STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **JULIUS MICHAEL ENGEL,** **Member No. 137759,** A Member of the State Bar.	Case Nos.: **14-O-03742-PEM (14-O-06088)** **DECISION**

Introduction[1]

In this contested disciplinary proceeding, respondent **Julius Michael Engel** is charged with six counts of professional misconduct in two matters. The charged misconduct includes: (1) failing to perform with competence; (2) failing to refund unearned fees; (3) failing to communicate with client; (4) failing to render accounts of client funds; (5) making misleading statement to a State Bar investigator; and (6) failing to report to the State Bar a civil action against him for fraud, misrepresentation, breach of a fiduciary duty or gross negligence committed in a professional capacity.

This court finds by clear and convincing evidence that respondent is culpable of the alleged misconduct. Based on the nature and extent of culpability, and the serious aggravating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of suspension be stayed, that he be placed on probation for three years, and that he be actually suspended for one year.

[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 Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on November 2, 2015. On November 20, 2015, respondent filed a response.

A two-day trial was held on March 10 and 11, 2016. Deputy Trial Counsel Catherine Taylor represented the State Bar. Respondent represented himself. On March 18, 2016, following closing briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 7, 1988, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the evidence and testimony admitted at trial.

The State Bar's witnesses were credible and reliable.

Case No. 14-O-03742 – The Henry Matter

Facts

Stanley and Elizabeth Henry (Henrys) had fallen on hard times. Stanley had lost his job as a mechanic when the Chrysler dealership where he had worked for 14 years closed down. Elizabeth required ongoing health care due to two failed kidney transplants and complications with diabetes. The Henrys were able to maintain their health insurance through COBRA at a monthly cost of $1,400. In addition, they paid at least $200 monthly for Elizabeth's medications.[2] They had to borrow from their retirement savings to maintain health insurance; but they were unable to pay their other bills and mortgage.

The Henrys, on their own, pursued a loan modification through the Keep Your Home California program (KYHC) but did not know if they qualified for the program. After hearing

[2] Elizabeth died in 2015 at the age of fifty-two.

respondent on the radio assuring listeners that he helped people who were unable to meet their mortgage obligations, the Henrys went to respondent's then-office at 1600 Sacramento Inn Way, Sacramento, California, to learn more about their options under Chapters 13 and 7 of the bankruptcy rules. In October 2012, the Henrys met with David Silva, a paralegal, in respondent's office to discuss their options with KYHC and/or pursuing a course of bankruptcy under Chapter 13 or Chapter 7.[3] After their meeting with David, the Henrys decided that they should file for bankruptcy as they were unsure of what was happening with KYHC.

In October 2012, the Henrys hired respondent to file a Chapter 13 bankruptcy petition on their behalf. They met with respondent's wife and secretary, Mary, and provided her with their documents, including pay stubs and six months of bank statements over a period of time. The Henrys paid respondent $2,000 in three installment payments on November 17 and December 5 and 26, 2012.

Respondent had the Henrys sign two separate but identical fee agreements for respondent to file a Chapter 13 bankruptcy petition on the Henrys' behalf. One was dated November 6, 2012, and the other was dated January 2, 2013. All explanations as to how KYHC worked with Chapters 13 and 7 were given to them by David and Mary. The Henrys never had a sit-down meeting with respondent regarding the differences between a Chapter 13 and Chapter 7 bankruptcy.

Shortly after the Henrys made their final payment in December 2012, signed the contracts with respondent, and provided all the paperwork as directed by Mary, respondent's office stopped returning the Henrys' calls. In March and February of 2013, the Henrys made repeated

[3] Chapter 7 provides a complete liquidation of debts. But under Chapter 13, one's debts are not liquidated; the debtor is put on a payment schedule of repayment.

phone calls to the phone number they had for respondent but the line would ring and there was no way to leave a message.

During the spring of 2013, Elizabeth was in and out of the hospital. When Elizabeth was able to leave the house, the Henrys went to respondent's office at 1600 Sacramento Inn Way in another attempt to contact him about their bankruptcy needs. Instead, the Henrys found respondent's office vacant. There was no forwarding address or contact information attached to respondent's office door or nearby walls.

In his continuing efforts to locate respondent, Stanley again went by respondent's office and it was still closed. However, this time, Stanley decided to knock on the door across the hallway. Attorney David Foyil (Foyil) came to the door, informing Stanley that respondent had moved out and closed his business. Stanley identified himself as respondent's client, told Foyil that he had paid respondent $2,000 to file a Chapter 13 bankruptcy, and asked Foyil if he would take his case as he still needed legal help. In addition, he requested to come back with his wife as she was still in the hospital.

In May 2013, as they still had not heard from KYHC, the Henrys signed a contract with Foyil to do a Chapter 13 bankruptcy petition for a total fee of $4,000. Since Foyil was aware that the Henrys had already paid respondent $2,000 to file a Chapter 13 bankruptcy petition, Foyil gave the Henrys credit for the amount that they had paid the Engel Law Group. But under this contract between Foyil and the Henrys, neither work was done nor were any fees paid to Foyil.

Later, the Henrys learned that they qualified for KYHC. But they were still consumed with debt. To get creditors off their backs, the Henrys then hired Foyil on March 3, 2014, to file a Chapter 7 bankruptcy. They signed an attorney-client fee agreement and paid him $1,200 (over six installments). Stanley had to take a loan from his current 401(k) with FedEx to pay

Foyil and is still paying it back with interest. On May 14, 2014, Foyil filed the Chapter 7 bankruptcy petition on behalf of the Henrys.

In June 2014, the Henrys complained to the State Bar about respondent's failure to file a bankruptcy petition on their behalf. Respondent was contacted during an investigation. On August 15, 2014, State Bar Investigator Tim Hankins wrote to respondent, informing him that Stanley was requesting an accounting and refund of his unearned legal fees.

In response, respondent twice denied even knowing the Henrys, let alone having them as clients. He wrote: "I have checked all available records and staff and I have never heard of a Stanley Henry."

On October 9, 2014, Investigator Hankins wrote a second investigation letter to respondent, reiterating that Stanley was requesting a full refund from him. This time the investigation letter included copies of the three installment checks totaling $2,000 from the Henrys to respondent.

In response, on October 16, 2014, respondent submitted copies of the two November 2012 and January 2013 contracts between him and the Henrys. Respondent represented to the State Bar that "[t]he matter at the time was handled by both me and my associate David Foyil...." Respondent included with his letter: a face sheet from the Henrys' bankruptcy petition filed by Foyil on May 14, 2014, and discharged August 25, 2014; a fee agreement signed by the Henrys on November 6, 2012; a fee agreement signed by the Henrys on January 2, 2013; a "regulation disclosure" sheet depicting due dates of payments, signed by Stanley Henry on November 13, 2012; Authorization to Release Information, including the Henrys' SSN, signed by Stanley and Elizabeth Henry on January 2, 2013; and an Authorization to Release Information to the Trustee signed by the Henrys on January 2, 2013.

Contrary to respondent's claim, Foyil was not his associate. At no time did the Henrys attend a meeting with respondent, respondent's wife, Mary, and Foyil at respondent's office at 1600 Sacramento Inn Way, or anywhere else, wherein the Henrys agreed that Foyil would handle any part of the bankruptcy the Henrys had paid respondent to handle. Foyil was never mentioned in the contracts executed between the Henrys and respondent. Moreover, Foyil testified that he and respondent did not share a law practice or a law firm. Attorney David Foyil's law firm is called EqualJusticeLawGroup.com, Inc. Respondent's law firm is called Engel Law Group.

Conclusions

Count 1 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent appears to argue that he did not fail to perform services for the Henrys since his "associate" Foyil had filed the Chapter 7 petition on behalf of the Henrys.

The court rejects respondent's argument. Attorney Foyil was not respondent's associate. Based on the March 2014 attorney-client fee agreement between Foyil and the Henrys, Foyil agreed to provide legal services to the Henrys in a Chapter 7 bankruptcy matter. Their attorney-client relationship had no nexus to respondent's relationship with Foyil or with the Henrys. Moreover, respondent never informed the Henrys that Foyil was handling their matter or referred Foyil to them. They independently and fortuitously hired Foyil.

Rule 3-110(B) provides that to act with "competence," it means to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

Diligence includes best efforts to accomplish with reasonable speed the purpose for which the attorney was employed. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931.)

Here, by signing two identical fee agreements with the Henrys in November 2012 and January 2013, respondent had agreed to perform legal services for the Henrys. Yet, he failed to apply any due diligence in the performance. After his office received documentations from the clients, respondent basically abandoned his clients and did not inform them that he had moved. When Stanley went to respondent's office, the place was closed and respondent could not be contacted.

Therefore, respondent violated rule 3-110(A) by failing to apply due diligence in representing the Henrys and by failing to communicate with the Henrys. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 782 [adequate communication with clients "is an integral part of competent professional performance as an attorney"].)

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

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, or even prepare, a bankruptcy petition, or perform any legal services for the Henrys, and therefore did not earn the $2,000 advance fees. In June 2013, respondent effectively terminated his employment by vacating his office and changing his address without informing the Henrys. He made no effort to ascertain the status of their KYHC application, which would determine the type of bankruptcy the Henrys should pursue, if any.

Respondent was unable to produce any evidence that he performed any work for the Henrys. Moreover, Foyil testified that when he received the Henrys file from respondent, there was no evidence of any work performed in the file, such as schedules for the bankruptcy matter.

Although respondent knew that the Henrys wanted their money back, as he was informed by the State Bar in August 2014, he continues to refuse to refund their money.

Therefore, respondent has failed to refund the unearned fees of $2,000, upon respondent's constructive termination of employment in June 2013, in willful violation of rule 3-700(D)(2).

Count 3 - (§ 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.

Between January and April 2013, the Henrys repeatedly attempted to contact respondent, by phone and by visiting his office at Sacramento Inn Way until they discovered it vacant, sometime around mid-2013.[4]

No one was answering the phone and there was no voicemail or any alternate way to leave a message. The Henrys received no correspondence from respondent advising them of his change of address at any time. In fact, after the Henrys complained to the State Bar and respondent was contacted by a State Bar investigator, respondent denied even knowing the Henrys. To further aggravate the situation, respondent later blamed Stanley for not taking the initiative to find him when he wrote to the investigator: "there is no excuse for saying he could not find me.... Henry never really looked."

By failing to respond to the clients' status inquiries and by failing to inform them of his change of address – a significant development considering that respondent had $2,000 of the Henrys' money and was supposed to be awaiting further instruction depending upon the outcome of KYHC, respondent willfully violated section 6068, subdivision (m).

[4] Respondent's membership records show that as of June 3, 2013, respondent's address was 1731 Howe Avenue, #621, Sacramento – a UPS store mailbox.

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

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.

By two separate letters from the State Bar in August and October 2014, respondent was on notice that the Henrys wanted an accounting of their $2,000. To date, respondent has not rendered an accounting of the Henrys' money. By failing to render an appropriate accounting to the Henrys regarding their $2,000, even after the State Bar notified respondent of the Henrys' request, respondent is in willful violation of rule 4-100(B)(3).

Count 5 - (§ 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.

Moral turpitude includes creating a false impression by concealment as well as affirmative misrepresentations. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 909-910.)

Here, respondent stated to the State Bar in the course of its investigation that Foyil, the attorney who completed the Henrys' Chapter 7 bankruptcy under a separate contract and a separate fee, was respondent's "associate." But respondent did not employ Foyil, pay Foyil a salary or other compensation, share expenses with Foyil, or maintain operating accounts or other shared banking. Both respondent and Foyil maintained separate law practices, Engel Law Group and Law Office of David Foyil and/or EqualJusticeLawGroup.com, Inc., respectively, as evidenced by their official State Bar member records addresses and their respective fee agreements each had the Henrys sign separately.

Moreover, Foyil testified that although he sometimes associated in with respondent in Chapter 13 cases, he never associated in on the Henrys matter because a Chapter 13 bankruptcy petition was never filed in that matter.

Therefore, there was no nexus shown between Foyil and respondent in their respective representation of the Henrys. There is no evidence to support respondent's assertion that he was somehow associated with Foyil and thereby entitled to retain the Henrys' $2,000. He had done no work of value on their Chapter 13 bankruptcy. It was Foyil who filed a Chapter 7 bankruptcy almost two years after the Henrys retained respondent.

By making false and misleading statements to the State Bar claiming Foyil was his "associate," respondent committed an act involving moral turpitude, dishonesty and corruption in willful violation of section 6106. (*In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387 [a deliberate attempt to mislead a State Bar investigation constitutes an act involving moral turpitude].)

Case No. 14-O-06088 – Failure to Report Judgment

Facts

On November 7, 2014, a civil judgment was entered against respondent in *Engel v. Fountaine*, Sacramento County Superior Court, case No. 14SC01726-1. The court there found that respondent committed gross professional negligence in handling his client's bankruptcy case and engaged in further conduct causing the client to suffer severe physical and emotional distress.

Respondent knew about the judgment and received notice of the judgment by November 22, 2014. Yet, he did not report the judgment until February 14, 2015, after being contacted by a State Bar investigator.

Conclusions

Count 7 - (§ 6068, subd. (o)(2) [Failure to Report Judgment])

Section 6068, subdivision (o)(2), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

Respondent argues that he did not report the judgment because the judgment was on appeal by way of writ and the case was subsequently settled.

The court rejects his arguments. He had a duty to report the entry of the judgment in *Engel v. Fountaine* to the State Bar regardless of the pendency of any appeal. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.) The willful violation of section 6068, subdivision (o)(2)'s reporting requirement does not require a bad purpose or an evil intent. All that is required is a general purpose of willingness to commit the act or omission. (*Ibid.*) Here, respondent reported the judgment almost three months after he had knowledge of it and only after he was contacted by the State Bar.

Therefore, by failing to report to the State Bar, in writing, within 30 days of his knowledge of the November 7, 2014 judgment in *Engel v. Fountaine* against respondent in a civil action for gross negligence committed in a professional capacity, respondent willfully violated section 6068, subdivision (o)(2).

Aggravation[5]

Respondent's misconduct is surrounded by seven significant aggravating factors.

[5] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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

Respondent has one prior record of discipline. (Rules Proc. of State Bar, rule 5.106.) The matter is currently pending in the Supreme Court; discipline has not yet been imposed. The non-final Review Department opinion filed December 2, 2015, affirmed the Hearing Department's recommendation that respondent be suspended for two years, the execution of which was stayed, placed on probation for two years, and actually suspended for six months. Respondent committed trust account violations and misconduct in four client matters, including failure to perform services competently, failure to return unearned fees, failure to inform client of significant developments, acceptance of fees from a non-client, and commingling funds in his client trust account. In aggravation, he committed multiple acts of misconduct, caused significant harm, and failed to accept any responsibility for his actions. (State Bar Court case Nos. 12-O-15773 et al.)

Although some of respondent's prior and current misconduct occurred concurrently, he continued to refuse to return unearned fees and provide an accounting, even after the hearing decision in his prior record was filed July 31, 2014, and the review opinion was filed December 2, 2015. As he was on notice of his prior misconduct and continued to commit similar violation (failure to return unearned fees), his prior warrants significant aggravating weight. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 564 [significant weight for prior record where current misconduct occurred before prior discipline was imposed, but after respondent was on notice of similar misconduct in prior record].)

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing in two matters, including failing to perform with due diligence, failing to refund unearned fees, failing to communicate with client, failing to render accounts of client funds, making misleading statement

to a State Bar investigator, and failing to report to the State Bar a civil action against him for gross negligence committed in a professional capacity.

Refusal or Inability to Account for Entrusted Funds or Property (Std. 1.5(i).)

Respondent has not provided an accounting of the $2,000 that he received from the Henrys in December 2012.

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

Respondent's failure to return unearned fees to the Henrys clearly deprived them of their funds and caused them significant harm. They were in danger of losing their house and sought respondent's help. But when they tried to contact respondent to get their money back, he was gone. They could have been paying the $2,000 toward their mortgage, medical expenses or other bills. Instead, Stanley had to take a loan from his 401(k) account, with tax penalties and interest, to pay another lawyer $1,200 to handle their bankruptcy.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

In this proceeding as well as in his closing brief, respondent maintains that he is not culpable of any misconduct. He insists on blaming others for his failings. Respondent claims he had no responsibility to communicate his whereabouts to the Henrys when he moved out of his office, contending that he changed his address with the State Bar and that Foyil "knew where I was" and the Henrys could have just asked him. Displaying a complete lack of insight, respondent blamed his client: "Henry never really looked."

Respondent's failure to inform his client of his move was tantamount to client abandonment and improper withdrawal from employment under rule 3-700(A)(2).[6] Respondent's assertion that it was his client's duty to contact him, when he left his office without notice, ignored his responsibilities to communicate with his clients, safeguard their interests and protect their confidences. (See *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 700.) Respondent cannot shift his obligation to notify his clients of his change of address to his clients. Placing the burden to find him on his clients clearly demonstrates his refusal to accept his professional duty.

He is unapologetic and has no recognition of or insight into his wrongdoing. "[L]ike any attorney accused of misconduct, [respondent] had the right to defend himself vigorously." (*In re Morse* (1995) 11 Cal.4th 184, 209.) But his conduct "reflects a seeming unwillingness even to consider the appropriateness of his [legal analysis] or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, [respondent] went beyond tenacity to truculence." (*Ibid.*) His demonstrated lack of insight into the seriousness of his misconduct is particularly troubling to this court because it suggests that it may reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Therefore, respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Failure to Make Restitution (Std. 1.5(m).)

To date, respondent has failed to make restitution to the Henrys, which is an aggravating circumstance.

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[6] 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.

High Level of Victim Vulnerability (Std. 1.5(n).)

Respondent's clients were particularly vulnerable due to their financial difficulties. Because they were facing foreclosure and possible bankruptcy, they sought legal help from respondent in their efforts to save their house and get out from under consumer debt brought on by Stanley's job loss and Elizabeth's ongoing health problems. They were admittedly unsophisticated legal consumers, and relied on respondent's radio advertisements in which he assured them "he helped people like us all the time." Respondent knew, or should have known, of their difficult situation, but exploited their lack of knowledge regarding the legal and bankruptcy process.

Mitigation

There is no clear and convincing evidence in mitigation. (Std. 1.6.)

Discussion

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

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when 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.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

Standard 1.8(a) provides that, when an attorney has one prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Here, respondent has a prior record pending before the Supreme Court; discipline has not been imposed yet.

In this case, the standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.7, 2.11, 2.12 and 2.19 apply in this matter.

Standard 2.2 provides that an actual suspension of three months is the presumed sanction for commingling or failing to promptly pay out entrusted funds. Reproval or suspension is the presumed sanction for any other rule 4-100 violation.

Standard 2.7 provides that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

Standard 2.12(b) provides that the presumed sanction for a violation of an attorney's duties under Business and Professions Code section 6068, subdivision (i),(j),(l), or (o) is reproval.

Standard 2.19 states, "Suspension not to exceed three years or reproval is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards."

The State Bar urges that respondent be suspended for three years, stayed, placed on probation for four years, and actually suspended for one year. It also requests that the period of actual suspension be consecutive to any suspension ordered in respondent's prior record of discipline currently pending in the Supreme Court.[7] In support of its recommendation, the State Bar cited *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

Respondent argues that his disciplinary matter should be dismissed because of the State Bar's failure to meet its burden of proof, laches, unclean hands, and so on. He further justified his taking of the unearned fees by implying that the clients were well served by two attorneys

[7] Recommending that the period of actual suspension run consecutively to respondent's prior record in case Nos. 12-O-15773 et al. is unnecessary since that discipline (six months' actual suspension) and the current recommended discipline, if approved by the Supreme Court, will overlap only for a short time, if any.

(Foyil and himself), their house was saved (as if he had helped), and the attorney fees were discounted by $800 from the original $4,000 less his $2,000 and less Foyil's $1,200.

The court rejects respondent's contentions.

In *In the Matter of Dahlz, supra*, the attorney was suspended for four years, stayed, placed on probation for four years, and actually suspended for one year for his misconduct in one client matter. He was culpable of failing to perform and communicate, improperly withdrawing from representation and committing an act of moral turpitude. The aggravating factors included multiple acts of misconduct, one prior instance of discipline, client harm and lack of candor toward the court and the State Bar investigator. The attorney's lack of candor was "more egregious than the misconduct found against him in this proceeding." (*Id.* at p. 282.) It included presenting a false telephone log entry prepared for purposes of trial; presenting to the State Bar investigator a falsified stipulation purporting to resolve his client's case; and misrepresenting to the investigator that he appeared before a Workers' Compensation Appeals Board judge at the time his client's claim was settled. In mitigation, the court afforded slight weight to pro bono services rendered because his involvement was not great and was remote in time.

Like the attorney in *Dahlz*, respondent lacked candor when he lied to the State Bar investigator by initially denying that the Henrys were his clients and by claiming that Foyil was his associate. Moreover, the gravamen of respondent's misconduct is not limited to the six counts of violations but more significantly, the aggravating circumstances surrounding his misconduct – prior record of discipline, multiple acts, refusal to provide an accounting, significant client harm, no recognition of wrongdoing, failure to pay restitution, and vulnerable clients – are troubling and are evidence of serious aggravation.

"It is troubling that while holding himself blameless, he displayed such a controlling attitude toward these clients, (one) of whom (was) ill and ... thus more vulnerable." (*In the*

Matter of Fonte (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 765.) At trial, respondent attacked the veracity and integrity of Stanley. Such an attack betrays his lack of understanding of his duties and obligations to his client and to the integrity of the legal profession.

Accordingly, in recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) In view of respondent's misconduct, the case law, the serious aggravating evidence, and the standards, the court concludes that placing respondent on an actual suspension for one year would be appropriate to protect the public and to preserve public confidence in the profession.

Recommendations

It is recommended that respondent **Julius Michael Engel**, State Bar Number 137759, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation[8] for a period of three years subject to the following conditions:

1. Respondent Julius Michael Engel is suspended from the practice of law for the first one year of probation.

2. It is recommended that during the first year of probation, respondent must make restitution to Stanley Henry in the amount of $2,000 plus 10 percent interest per year from December 26, 2012 (or reimburse the Client Security Fund to the extent of any payment from the fund to Stanley Henry, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

3. 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

[8] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. 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.

5. 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.

6. 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.

7. 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.

8. Within one year after the effective date of the discipline herein, respondent 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 respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Exam

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further 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 (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.

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: May 24, 2016

Pat McElroy
PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator 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 San Francisco, on May 24, 2016, I deposited a true copy of the following document(s):

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 San Francisco, California, addressed as follows:

JULIUS M. ENGEL
ENGEL LAW GROUP
1731 HOWE AVE # 621
SACRAMENTO, CA 95825

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Erica L.M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 24, 2016.

George Hue
Case Administrator
State Bar Court