30, 2008, closing Holsome's complaint, is a binding admission that Haltom did not commit misconduct in case no. 09-O-12950.

6. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School.

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. (Cal. Rules of Court, rule 9.18.) At the expiration of the probation period, if Victor Stephen Haltom has complied with all conditions of probation, the one year period of stayed suspension will be satisfied and that suspension will be terminated.

We further recommend that Victor Stephen Haltom be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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

PURCELL, J.

I CONCUR:*

EPSTEIN, J.

* Presiding Judge Joann Remke is recused.