

PUBLIC MATTER

FILED

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P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 13-O-10003; 16-O-17706;
)	17-O-00498; 17-O-01636-CV
GREGORY HENRICK MITTS,)	
)	AMENDED DECISION
A Member of the State Bar, No. 71981.)	
_____)	

Introduction¹

In this contested disciplinary proceeding, respondent Gregory Henrick Mitts (Respondent) is charged with a total of 12 counts of misconduct involving three separate client matters and a probation condition. Specifically, Respondent is charged with failing to perform legal services with competence (rule 3-110(A) [two counts]); failing to respond to client inquiries (§ 6068, subd. (m) [two counts]); failing to inform client of significant developments (§ 6068, subd. (m) [two counts]); failing to render an accounting (rule 4-100(B)(3)); failing to obey a court order (§ 6103); improper withdrawal from employment (rule 3-700(A)(2)); failing to refund unearned fees (rule 3-700(D)(2)); failing to release a client file (rule 3-700(D)(1)); and moral turpitude (§ 6106). After careful consideration, the court finds Respondent committed 11 ethical violations.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

In his Answer filed on February 7, 2018, Respondent admitted to culpability as to the first eleven of the twelve counts. “It is well established that a judicial admission in a pleading is a “conclusive concession of the truth of a matter and has the effect of removing it from the issues.” (*Walker v. Dorn* (1966) 240 Cal. App. 2d 118, 120.) Given the judicial admission, this court finds by clear and convincing evidence that Respondent is culpable of the misconduct in those eleven counts. Moreover, this court finds Respondent culpable of count twelve.

Based on the facts and circumstances, as well as the applicable aggravating and mitigating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for six months.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) against Respondent on December 20, 2017. Thereafter, Respondent filed a response to the NDC on February 7, 2018.

On May 8, 2018, OCTC filed a motion to modify or withdraw the approved stipulation regarding facts, conclusions of law and disposition. On May 23, 2018, Respondent filed an opposition stating that no good cause existed for modifying or withdrawing the motion, to which OCTC replied on May 29, 2018. On June 1, 2018, the court granted OCTC’s motion to withdraw the stipulation. On June 1, 2018, Respondent filed a petition for interlocutory review of the June 1, 2018 order in the Review Department, asserting that the court acted without good cause and that the court abused its discretion. The Review Department denied the petition on June 22, 2018.

On August 20, 2018, Respondent made an oral motion to continue the trial in this matter that was set for August 23, 2018. OCTC did not oppose Respondent’s motion. The court granted the motion and continued the trial to September 18, 2018.

On August 20, 2018, OCTC filed a request for the court to take judicial notice of the NDC and Respondent's Answer, wherein Respondent admitted "the charges alleged" in the NDC, with the exception of the charges alleged in Count Twelve. On September 13, 2018, Respondent filed an opposition to the motion, alleging that his answer was filed based on settlement negotiation discussions. This court granted the request for judicial notice on September 17, 2018.

A one-day trial was held in this matter on September 18, 2018. The matter was submitted for decision on that same date. The parties filed closing briefs on October 2, 2018, and OCTC filed a Motion to Strike Respondent's Closing Argument Brief on October 4, 2018. Respondent did not oppose the motion.²

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 1972, and has been a member of the State Bar of California at all times since that date.

Case Number 13-O-10003 – The Brooks Matter

Facts

On March 25, 2010, Rowan Brooks employed Respondent to prepare and file a petition for writ of habeas corpus on Brooks's behalf. Brooks paid Respondent \$40,000 in advanced fees. Brooks reminded Respondent in writing about the deadline to file the petition. Respondent filed an untimely petition for writ of habeas corpus on behalf of Brooks,³ but Respondent never informed Brooks that the petition was not timely filed.

² Good cause having been shown, OCTC's motion, filed October 2, 2018, to strike parts of Respondent's closing brief is granted. Page 1, line 2 through page 3 line 5, and page 3 line 10 through page 7, line 1 of Respondent's closing brief are stricken. **IT IS SO ORDERED.**

³ The case was entitled *Brooks v. James Yates*, United States District Court for the Eastern District of California, case No. 1:11-cv-01315-LJO-JLT.

An August 15, 2011 court order directed Respondent to show cause why Brooks's untimely petition should not be dismissed as untimely. Respondent failed to respond to the district court order. Respondent never informed Brooks about the order to show cause, and that he failed to respond to the order.

Between May 2011 and August 2011, Brooks made 11 written status inquiries to Respondent about the petition for writ of habeas corpus that Respondent was hired to file. The inquiries were reasonable. In addition, on October 12, 2012, Brooks requested an accounting of the \$40,000 in advanced attorney's fees. Respondent did not promptly respond to any of Brooks's status inquiries and did not provide Brooks with an appropriate accounting.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

OCTC charged Respondent with willfully violating rule 3-110(A) by failing to file a timely petition for writ of habeas corpus on Brooks's behalf and failing to respond to an order to show cause why the untimely petition should not be dismissed as untimely. Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent failed to file a timely habeas corpus petition and failed to respond to a court's order to show cause. Respondent admitted to and the court finds that Respondent is culpable of the charges alleged in Count One.

Count Two - (§ 6068, subd. (m) [Failure to Communicate])

Respondent is charged with willfully violating section 6068, subdivision (m), by failing to promptly respond to Brooks's reasonable status inquiries. Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Brooks made 11 reasonable inquiries

about the status of the habeas petition Respondent was hired to file, but Respondent failed to promptly respond to those inquiries. Respondent admitted to and the court finds that Respondent is culpable of willfully violating section 6068, subdivision (m).

Count Three - (§ 6068, subd. (m) [Failure to Inform Client of Significant Development])

Respondent is charged with willfully violating section 6068, subdivision (m), by failing to keep Brooks informed about significant developments concerning the petition for writ of habeas corpus Respondent agreed to file on Brooks's behalf. Respondent did not inform Brooks about the following: 1) he failed to timely file a habeas petition on Brooks's behalf; 2) the district court issued an order to show cause why Brooks's "late-filed" petition should not be dismissed as untimely; and 3) that Respondent failed to respond to the court's order to show cause. Respondent admitted to and the court finds that Respondent is culpable of willfully violating section 6068, subdivision (m).

Count Four - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

OCTC charged Respondent with willfully violating rule 4-100(B)(3) by failing to render an appropriate accounting to Brooks. Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. On October 10, 2012, Brooks requested an accounting of the \$40,000 in advanced fees he paid Respondent on March 25, 2010. Respondent did not render an appropriate accounting to Brooks. Respondent admitted to and the court finds that Respondent is culpable of willfully violating rule 4-100(B)(3).

Count Five - (§ 6103 [Failure to Obey a Court Order])

Respondent is charged with willfully violating section 6103 by failing to comply with the district court's August 15, 2011 order to show cause why the petition for writ of habeas corpus filed in *Brooks v. James Yates* should not be dismissed as untimely. Section 6103 provides, in

pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. An attorney's knowledge of a final, binding order is an essential element of a section 6103 violation.

(In the Matter of Maloney and Virsik (Review Dept.2005) 4 Cal. State Bar Ct. Rptr. 774, 787.)

Although Respondent did not file a response to the August 15, 2011 district court order, and Respondent admitted that he committed the misconduct charged in Count Five, the NDC fails to allege that Respondent received or had knowledge of the district court's order. As such, the court does not find Respondent culpable of willfully violating section 6103. Count Five is dismissed with prejudice.

Case Number 16-O-17706 – The Pull Matter

Facts

Respondent agreed to provide legal services to Edward and Theresa Pull. The Pulls hired Respondent to represent them in a case entitled *Edward and Theresa Pull v. Cruise Air Aviation*, Kern County Superior Court case No. CV283527. Cruise Air Aviation filed a motion for summary judgment, but Respondent did not file an opposition. The Kern County superior court granted the motion and dismissed the Pulls' lawsuit. Respondent never informed the Pulls that Cruise Air Aviation had filed a motion for summary judgment, that he failed to oppose the motion, that the superior court granted the motion, and that the court dismissed the Pulls' lawsuit.

Conclusions

Count Six - (§ 6068, subd. (m) [Failure to Inform Client of Significant Development])

OCTC charged Respondent with willfully violating section 6068, subdivision (m) by failing to keep his client's informed of significant developments. Respondent never informed the

Pulls about the following: 1) the opposing party in their lawsuit filed a motion for summary judgment; 2) Respondent never opposed the motion for summary judgment; 3) the superior court granted the motion; and 4) the superior court dismissed the Pulls' lawsuit. Respondent admitted to and the court finds that Respondent is culpable of willfully violating section 6068, subdivision (m).

Case Number 17-O-00498 – The Rodriguez Matter

Facts

On September 12, 2015, Leticia Rodriguez hired Respondent to draft and file a petition for writ of habeas corpus on her behalf. On the same date, Rodriguez paid Respondent \$1,000 in advanced fees. Respondent failed to file a habeas petition or take any action on Rodriguez's behalf.

Between November 2, 2015, and March 22, 2017, Rodriguez made 27 telephonic and three written status inquiries to Respondent about the petition for writ of habeas corpus that Respondent was hired to file. The inquiries were reasonable. In addition, on March 22, 2017, Rodriguez requested that Respondent return her client file. Respondent did not promptly respond to any of Brooks's status inquiries and did not promptly return Brooks's file.

Conclusions

Count Seven - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Respondent is charged with willfully violating rule 3-110(A) by failing to perform with competence. Respondent never filed the writ of petition for habeas corpus that Rodriguez hired Respondent to file on Rodriguez's behalf. Respondent admitted to and the court finds that Respondent is culpable of willfully violating rule 3-110(A).

Count Eight - (§ 6068, subd. (m) [Failure to Communicate])

Rodriguez made 30 reasonable inquiries about the status of the habeas petition Respondent was hired to file, but Respondent failed to promptly respond to those inquiries. Respondent admitted to and the court finds that Respondent is culpable of willfully violating section 6068, subdivision (m).

Count Nine - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

OCTC charged Respondent with willfully violating rule 3-700(A)(2) by improperly withdrawing from employment. Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws. After Rodriguez hired Respondent on September 12, 2015, Respondent abandoned Rodriguez's legal matter and never filed a habeas petition on her behalf, which was equivalent to a constructive withdrawal. Respondent admitted to and the court finds that Respondent is culpable of willfully violating rule 3-700(A)(2).

Count Ten - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent is charged with willfully violating rule 3-700(D)(2) by failing to promptly refund \$1,000 in advanced fees to Rodriguez. Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Respondent failed to file the habeas petition on Rodriguez's behalf or perform any legal services on her behalf. Thus, he did not earn any of the \$1,000 advanced fee that Rodriguez paid. Respondent's employment was terminated by his constructive withdrawal, which required him to promptly return the entire \$1,000 to Rodriguez, but he failed to do so.

Respondent admitted to and the court finds that Respondent is culpable of willfully violating rule 3-700(D)(2).

Count Eleven - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

OCTC charged Respondent with willfully violating rule 3-700(D)(1) by failing to return Rodriguez's file upon her request once Respondent's employment was terminated. Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not. After Respondent constructively withdrew from employment, Rodriguez requested her client file on March 22, 2017. Respondent failed to promptly return the file as requested. Respondent admitted to and the court finds that Respondent is culpable of willfully violating rule 3-700(D)(1).

Case No. 17-O-01636 – The Probation Matter

Facts

On March 25, 2010, Rowan Brooks hired Respondent to represent him in filing a petition for review before in the California Supreme Court. Brooks executed a retainer agreement wherein Brooks agreed to pay Respondent a \$10,000 "non-refundable retainer fee, which [was] earned upon receipt."

On January 2, 2013, Respondent received from Brooks a letter dated October 10, 2012. In the letter, Brooks requested an accounting and various documents that Respondent had in his possession. Respondent sent Brooks a letter dated January 2, 2013, indicating that he intended to send Brooks his entire client file. Respondent did not address Respondent's accounting request and failed to provide Brooks with an accounting.

Pursuant to a prior discipline in State Bar case No. 11-O-18523, Respondent was required to submit a written quarterly report to the Office of Probation of the State Bar. Respondent submitted his quarterly report on April 5, 2013. In his quarterly report, Respondent declared under penalty of perjury that he was in compliance with all provisions of the State Bar Act and Rules of Professional Conduct from January 1, 2013, through March 31, 2013. Respondent's statement was false because Brooks requested an accounting from Respondent on January 2, 2013, which Respondent failed to provide.

Respondent knew that he had not provided Brooks with an accounting, but believed that Brooks was not owed an accounting because Brooks had signed a retainer agreement. Respondent did not understand that his agreement with Brooks was not a "true retainer" – Brooks had not paid Respondent to secure his availability over a certain period of time. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4.) During the trial, OCTC stipulated that Respondent was ignorant to the law of retainer agreements.

Conclusions

Count Twelve - (§ 6106 [Moral Turpitude])

OCTC charged Respondent with willfully violating section 6106 by engaging in an act of moral turpitude, dishonesty, or corruption when he falsely reported under penalty of perjury to the Office of Probation of the State Bar that he was in compliance with all of his ethical obligations from January 1, 2013 through March 31, 2013. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent is culpable of willfully violating section 6106.

At the time Respondent signed and submitted his April 2013 quarterly report, Respondent knew that he had not provided Brooks with an accounting as Brooks had requested. Respondent claimed that he did not understand the laws of retainers or that his agreement with Brooks was

not a “true retainer.” Respondent’s agreement with Brooks was not a true retainer; the money was paid for specific legal services and not to secure Respondent’s availability for a given period of time. (See *T & R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1, 7 [distinguishing a true retainer from advanced fees].) Since Respondent did not have a true retainer agreement with Brooks, Respondent was required to provide Brooks with an accounting, but he failed to do so. Thus, he misrepresented that he had fulfilled his ethical responsibilities in his April 2013 quarterly report.

Even if Respondent believed that he had no ethical duty to provide Brooks with an accounting, Respondent cannot claim ignorance of the law for the misrepresentation he made under penalty of perjury to the Office of Probation. Respondent had an ethical duty to ensure that he accurately completed his quarterly report, especially since “[a]t a minimum, quarterly probation reporting is an important step towards an attorney probationer’s rehabilitation because it requires the attorney, four times a year, to review and reflect upon his professional conduct In addition, it requires the attorney to review his conduct to ensure that he complies with all of the conditions of his disciplinary probation.” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.)

The court does not find that Respondent’s misrepresentation in his April 2013 quarterly report was intentional but finds that the false report was due to Respondent’s gross negligence in failing to ensure that he understood all of his ethical obligations. As such, Respondent is culpable of willfully violating section 6106.

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.)

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline. On August 3, 2012, Respondent was privately reprimanded for misconduct in a single client matter. Respondent stipulated that he was hired to represent a client in a post-conviction matter, but over a two-year period, Respondent failed to take action on his client's matter. Respondent was culpable of failing to perform legal services with competence and failing to promptly refund \$7,500 in unearned legal fees. Respondent's misconduct was mitigated by 35 years of discipline-free practice, candor and cooperation, physical difficulties, and family problems. There were no aggravating factors. Respondent's prior wrongdoing is a significant aggravating factor because it is similar to the misconduct in the current matter.

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing. Because Respondent's multiple acts of misconduct spanned over an extended period of time, they warrant significant weight in aggravation.

Significant Harm to Client/Public (Std. 1.5(j).)

Respondent's misconduct caused significant harm to Bobby Scrivner and to the administration of justice. Scrivner credibly testified that Rowan Brooks was her mother's third husband, and that they were married for 18 years – until Brooks murdered her. After the death of Scrivner's mother, Brooks was able to withdraw \$50,000 from his deceased wife's savings account, even though Scrivner made efforts to put a freeze on that account.

Thereafter, Scrivner began her efforts to obtain \$50,000 in restitution from Brooks. Scrivner was aware that Brooks had received an inheritance of \$75,000 after his mother died. At the time of Brooks's sentencing, Scrivner requested \$50,000 in restitution from the sentencing court. Ultimately, Scrivner was able to obtain a restitution order directing Brooks to pay her

almost \$50,000. The order did not specifically direct Brooks to pay to Scrivner a portion of the \$75,000 bequest he had received.

Brooks wanted to shield his inheritance funds from Scrivner's recovery. Brooks deposited \$50,000 in funds with a law firm. Respondent acknowledged that he knew that Brooks wanted to protect his inheritance funds from Scrivner. Respondent directed the law firm to transfer the funds to him to thwart Scrivner's ongoing attempts to enforce the restitution order. Several hearings were held in an attempt to trace Brooks's funds, but Scrivner was unable to secure any funds. The harm to Scrivner and the interest of justice is a significant aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds a single mitigating circumstance based on this record.

Pretrial Admissions

Respondent admitted culpability to 11 of the 12 charges. This demonstrates that Respondent accepted responsibility for his misconduct while preserving court time and resources. The court affords significant weight to this mitigating circumstance. (Std. 1.6(e); see *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].)

Discussion

OCTC argues that the appropriate level of discipline for Respondent's misconduct is a six-month actual suspension. Respondent did not provide an appropriate level of discipline in the event he was found culpable of the alleged wrongdoing. As discussed below, this court finds that Respondent's misconduct warrants an actual suspension of six months.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

While the standards are entitled to great weight (*In re Silverton* (2005) 36 Cal.4th 81, 92), they are not applied talismanically (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222) and “do not mandate a specific discipline” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). In short, even though the standards provide appropriate guidelines on the issue of discipline, a proper discipline recommendation ultimately rests on “a balanced consideration of all relevant factors, including aggravating and mitigating circumstances.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316; accord *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940; see also *Howard v. State Bar, supra*, 51 Cal.3d at pp. 221-222 [the Supreme Court is “permitted to temper the letter of the law with considerations peculiar to the offense and the offender”].)

Standard 2.11 is the most applicable standard to this case. Standard 2.11 provides in part that “[d]isbarment or actual suspension is the presumed sanction for . . . intentional or grossly negligent misrepresentation. . . .” The degree of sanction depends on the magnitude of the misconduct, the extent of harm to the victim, the impact on the administration of justice, and the extent to which the misconduct is related to the practice of law. (Std. 2.11.) Although

Respondent's grossly negligent misrepresentation did not harm a client or the administration of justice, it was directly related to the practice of law since he made the misrepresentation to the Office of Probation. Moreover, because Respondent has a prior record of discipline, the sanction in this case must be greater than the previously imposed sanction." (Std.1.8(a).) Respondent's prior involved a single client, but it was similar to the misconduct in this case. Based on the applicable standards, at a minimum, Respondent's misconduct warrants a period of actual suspension.

Although no case is directly analogous to Respondent's matter, the court considers *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, to arrive at the appropriate level of discipline. In *Peterson*, the attorney was actually suspended for one year for failing to perform with competence and failing to communicate in three client matters. In two of the client matters, he also violated 6106 by deceiving his clients about the status of their cases. In addition to the six ethical violations, the attorney failed to cooperate with the State Bar investigation into the matter. The attorney's misconduct was aggravated by multiple acts of misconduct, client harm, indifference and a lack of candor and cooperation. There were no mitigating factors.

Here, Respondent's misconduct involved three clients, and he was culpable of committing an act of moral turpitude. But, Respondent's misrepresentation to the Office of Probation was based on gross negligence, not intentional dishonesty or deceit. As in *Peterson, supra*, 1 Cal. State Bar Ct. Rptr. 73, Respondent's misconduct involved significant aggravating circumstances (especially Respondent efforts to thwart Scrivner's recovery of funds from Brooks), but Respondent had a significant mitigating factor, whereas the attorney in *Peterson* had none. Respondent's misconduct warrants a lesser period of actual suspension than in *Peterson* because Respondent's violation involving moral turpitude was not "repeated and protracted." (*Id., supra*, 1 Cal.State Bar at p. 80-81.)

In light of Respondent's prior private reproof that was similar to the current misconduct, other aggravating circumstances, and the sole mitigating circumstance, the court concludes that a six-month actual suspension is appropriate to protect the public, the courts and the legal profession; to maintain high professional standards; and to preserve public confidence in the legal profession. (Std. 1.1.)

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that Gregory Henrick Mitts, State Bar Number 71981, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions.

Conditions of Probation

Actual Suspension

Respondent must be suspended from the practice of law for the first six months of Respondent's probation.

Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126 and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully,

promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

State Bar Ethics School and Client Trust Accounting School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and of the State Bar Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending these sessions. If Respondent provides satisfactory evidence of completion of the Ethics School and/or the Client Trust Accounting School after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Proof of Compliance with Rule 9.20 Obligations

For a minimum of one year after the effective date of discipline, Respondent is directed to maintain proof of Respondent's compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-

delivery. Respondent is required to present such proof upon request by the Office of Chief Trial Counsel, the Office of Probation, and/or the State Bar Court.

Commencement of Probation

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Gregory Henrick Mitts 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, or during the period of his suspension, whichever is longer 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).)

California Rules of Court, Rule 9.20


It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.⁴ Failure to do so may result in disbarment or suspension.

⁴ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers*

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code 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.

Dated: January 18, 2019



CYNTHIA VALENZUELA
Judge of the State Bar Court

v. *State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 18, 2019, I deposited a true copy of the following document(s):

AMENDED DECISION

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

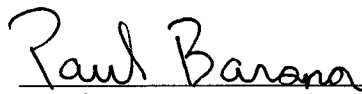
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FREDRIC J. GAGLIARDINI
LAW OFFICE OF FRED GAGLIARDINI
1227 CALIFORNIA AVE
BAKERSFIELD, CA 93304 - 1403

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

TIMOTHY G. BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 18, 2019.



Paul Barona
Court Specialist
State Bar Court