

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 13-O-11189-RAP
)	(13-O-12314; 13-O-14235)
)	
DANIEL KRISTOF LAK,)	DECISION
)	
Member No. 216983,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State of Bar of California (State Bar) charged Daniel Kristof Lak (respondent) with a total of eight counts of misconduct in three matters. The charges include failing to perform legal services with competence, failing to inform a client of significant developments, moral turpitude – misrepresentation to a client, failing to render accounts of client funds, practicing law while suspended, misusing a client trust account, failing to maintain respect for the court, and seeking to mislead a judge. The court finds respondent culpable on all counts and after considering the facts and the law recommends, among other things, that respondent be suspended from the practice of law for a period of two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

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.

Significant Procedural History

The State Bar filed the notice of disciplinary charges (NDC) against respondent on December 6, 2013. Respondent filed a response to the NDC on January 10, 2014.

Trial was held on April 7 - 9, 2014. The State Bar was represented by Deputy Trial Counsel Lee Ann Kern. Respondent represented himself. The court took the proceeding under submission for decision on April 9, 2014.

On April 9, 2014, respondent filed a motion to dismiss all counts associated with case no. 13-O-11189 (motion to dismiss). On April 15, 2014, the State Bar filed an opposition to the motion to dismiss. No good cause having been shown, the motion to dismiss is hereby denied.

On May 20, 2014, respondent filed a motion to stay the present proceeding pending the Supreme Court's ruling on a motion respondent filed in a separate matter (motion to stay). On May 28, 2014, the State Bar filed an opposition to the motion to stay. No good cause having been shown, the motion to stay is hereby denied.

Findings of Fact

Respondent was admitted to the practice of law in California on December 3, 2001, and has been a member of the State Bar of California since that date.

Case No. 13-O-11189 – The Hsieh Matter

Facts

On November 4, 2011, Brian Hsieh (Hsieh) retained respondent to represent him in his marital dissolution. Hsieh was referred to respondent by his legal services plan, ARAG. At that time, respondent was an ARAG plan attorney. In October 2011, Hsieh's spouse, Lily Liu (Liu), filed a petition for marital dissolution in the Orange County Superior Court entitled *Lily Liu v. Brian Ing Pu Hsieh* (the petition). Liu was not represented by counsel. When Liu filed the

petition, Hsieh and Liu had been married for approximately two months. They had few community assets and no children.

Hsieh paid respondent an initial retainer of \$3,000. The retainer fee included filing costs and fees in the case. At respondent's instruction, Hsieh prepared a check in the amount of \$3,000 payable to "Daniel Lak, IOLTA." On November 7, 2011, respondent deposited the check in his client trust account at JP Morgan Chase (CTA).

Respondent filed Hsieh's response to the petition on December 14, 2011. During his representation of Hsieh, respondent prepared documents comprising the judgment in the dissolution (the judgment documents) and submitted the documents to the court in May 2012.

Initially, Hsieh was satisfied with respondent's representation. Up until August 6, 2012, respondent provided Hsieh with numerous status updates by email. On that date, however, the court rejected the judgment documents due to errors contained in the documents.² Respondent received notice of the court's rejection of the documents, but did not inform Hsieh.

Following August 6, 2012, the status updates to Hsieh stopped. On or about August 29, 2012, Liu made Hsieh aware of the court's August 6, 2012 rejection of the judgment documents. On August 30, 2012, Hsieh sent an email to respondent concerning the rejected judgment documents.

On September 4, 2012, Hsieh and respondent had a telephone conversation and respondent informed Hsieh that the judgment documents had been refiled with the court. Respondent also stated that he would mail Hsieh copies of the refiled judgment documents. Respondent's statements to Hsieh were false. Respondent had not refiled the rejected judgment documents and therefore could not mail a copy of the refiled documents to Hsieh.

² One of the errors was the incorrect spelling of Liu's name. Respondent testified that he was aware of the misspelling prior to filing the documents.

After not receiving a copy of the refiled court documents from respondent, Hsieh went to the courthouse on September 17, 2012, to check the court file in his dissolution matter. A review of the file indicated that respondent had not refiled the rejected judgment documents. That same day, Liu refiled the corrected judgment documents.³

At trial in this matter, respondent testified that he had prepared and refiled the corrected judgment documents on September 17, 2012. After hearing the testimony of other witnesses in this matter, respondent subsequently changed his testimony and acknowledged that he had not refiled the September 17, 2012 judgment documents.

On September 19, 2012, respondent sent an email to Hsieh stating that the updated judgment documents were sent to the courthouse and filed and that Hsieh should receive copies by the end of the week.⁴ On September 28, 2012, Hsieh informed respondent that he had not received copies of the refiled judgment documents. On October 2, 2012, Hsieh again sent respondent an email asking for copies of the refiled judgment documents.

On October 5, 2012, Hsieh sent another email to respondent, terminating respondent's employment and asking respondent to sign a substitution of attorney form that Hsieh attached to his email. Respondent received the email, but did not respond.

On October 16, 2012, Hsieh again sent an email to respondent with an attached substitution of attorney form. Respondent received the email, but did not respond.

³ The corrected judgment documents filed by Liu are not in the official court file, but the filing is listed in the official court docket.

⁴ At trial respondent argued that the court records indicate that on September 17, 2012, the judgment documents were refiled and his September 19, 2012 email to Hsieh was therefore not false. The court does not agree. Hsieh was requesting information from respondent as to whether respondent had refiled the corrected judgment documents. Respondent knew he had not refiled the judgment documents on September 17, 2012, when he sent the September 19th email to Hsieh.

On October 30, 2012, Hsieh sent another email to respondent stating that he was going to have the court remove respondent as his attorney. Hsieh also asked respondent for an accounting in his case. Respondent received the email, but did not respond.

On October 31, 2012, Hsieh filed a substitution of attorney form bearing only his signature with the court. Attached to the substitution of attorney was Hsieh's declaration asking the court to remove respondent as his attorney because respondent had not cooperated in signing the substitution of attorney form and was not providing effective service. The court issued an order to substitute respondent out of Hsieh's case and substituted in Hsieh as his own counsel.⁵

On December 3, 2012, Hsieh sent an email to respondent asking for an accounting. Respondent received the email, but did not respond. On January 3, 2013, Hsieh sent a letter to respondent asking for a final billing statement. Respondent received the letter, but – as detailed below – did not provide a billing statement to Hsieh until May 29, 2013.⁶

On February 6, 2013, Hsieh and Liu finalized their dissolution.

Between May 22 and June 14, 2013, respondent was suspended from the practice of law for noncompliance with child/family support obligations.⁷ On May 29, 2013, respondent prepared and sent a letter to Hsieh, enclosing his final billing statement. The letter was on

⁵ Respondent testified that he returned an executed substitution of attorney form to Hsieh after receiving Hsieh's October 5, 2012 email. Respondent, however, could not explain why, after receiving Hsieh's subsequent emails, he did not inform Hsieh that respondent had already executed and mailed the substitution of attorney. The court finds respondent's testimony on this subject lacks credibility.

⁶ Respondent testified that he had difficulty providing an accounting to Hsieh because he was receiving conflicting billing schedules from ARAG. According to respondent, he promptly provided an accounting to Hsieh once he was able to reach an agreement with ARAG on the proper billing schedule. Respondent, however, was only able to produce written evidence of his contact with ARAG concerning the billing in the Hsieh's matter beginning in June 2013, approximately eight months after Hsieh requested an accounting and after he sent Hsieh a final billing statement on May 29, 2013. Again, the court finds that respondent's testimony lacked credibility.

⁷ The court takes judicial notice of respondent's official membership records.

respondent's letterhead, which stated, "THE LAW OFFICES OF DANIEL K. LAK." Hsieh received the letter and believed respondent was entitled to practice law. Hsieh was unaware that respondent was not eligible to practice law when respondent sent the letter.

Also on May 29, 2013, respondent prepared and sent an email concerning the Hsieh matter to Podina Brown (Brown), a State Bar investigator. The email contained a sender address of "Daniel Lak [dl@laklaw.net]" and an electronic signature of "Daniel K. Lak, Esq., Law Offices of Daniel K. Lak. Brown notified respondent of the improper attorney representations contained in his email. According to respondent, he immediately changed his sender address.

At trial, respondent acknowledged that he was not entitled to practice between May 22 and June 14, 2013. Respondent described his attorney references in his May 29, 2013 letterhead and email as inadvertent mistakes during a short suspension.

Conclusions

Count One – Rule 3-110(A) [Failure to Perform Competently]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The court finds that there is clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to refile the judgment documents and failing to promptly execute the substitution of attorney form despite repeated client requests.

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

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. The court finds that there is clear and convincing evidence that respondent failed to inform a

client of a significant development in willful violation of section 6068, subdivision (m), by failing to inform Hsieh that the court rejected the judgment documents due to errors in the judgment documents.

Count Three – § 6106 [Moral Turpitude – Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The court finds that there is clear and convincing evidence that respondent committed an act involving dishonesty, moral turpitude, or corruption, in willful violation of section 6106, by falsely representing to Hsieh that respondent had refiled the judgment documents.

Count Four – Rule 4-100(B)(3) [Failure to Account]

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. The court finds that there is clear and convincing evidence that respondent failed to render an appropriate accounting of client funds to a client, in willful violation of rule 4-100(B)(3), by failing to promptly respond to Hsieh's December 3, 2012 request for an accounting.

Count Five – § 6068, subd. (a) [Duty to Support All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. The court finds that there is clear and convincing evidence that respondent failed to comply with all laws in willful violation of section 6068, subdivision (a), by using letterhead and an electronic signature that identified respondent as entitled to practice law while he was suspended from the practice of law in violation of sections 6125 and 6126.

Case No. 13-O-12314 – The Client Trust Account Matter

Facts

Between December 5, 2012 and March 12, 2013, respondent issued paper and electronic checks from his CTA to non-clients to pay his personal expenses, as follows:

<u>DATE</u>	<u>PAYEE</u>	<u>AMOUNT</u>	
12/05/12	The Gas Company	\$ 16.34	
12/12/12	Credit One	209.95	
12/17/12	Verizon Wireless	347.81	
01/03/13	Capital One	100.00	
01/10/13	Premier Business	496.58	Check No. 5032
01/14/13	So. Cal. Edison	287.89	
01/16/13	Verizon Wireless	448.83	
02/04/13	Vons	167.79	
02/06/13	So. Cal. Edison	93.52	
02/06/13	Gold's Gym	29.95	Check No. 3287
02/11/13	O.C. Toll Road	180.00	
02/14/13	Verizon Wireless	280.65	
02/14/13	Dedicated Credit Rp.	199.00	Check No. 3398
02/22/13	Paradise Cleaners	86.93	
03/12/13	Nelix	7.00	

Respondent admits that the above payments from his CTA were for his personal expenses or mixed business/personal expenses. Respondent, however, asserts that shortly before he made these payments from his CTA, he attempted to change the identity of the account from a CTA to a business account, but his bank would not agree to the change. For a very short period in November 2012, respondent believed that his bank had changed the account from a CTA to a business account. But when he started to make the improper payments from his CTA in December 2012, respondent was aware that the account was a CTA and not a business account.

For some unexplained reason, respondent believes that he is somehow absolved from following his ethical responsibilities on the proper use of his CTA because he was attempting to change his account from a CTA to a business account. The court finds this argument lacks merit.

Conclusions

Count Six – Rule 4-100(A) [Commingling Funds in Trust]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. The court finds that there is clear and convincing evidence that respondent failed to maintain client funds in a client trust account, in willful violation of rule 4-100(A), by issuing paper and electronic checks from his CTA to pay his personal and business expenses.

Case No. 13-O-14235 – The Montes Matter

Facts

On June 26, 2013, respondent commenced trial in a family law matter entitled *Montes v. Montes*, Orange County Superior Court case no. 12D005456. When the trial started, respondent was aware that he would be suspended from the practice of law pursuant to Supreme Court Order S209443. Respondent's suspension was to begin on June 30, 2013. Respondent did not inform the court of his impending suspension. Respondent estimated the trial would last about two days.

On June 27, 2013, the court in the *Montes* matter trailed the trial to July 1, 2013, and ordered all parties and their counsel to return on that date. Respondent did not inform the court on June 27th that he would be suspended from the practice of law beginning on June 30, 2013, and unable to appear at trial on July 1, 2013.

The State Bar contends that respondent withheld material information from the court by failing to inform the court of his impending suspension starting on June 30, 2013. This court agrees. Judge Lon F. Hurwitz of the Orange County Superior Court testified that he would not have started trial on June 26, 2013, if he had been aware of respondent's impending suspension.

Respondent had a duty to disclose his forthcoming suspension and allow the court to determine whether or not to proceed with trial. (See *Arm v. State Bar* (1990) 50 Cal.3d 763, 775 [attorney had duty to disclose forthcoming suspension].)

On the morning of July 1, 2013, respondent placed a telephone call to Department L66 of the Orange County Superior Court and spoke to Rebecca Lau (Lau), the assistant court clerk. Respondent asked to speak with Judge Hurwitz on a personal matter and not about the *Montes* matter. Lau would not put the call through to Judge Hurwitz. Respondent then told Lau he would not be appearing in court that day due to a “family emergency.” Lau placed respondent on hold and told Judge Hurwitz that respondent wanted to speak with him about a “family emergency.” Judge Hurwitz would not speak to respondent.⁸

Clearly, respondent’s statement that he had a “family emergency” was a material misrepresentation to Lau and meant to mislead the court. Respondent was aware that Lau would inform the court of his alleged “family emergency.”

On July 1, 2013, the court in the *Montes* matter ordered the parties and their counsel, including respondent, to appear in court on July 23, 2012. Respondent failed to appear in court on July 23, 2013, and the court declared a mistrial in the *Montes* matter.

The court continued the *Montes* trial until sometime in the late fall of 2013. Respondent continued to represent his client. No additional trial dates were held. The parties submitted the matter to the court on the testimony already taken in June 2013.

⁸ Respondent testified that he does not recall using the term “family emergency.” Much of respondent’s testimony in this proceeding was less than credible. Here, the court found Lau’s testimony to be credible. Respondent did acknowledge that when he spoke to Lau he was not experiencing any type of family emergency.

Conclusions

Count Seven – § 6068, subd. (b) [Maintaining Respect Due to the Court]

Section 6068, subdivision (b), provides that attorneys have a duty to maintain respect due to the courts of justice and judicial officers. The court finds that there is clear and convincing evidence that respondent failed to maintain respect due to the courts and judicial officers, in violation of section 6068, subdivision (b), by commencing trial in the *Montes* matter four days prior to the commencement of his suspension and failing to inform the court, when the matter was trailed into his period of suspension, that he would be unable to represent his client at trial.

Count Eight – § 6068, subd. (d) [Duty to Employ Means Consistent with Truth]

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. The court finds that there is clear and convincing evidence that respondent sought to mislead a judge or judicial officer, in willful violation of section 6068, subdivision (d), by falsely telling the court clerk that he would not be appearing at trial that day for the *Montes* matter due to a “family emergency.”

Aggravation⁹

The State Bar has established, by clear and convincing evidence, the following factors in aggravation. (Std. 1.5.)

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

On May 31, 2013, the Supreme Court issued Order No. S209443 (State Bar Court case no. 12-O-11263) suspending respondent from the practice of law for two years, execution stayed, and placed respondent on probation for three years, including a 60-day period of actual

⁹ All references to standards (Stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

suspension. Respondent stipulated to commingling funds in his client trust account and paying personal and business expenses from that account.¹⁰ Respondent also stipulated to committing acts involving moral turpitude by repeatedly issuing checks (paper and electronic) with insufficient funds from his client trust account. In aggravation, respondent committed multiple acts of misconduct. In mitigation, respondent had no prior record of discipline, he cooperated with the State Bar, he presented evidence of his good character, and his misconduct was not motivated by personal enrichment and did not result in client harm.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent is culpable of multiple acts of misconduct in three separate matters. Respondent's multiple acts of misconduct warrant some consideration in aggravation.

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

Respondent's misconduct also evidences a pattern of misconduct. A pattern of misconduct can be found where an attorney's present misconduct viewed in conjunction with a prior record of discipline shows recurring types of wrongdoing that depict a continuous course of conduct over an extended period of time. (See *Garlow v. State Bar* (1988) 44 Cal.3d 689, 711 [attorney's four prior incidents of discipline combined with present misconduct evidenced a serious pattern of misconduct involving recurring types of wrongdoing]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607 [pattern found when current misconduct was the second time the attorney committed the same ethical violation].) In his prior discipline, respondent stipulated to misusing his client trust account in the same fashion as the present matter. Despite signing the prior stipulation on December 11, 2012, respondent's CTA abuse continued until March 12, 2013. The court finds that respondent's continued misuse of his CTA over an extended period of

¹⁰ The misconduct in respondent's prior discipline spanned from September 2011 to January 2012.

time, despite having just signed a stipulation acknowledging the same type of misconduct in his prior discipline, demonstrates a pattern of misconduct warranting some consideration in aggravation.

Uncharged Misconduct (Std. 1.5(d).)

Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the “evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was based on [the respondent’s] own testimony. . . .” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.) Here, the State Bar introduced evidence to establish that respondent misappropriated filing fees paid by Hsieh. This evidence, however, was not elicited to establish the charged misconduct. The State Bar should have placed respondent on notice by properly charging this alleged misconduct. Accordingly, the court does not give any weight to the State Bar’s assertions of uncharged misconduct.¹¹

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent failed to inform the court of his impending suspension in the *Montes* matter. Judge Hurwitz testified that if the court had been aware of respondent’s impending suspension, the court would not have commenced trial on June 26, 2013. However, since no additional trial time was ultimately required, the harm to the administration of justice was lessened.

Lack of Insight

Respondent’s testimony at trial evidences a failure on his part to understand his ethical responsibilities to his clients, the courts, and the proper handling of his client trust account. Respondent blamed Hsieh, Liu, his bank, and the State Bar for any alleged violations of his

¹¹ The court also does not find that respondent’s own testimony established, by clear and convincing evidence, a failure to obey court orders.

ethical duties. Respondent's unwillingness or inability to accept responsibility for his conduct demonstrates a lack of insight and understanding of the present misconduct.

Mitigation

Respondent has not proven by clear and convincing evidence any factors in mitigation.¹²
(Std. 1.6.)

Discussion

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. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the 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.)

Standard 1.7(a) provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7(b) provides, in pertinent part, if aggravating circumstances are found, they should be considered alone and in balance with any mitigating factors. Standard 1.7(c) provides, in pertinent part, if mitigating circumstances are found, they should be considered alone and in balance with any aggravating factors.

Standard 1.8(a) provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so

¹² Respondent's testimony concerning his child care issues do not establish mitigation.

remote in time and previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

Standard 2.2(a) provides for actual suspension of three months to be appropriate for commingling or failing to promptly pay out entrusted funds. Standard 2.2(b) provides that suspension or reproof is appropriate for any other violation of Rule 4-100.

Standard 2.5(c) provides that reproof is appropriate for failing to perform legal services or properly communicate in a single client matter.

Standard 2.6(b) provides that suspension or reproof is appropriate when a member engages in the practice of law or holds himself out as entitled to practice law when he is on inactive status or actual suspension for non-disciplinary reasons. The level of discipline for this standard depends on whether the member knowingly engaged in the unauthorized practice of law.

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the practice of law.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a)-(h).

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickie* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law

with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urged that respondent be suspended from the practice of law for two years. Respondent, on the other hand, asserted that all counts should be dismissed. In its discipline recommendation, the State Bar cited *Arm v. State Bar, supra*, 50 Cal.3d 763.¹³

In *Arm*, the attorney was found culpable of misleading a court by failing to disclose a discipline suspension scheduled to coincide with an upcoming court hearing. The attorney was also found culpable of commingling funds in his client trust account. In aggravation, the attorney had been previously disciplined on three prior occasions.¹⁴ The Supreme Court found that the lack of harm and the absence of bad faith constituted compelling mitigation, and, therefore, disbarment was not warranted. Instead, the Supreme Court ordered that the attorney be suspended for five years, that execution of suspension be stayed and the attorney be placed on probation for five years, including an eighteen-month period of actual suspension.

While the present case and *Arm* contain many similarities, the misconduct in the present case is more extensive and involves a finding of moral turpitude. Although *Arm* involved considerable aggravation for the attorney’s lengthy prior record of discipline, the present matter also involves significant aggravation stemming from respondent’s prior record of discipline, multiple acts of misconduct, pattern of misconduct, and lack of insight. And unlike *Arm*, the present matter does not involve compelling mitigation.

¹³ The State Bar also cited an unpublished case that cannot be relied upon for legal precedent.

¹⁴ The attorney’s prior disciplines included a public reproof, a stayed suspension, and a 60-day actual suspension.

After considering the standards, the case law, and the facts and circumstances involved, the court finds that the present matter warrants a higher level of discipline than *Arm*. Consequently, the court concludes that, among other things, a two-year minimum period of actual suspension is appropriate to effectuate the goals of protecting the public, preserving public confidence in the profession, and maintaining the highest possible professional standards for attorneys.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that he be placed on probation for four years, including a minimum period of actual suspension of two years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

Recommendations

Accordingly, it is recommended that respondent **Daniel Kristof Lak**, State Bar Number 216983, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and will remain suspended until the following requirement is satisfied:
 - i. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must also comply with the following additional conditions of probation:
 - i. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation;

- ii. Respondent 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, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's 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.
 - iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions;
 - iv. 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 respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation; and
 - v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
3. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.¹⁵

California Rules of Court, Rule 9.20

It is recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and

¹⁵ It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on May 31, 2013, by the Supreme Court in case no. S209443.

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Multi-State Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on May 31, 2013, by the Supreme Court in case no. S209443.

Costs

It is 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.

Dated: June 4, 2014

RICHARD A. PLATEL
Judge of the State Bar Court