PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of JAKRUN S. SODHI, A Member of the State Bar, No. 200851.	)	Case Nos. 15-O-13337 (16-O-12705; 16-O-16903)-PEM DECISION

INTRODUCTION[1]

In this contested disciplinary proceeding, respondent Jakrun S. Sodhi (Respondent) is charged with twenty counts of professional misconduct, including: (1) engaging in a scheme to defraud; (2) misappropriation; (3) breaching his duty of loyalty; (4) seeking an agreement to withdraw a disciplinary complaint; (5) failing to perform legal services with competence; (6) failing to inform clients of significant developments; (7) sharing legal fees with a non-lawyer; (8) improperly withdrawing from employment; (9) failing to deposit client funds in a trust account; and (10) engaging in a business transaction with a client.

The court finds, by clear and convincing evidence, that Respondent is culpable of five out of the twenty counts of misconduct. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, the court recommends, among other things, that Respondent be suspended for 30 days.

[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 Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) on October 2, 2017. On October 27, Respondent filed a motion to dismiss the NDC. OCTC filed an opposition to the motion to dismiss on November 9, 2017. Respondent filed his reply on November 15, 2017. On December 7, 2017, the court denied the request to dismiss Counts Two through Twenty of the NDC, but dismissed Count One of the NDC without prejudice for failure to give sufficient notice of the charges. The order permitted OCTC to file an amended NDC.

On January 2, 2018, OCTC filed an amended NDC. Thereafter, on January 24, 2018, Respondent filed a response to the amended NDC.

A sixteen-day trial was held on March 20, 21, 22, and 23; April 24, 25, 26, and 27; June 6, 7, and 8; and August 9, 10, 14, 15, and 17, 2018. Senior Trial Counsel Erica I. M. Dennings and Deputy Trial Counsel Duncan Carling represented OCTC. Attorneys Robert E. Carey, Jr., and Christopher Sun represented Respondent. On August 31, 2018, 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 June 1, 1999, 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.

Case No. 16-O-12705 – The Arata, Swingle, Sodhi, and Van Egmond Corporation

Facts

In 2009, Respondent formed a law corporation with three other attorney shareholders, George Arata, Bradley Swingle, and Colleen Van Egmond (the Corporation). All four shareholders of the Corporation previously worked at the law firm of Curtis and Arata. The four

shareholders worked in different areas of the law. Respondent's focus was on criminal defense and personal injury work.

The Corporation had no written policy regarding shareholders taking cases on a pro bono basis, and each shareholder had differing ideas of what the Corporation's policy was on accepting pro bono cases. According to Colleen Van Egmond (Van Egmond), there was no real policy regarding handling cases for family and friends, and there was no discussion of what percentage of a shareholder's work could be pro bono. According to Bradley Swingle (Swingle), there was no limit on pro bono cases, but if a shareholder wanted to take on a huge pro bono case, they would need to first discuss it with the other shareholders. According to George Arata (Arata), there was no written agreement as to the handling of pro bono cases, but shareholders were expected to use common sense and their best judgment with regard to pro bono work. The court finds on the basis of credible evidence that Respondent's caseload was 320-400 cases a year and that 5% to 10% of his caseload was on a pro bono basis. Respondent believed he could handle pro bono cases without first discussing those matters with the other shareholders.

While the Corporation had no actual policy pertaining to pro bono work allotment, Swingle, Arata, and Van Egmond were in agreement that all cases, including pro bono matters, had to be inputted into the Corporation's Abacus case management system. Inputting cases into the Abacus system served several purposes, including generating bills, listing opposing parties, running conflict checks, highlighting important deadlines, listing contact information, and calendaring court dates and events. Moreover, using the Abacus system was a requirement of the Corporation's malpractice insurance.[2]

Despite the views of Swingle, Arata, and Van Egmond, the perceived policy that all cases were to be inputted into the Abacus system does not appear to have been reduced to writing. In

[2] The Corporation's data was entered into the Abacus system by administrative staff, not by the shareholders.

fact, there are no references to the Abacus system in the Corporation's bylaws, minutes, or the employee handbook.

Unlike the other shareholders, Respondent did not typically use the Abacus system for his criminal practice because he considered it to be nothing more than a billing program. Respondent believed that the Abacus system was designed for hourly cases, while most of his criminal cases were flat fee or a retainer based upon a lump sum payment.[3] Respondent also did not use the Abacus system for his pro bono cases because there was nothing to bill. Instead, Respondent put all of his pro bono cases in Microsoft Outlook.

Cases Not Entered into the Abacus System

In early 2016, while researching a witness in a case that he was handling for a municipal client, Swingle discovered that Respondent was representing the witness in a criminal case as an adverse party against the municipal client. The municipal client was the City of Turlock, which had long been a client of Swingle, and hence the Corporation. And the witness Respondent was representing was not in the Abacus system. Swingle told Van Egmond and Arata that the Corporation had to get a handle on this or risk being sued for malpractice.

Van Egmond subsequently performed a search of how many cases were out there where Respondent was representing clients, but the clients were not listed in the Abacus system. Van Egmond found there were at least forty-three cases over seven years where Respondent was attorney of record and the cases were not in the Abacus system. Also, Van Egmond searched Helen Mays's desk and found a number of receipts indicating that money had been collected but not reported to the Corporation. Helen Mays (Mays) was Respondent's secretary/paralegal/ administrative assistant.

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[3] Respondent noted that if he had a white collar criminal matter he would have it inputted into the Abacus system because those cases were generally billed on an hourly basis.

Below are four specific client matters that were handled by Respondent, but not entered into the Corporation's Abacus system. None of these clients testified in these proceedings.

The Zimmeht Matter

John Zimmeht (Zimmeht) represented himself on a misdemeanor charge of driving under the influence (DUI) in 2008. (Exhibit 18.) In 2011, Respondent represented Zimmeht on a motion to modify and to terminate probation on the 2008 DUI. Because Zimmeht was an insurance broker for the Corporation, Respondent gave Zimmeht a courtesy discount of $1,000 and billed him $500. (Exhibit 18, p. 30.) Respondent was not sure whether he reported the case to the Corporation. Nor could Respondent verify whether Zimmeht actually paid the bill.

On June 20, 2016, an investigator for the Arata, Swingle, and Van Egmond contacted Zimmeht, who said Zimmeht indicated that he paid $500 cash but had no receipts or documentation to that effect. (Exhibit 75, p. 9.) Zimmeht did not testify at trial so in the absence of documentation this court finds that any evidence that relates to Zimmeht is unreliable.

The Meirinho Matter

Respondent represented Manuel Meirinho (Meirinho) in a DUI matter in Stanislaus County in 2014 and 2015. Respondent made at least fifteen appearances. (Exhibit 19.) Respondent maintains that Meirinho hired the Corporation and was charged for his representation. Respondent does not recall how much Meirinho was charged but he is clear that he never received any money directly from Meirinho. Mays testified that Meirinho was in the Abacus system and that he paid the Corporation by check. She also testified that Respondent had represented members of the Meirinho family when he worked at the Curtis and Arata law firm.

Van Egmond testified that Meirinho was not in the Abacus system and that her hired investigator interviewed Meirinho on June 3, 2016. In that interview, Meirinho purportedly

stated he had paid some money but was not sure of the amount. Meirinho did not have receipts or documentation as to the amounts he paid Respondent. Also, it was unclear whether the references of paying cash were when Respondent still worked at the Curtis and Arata firm. Meirinho did not testify at trial.

The Teel Matter

Respondent represented Matthew Teel (Teel) in a DUI matter in Stanislaus Superior Court. (Exhibit 20.) Respondent admitted he did not know whether Teel's case was in the Abacus system. Respondent basically handled the Teel case as a "favor" for his buddy. He remembers that he did charge Teel a flat fee for his representation but did not remember how much. Respondent allowed Teel to make payments over time because Teel was unable to pay the flat fee upfront. According to Mays, Teel would come into the office and make cash payments and that she would give the payments to the front desk.

Teel purportedly told the investigator for the Corporation that he believed he paid Respondent approximately $2,400, but he had no documentation or receipts to give the investigator. Teel did not testify at trial.

The Ruiz Matter

Respondent represented Javier Ruiz (Ruiz) in a DUI matter in Stanislaus County Superior Court. (Exhibit 21.) Respondent made five court appearances for Ruiz prior to his termination from the Corporation. Respondent admits that Ruiz was not in the Abacus system because he was handling the case on a pro bono basis. After Respondent was terminated from the Corporation, he continued to represent Ruiz but could no longer afford to continue with the case on a pro bono basis. Thereafter, Respondent charged Ruiz $2,500. Respondent still represents Ruiz. Ruiz did not testify at trial.

Respondent's Termination from the Corporation

After discovering the number of cases not in the Abacus system, Arata, Swingle, and Van Egmond sought the advice of attorney David Zeff (Zeff). Zeff advised that the Corporation had exposure for liability in those cases not in the Abacus system and that Respondent should be terminated.

On April 19, 2016, Respondent was handed a termination letter. Respondent was terminated because the shareholders believed he: (1) failed to turn in or report money for services from clients in exchange for legal services; (2) failed to or conspired with Mays not to enter into the Abacus system all the cases handled under the Corporation's name; and (3) breached his fiduciary duties to the Corporation. (See Exhibit 54.) Mays was also terminated for alleged fraud, as well as allegations of failing to comply with office protocol in the handling of client files and monies.[4]

On October 13, 2016, counsel for Respondent sent a letter in connection with the litigation between Respondent and his former shareholders to Zeff. The letter stated that Respondent agrees that a settlement, if achievable, may provide a satisfactory resolution to the ongoing litigation. Respondent's settlement proposal had five terms, including a requirement that the Corporation send a letter to the California State Bar withdrawing their complaint and stating that the parties have come to an amicable resolution. Moreover, Respondent's attorney stated that the California State Bar letter would be reviewed and approved by, and on behalf of, Respondent before it was sent.[5] (Exhibit 53, p. 2.)

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[4] The credibility of Respondent's partners in this matter was cast into doubt by the bad blood that still permeates between Respondent, Mays, and the remaining shareholders of the Corporation. Although the termination occurred over two years ago, strong feelings of broken trust and anger continue to persist.

[5] One of Respondent's attorneys in the present proceedings, Robert E. Carey, Jr., was the attorney who authored this letter. Mr. Carey did not testify in these proceedings.

On October 17, 2016, Zeff, as counsel for Arata, Swingle, and Van Egmond, sent Respondent's counsel a letter which stated that the October 13, 2016 settlement proposal on behalf of Respondent violated section 6090.5 by making the request that Arata, Swingle, and Van Egmond withdraw their State Bar complaint. (Exhibit 73.) Three days later, on October 20, 2016, Respondent's counsel sent Zeff a letter which stated, "it appears that, due to my inartful drafting, you have misunderstood the intent and meaning of the October 13, 2016 letter." (Exhibit 1001, p. 4.)

The April 19, 2016 termination letter was the triggering event which caused the Corporation's buy-sell agreement (Exhibit 56) to come into operation. A buy-sell agreement is an "agreement between owners of a business by which the surviving owners agree to purchase the interest of a withdrawing or deceased owner." (Black's Law Dict. (7th ed. 1999) p. 193, col. 2.) It is clear that the buy-sell agreement governs the buying and selling of interest in the partnership. This was no document before the court regarding the controlling of the day-to- day operating of the firm's business.

As a result of the buy/sell agreement, the parties went to arbitration. Respondent was ultimately paid $175,000 by the Corporation and was given one of the Corporation's cases, valued at $300,000.[6]

Conclusions of Law

Count One – Section 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The NDC alleges

[6] The parties contested whether section 19 of the buy-sell agreement controlled the day to day operations of the Corporation or whether it only applied when Arata, Swingle, and Van Egmond sought to remove Respondent. As noted above, buy-sell agreements apply to purchasing the interest of departing owners. Upon review of the present buy-sell agreement, it does not appear that this document was intended to govern the day-to-day operations of the Corporation.

that Respondent violated section 6106 by engaging in a scheme to defraud his law firm and law partners. The scheme to defraud involved Respondent's purported acceptance of legal fees from 39 clients without reporting the clients or the fees to the Corporation.

OCTC's allegations in Count One, however, have not been established by clear and convincing evidence. To begin with, the Corporation operated informally and largely based on "trust." There were no clear cut rules regarding how many cases one could take on a pro bono basis and no written policy regarding inputting all cases into the Abacus system. Van Egmond testified that there were no policies regarding handling cases for family and friends, indicating that the shareholders generally trusted one another. Swingle testified that there was no limit on pro bono cases. Arata, when questioned regarding whether there was any agreement that all fees earned by an attorney were the property of the Corporation, replied that there was not such an agreement because the shareholders trusted each other.

Respondent did not share the belief of his former shareholders that all cases needed to be inputted into the Abacus system. As a result, Respondent asserts that he did not enter pro bono cases and various flat fee criminal cases that did not involve billing. Respondent also asserted that most of the cases listed in Count One of the NDC were pro bono cases. It should also be noted that the list of 39 cases spans a seven-year period. Given that Respondent handled 320-400 cases a year and 5%-10% were pro bono, this list does not appear to demonstrate clear and convincing evidence of a scheme to defraud.

It was Respondent's perceived breaking of the trust Van Egmond and Arata described that led to the nasty break-up of the Corporation. While Respondent's conduct clearly did not meet the expectations of his former shareholders, a violation of ambiguous or "unwritten rules" does not establish, by clear and convincing evidence, a violation of section 6106. Accordingly, Count One is dismissed with prejudice.

Count Two –Section 6106 [Moral Turpitude – Misappropriation]

In Count Two, OCTC alleges that Respondent committed moral turpitude by misappropriating $500 in fees from Zimmeht. However, it has not been established by clear and convincing evidence that Respondent received and misappropriated $500 from Zimmeht – who did not testify in these proceedings. Accordingly, Count Two is dismissed with prejudice.

Count Three – Section 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. In Count Three, OCTC asserts that the misconduct alleged in Count Two, i.e., misappropriating $500 in fees paid by Zimmeht, also demonstrated a breach of Respondent's duty of loyalty to the Corporation, and thereby constituted a violation of section 6068, subdivision (a). However, as noted above, it was not established by clear and convincing evidence that Respondent received and misappropriated $500 from Zimmeht. Consequently, Count Three is also dismissed with prejudice.

Count Four – Section 6106 [Moral Turpitude – Misappropriation]

In Count Four, OCTC alleges that Respondent committed moral turpitude by misappropriating $1,500 in cash retainer fees from Meirinho. However, it has not been established by clear and convincing evidence that Respondent received and misappropriated $1,500 from Meirinho – who did not testify in these proceedings. Even assuming, arguendo, that Meirinho paid the alleged retainer, it remains unclear whether that payment (or payments) was made while Respondent still worked at the Curtis and Arata law firm. Accordingly, Count Four has not been established by clear and convincing evidence and is dismissed with prejudice.

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

Similar to Count Three, OCTC asserts in Count Five that the misconduct alleged in Count Four, i.e., misappropriating $1,500 in fees paid by Meirinho, also demonstrated a breach

of Respondent's duty of loyalty to the Corporation, and thereby constituted a violation of section 6068, subdivision (a). However, as noted above, it was not established by clear and convincing evidence that Respondent received and misappropriated $1,500 from Meirinho. Consequently, Count Five is also dismissed with prejudice.

Count Six – Section 6106 [Moral Turpitude – Misappropriation]

In Count Six, OCTC alleges that Respondent committed moral turpitude by misappropriating $2,400 in fees from Teel. However, it has not been established by clear and convincing evidence that Respondent received and misappropriated $2,400 from Teel – who did not testify in these proceedings. Accordingly, Count Six is dismissed with prejudice.

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

For the same reasons articulated in Counts Three and Five, Count Seven has not been established by clear and convincing evidence and is also dismissed with prejudice.

Count Eight – Section 6106 [Moral Turpitude – Misappropriation]

In Count Eight, OCTC alleges that Respondent committed moral turpitude by misappropriating $2,500 in fees from Ruiz. However, it has not been established by clear and convincing evidence that Respondent received and misappropriated $2,500 from Ruiz – who did not testify in these proceedings. Accordingly, Count Eight is dismissed with prejudice.

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

For the same reasons articulated in Counts Three and Five, Count Nine has not been established by clear and convincing evidence and is also dismissed with prejudice.

Count Ten – Section 6090.5, subd. (a)(2) [Seeking Agreement to Withdraw Complaint]

Section 6090.5, subdivision (a)(2), prohibits an attorney, whether as a party or as an attorney for a party, from agreeing or seeking agreement, in a civil matter, that the plaintiff will withdraw a disciplinary complaint or will not cooperate with the investigation or prosecution

conducted by the State Bar. On October 13, 2016, Respondent, by and through his attorney, sought an agreement from his former shareholders to withdraw their disciplinary complaint to the State Bar as part of an attempt to settle civil litigation between Respondent and the former shareholders, in willful violation of Business and Professions Code, section 6090.5(a)(2).

The court does not believe Respondent's attorney's assertion that it was "inartful drafting" that caused that proposal. Clearly, the language of the October 13, 2016 settlement offer reflected an intention to seek an agreement to withdraw a State Bar disciplinary complaint. And Respondent, as a client, would have had to approve the terms of the settlement offer. (See *In the Matter of McCarthy* (Review. Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 382 [respondent found culpable for his attorney conditioning settlement on withdrawal of State Bar complaint].) Moreover, the October 13, 2016 letter itself indicates that Respondent was aware of the settlement offer, as it stated, "we propose the following terms of settlement." (Exhibit 53.) And, as noted above, Mr. Carey did not testify in these proceedings.

Case No. 16-O-16903 – The Ali Matters

Facts

The Mansoor Ali Matter

In 2010, Mansoor (Mansoor) and Nazreen (Nazareen) Ali retained Respondent to represent them as plaintiffs in a personal injury case. On March 26, 2012, Respondent sent a settlement offer letter to the defendant's insurance company on behalf of Mansoor and Nazreen, seeking a settlement for the maximum amount allotted by the defendant's policy. Respondent subsequently filed a complaint in San Joaquin County Superior Court in May 2012. He did not, however, serve the defendant or the defendant's insurance company. On June 28, 2012, Respondent sent Mansoor a letter where he stated that "we" are attempting to reduce the River Surgical bill. (Exhibit 1058.)

The claims relating to Mansoor were settled directly with the insurance company for $15,000. There was no dispute at this hearing that Respondent's fee agreement stated that the medical liens were entirely the responsibility of the person who was bound by them, i.e., Mansoor. (Exhibit 1152.)

Respondent noted that the Corporation, as courtesy to clients, often negotiated liens on their behalf. As for Mansoor, however, Respondent found him to be such a difficult client that Respondent waived all attorney fees and had the insurance company write the check out directly to Mansoor.[7] Unbeknownst to Respondent, however, Mays set up a side deal with Mansoor to negotiate his medical liens for him for $1,850.

On June 13, 2013, Respondent sent Mansoor's signed settlement release to the defendant's insurance company. (Exhibit 1060 and Exhibit 64, p. 5.) Respondent stated in his correspondence that he was not claiming any attorney's fees from that settlement. Respondent requested that the insurance company send the settlement check to his office, and that the check only be made out to Mansoor. The insurance company complied and issued a $15,000 check to Mansoor only.

On July 9, 2013, Mansoor gave Mays a check for $1,850 along with four other checks made out to his medical providers, as follows: $1,000 to California Rehabilitation; $1,500 to Stanislaus Orthopedic; $4,000 to River Surgical; and $260 to NaPharm. These checks were not deposited in the Corporation's trust account. Mays deposited the check made out to her immediately because she did not trust Mansoor.[8] Three days later, Mansoor attempted to stop payment on all five checks; however, Mays had already cashed the check made out to her. There

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[7] Respondent produced text messages with Mansoor corroborating some of the difficulties he experienced with Mansoor. (See Exhibits 1150 and 1151.)

[8] This check was made out to Mays, she is the one that cashed it, and she did not sign it over to Respondent.

was no evidence developed at trial that Respondent received any monies from the check that Mays cashed. Following Respondent's termination in April 2016, Swingle found the checks for the lien providers that Mansoor gave to Mays. As noted above, Mansoor stopped payment on those checks back in July 2013.[9]

At trial, OCTC presented an unsigned settlement invoice for Mansoor's matter, which included $1,850 in attorney's fees.[10] (Exhibit 63.) OCTC asserted that Respondent gave Mansoor the settlement invoice on July 9, 2013. Mansoor, however, testified that he had never before seen the settlement invoice. Mays testified that the settlement invoice was a draft that was never given to Mansoor. Respondent testified that prior to the NDC being filed he had never seen the settlement invoice. Considering the totality of the evidence, it is unclear when the settlement invoice was created, but it is clear that it was never presented to Mansoor.

The Nazreen Ali Matter

After settling Mansoor's claims in July 2013, Respondent sent information regarding Nazreen's claim to the insurance company and continued to appear on behalf of Nazreen in court, but made no progress on her case for over four years. Between May 2012 and March 2016, Respondent never served the defendants with a summons regarding the filed lawsuit and no significant action was taken to prosecute Nazreen's case. Respondent began consistently missing court dates in the case starting in 2015. He failed to appear on Nazreen's matter on January 15, March 4, and September 15, 2015, prompting an Order to Show Cause Hearing for contempt of court.

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[9] Mansoor and Mays both testified in these proceedings. The credibility of these two witnesses is suspect because their testimony directly conflicted on key issues and they both demonstrated considerable anger.

[10] The unsigned settlement invoice stated that the attorney's fees were reduced from $3,750.

After his April 19, 2016 termination from the Corporation, Respondent failed to appear at a July 29, 2016 court date in Nazreen's case and failed to withdraw from the case as attorney of record. He also failed to inform Nazreen of his termination from the Corporation or advise her how to move forward with her lawsuit.

In September 2016, the remaining shareholders realized Nazreen's case was still pending and contacted her. They advised her of the option to have her file sent to Respondent at his office or have them try to resolve the matter. Nazreen chose to remain with the Corporation.

On January 9, 2017, Swingle served Nazreen's 2012 complaint on the defendants in the case. Swingle was able to resolve Nazreen's case in April 2017, for $3,000. Swingle attributes the small settlement to the Corporation's inability to locate all of the medical bills and records provided to Respondent during his representation. At trial in the present proceeding, Respondent acknowledged that he was embarrassed by the way he dropped the ball with regard to Nazreen's matter.

Conclusions of Law

Count Eleven – Rule 1-320(A) [Sharing Fees with Non-Lawyers]

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer. In Count Eleven, OCTC alleged that Respondent shared legal fees with Mays, who was not a lawyer, in Mansoor's personal injury matter. There is no credible evidence that Respondent received, or even knew about, the $1,850 check Mays deposited. Therefore, the limited evidence presented at trial did not rise to the level of clear and convincing evidence that Respondent was aware of the $1,850 paid by Mansoor to Mays. Accordingly, Count Eleven is dismissed with prejudice.

Count Twelve – 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. In Count Twelve, OCTC alleged that Respondent violated rule 3-110(A) by failing to supervise his employee, Mays, resulting in the failure to distribute checks for lien payments entrusted to Respondent by Mansoor.

Mansoor, however, stopped payment on the checks he gave Mays, rendering them worthless. As previously noted, neither Mansoor nor Mays were credible witnesses. The fact that the checks were never sent to Mansoor's lienholders indicates that Mays was somehow aware of Mansoor's stop-payment orders. Since many of the surrounding facts and circumstances remain unclear, Count Twelve has not been established by clear and convincing evidence and is dismissed with prejudice.

Count Thirteen – Section 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. In Count Thirteen, OCTC alleged that Respondent failed to keep Mansoor reasonably informed of significant developments by failing to inform Mansoor that Respondent was terminated from the Corporation on April 19, 2016, and that Respondent had not distributed the lienholder checks Mansoor had given Mays in 2013.

Count Thirteen has not been established by clear and convincing evidence. Mansoor received his settlement funds in 2013. While Mansoor did provide checks to Mays for his medical lienholders, he put stop-payment orders on those checks shortly thereafter. Accordingly, Mansoor knew his lienholders could not be paid with the checks he gave to Mays, and Respondent was effectively finished working on Mansoor's matter in 2013. Accordingly, Count

Thirteen has not been established by clear and convincing evidence and is dismissed with prejudice.

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

By failing to serve Nazreen's lawsuit on the defendants and failing to appear at three court proceedings in the case, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count Fifteen – Section 6068, subd. (m) [Failure to Communicate]

By failing to inform Nazreen that Respondent was terminated from the Corporation on April 19, 2016, Respondent failed to keep his client reasonably informed of significant developments in a matter in which Respondent agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count Sixteen – Rule 3-700(A)(2) [Improper Withdrawal 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. Respondent willfully violated rule 3-700(A)(2) by constructively terminating his employment of his client, Nazreen, without notice and without taking any other steps to avoid reasonably foreseeable prejudice to his client.

Count Seventeen – Section 6106 [Moral Turpitude]

In Count Seventeen, OCTC alleged that Respondent committed moral turpitude by falsely stating in a letter to Farmers Insurance Group that he was not asserting attorney's fees on Mansoor's claim. However, it has not been established by clear and convincing evidence that

Respondent's statement to Farmers Insurance Group was false. Accordingly, Count Seventeen is dismissed with prejudice.

Count Eighteen – Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

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. In Count Eighteen, OCTC alleged that Respondent violated rule 4-100(A) by not depositing checks made out to California Rehabilitation, River Surgical, Stanislaus Orthopedic, and NaPharm into his CTA.

This count fails on two grounds. First, each of the checks had stop-payment orders issued on them and therefore could not be deposited.[11] And second, it would have been impossible to deposit checks made out to the lienholders into Respondent's CTA. Accordingly, Count Eighteen is dismissed with prejudice.

Case No. 15-O-13337 – The Foremost Insurance Company Matter

Facts

Respondent owned rental property in Modesto, California (the Modesto property). The tenants living at Respondent's Modesto rental property were evicted in late December 2014 or early January 2015.

In late 2014 or early 2015, Noah Yates (Yates) – who was a client of the Corporation – approached Respondent about doing some repair work on Respondent's Modesto property as partial payment toward legal fees Yates owed to the Corporation. Respondent hired Yates and

[11] As previously noted, the court does not agree with OCTC's theory that Mays did not know about the stop-payment orders. Her action of holding onto the checks is consistent with the actions of someone who has been informed that the checks could not be cashed. Further, if the checks were still good, neither Mays nor Respondent would derive any benefit from not passing them along to the lienholders.

agreed to pay him $25 per hour, which Yates could use to pay off his legal debt to the Corporation. There is no evidence in the record that Respondent disclosed the terms of this agreement in writing to Yates or otherwise memorialized the agreement.[12]

Yates inspected the property and reported, in late January 2015, that the tenants had left the place filthy, but the only repair work that needed to be done was some painting, repair to a hole in the wall, and removal of junk. The initial estimate for repairs was about $1,000.

On or about February 9, 2015, the Modesto property was broken-into and vandalized.[13] As a result, the estimate to repair the damages increased to $11,000. And by March 2015, the repair costs ballooned to approximately $30,000.

In March 2015, Respondent filed an insurance claim with his insurance company – Foremost Insurance – stating that the damages were discovered on February 9, 2015. Under the terms of Respondent's insurance policy, there would be no coverage if the tenants caused the damage to the property. The insurance company suspected that Respondent's tenants may have caused the damages. Accordingly, the insurance company began an investigation.

During the investigation, Respondent gave some statements regarding the timing of the claim that contradicted statements contained in his initial claim. Respondent explained these contradictions by noting that some of his statements were based on information conveyed by Yates.

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[12] Respondent testified that he does not remember if his agreement with Yates was in writing nor does he know if he had the agreement reviewed by other shareholders. The court found suspect Respondent's testimony that he did not remember these facts.

[13] This finding is based on Respondent's uncontroverted testimony. Yates was scheduled to testify in these proceedings on behalf of OCTC on three separate occasions. He failed to appear on all three occasions.

On August 27, 2015, Respondent withdrew his insurance claim. Respondent's explanation for the withdrawal was that he was unable to secure insurance coverage for the Modesto property while it still had a pending insurance claim. (See Exhibit 12.)

Conclusions of Law

Count Nineteen – Section 6106 [Moral Turpitude]

In Count Nineteen, OCTC alleged that Respondent violated section 6106 by "making fraudulent statements and misrepresentations" to his insurance company. These allegations, however, were not established by clear and convincing evidence. While Respondent gave some statements regarding the timing of his insurance claim that contradicted statements contained in his initial claim, his explanation that the contradictions resulted from his reliance on information provided by Yates was uncontroverted. Accordingly, Count Nineteen is dismissed with prejudice.

Count Twenty – Rule 3-300 [Avoiding Interests Adverse to a Client]

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and the client thereafter consents in writing to the terms of the transaction/acquisition.

In December 2014 or early January 2015, Respondent entered into a business transaction with Yates, specifically, that Yates would perform repair work on the Modesto property as partial payment toward the legal fees that Yates owed the Corporation. Respondent did not fully disclose in writing to Yates the terms of the business transaction in a manner which should

reasonably have been understood by Yates; Respondent did not advise Yates in writing that he may seek the advice of an independent lawyer of Yates's choice and did not give Yates a reasonable opportunity to seek that advice; and Yates did not consent in writing to the terms of the transaction.[14] Respondent thereby willfully violated Rules of Professional Conduct, rule 3-300.

Aggravation[15]

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor – warranting moderate weight in aggravation.

Mitigation

No Prior Record of Discipline (Std. 1.6(a).)

Respondent was admitted to practice law in California in June 1999 and has no prior record of discipline. His approximately thirteen years of discipline-free conduct prior to the present misconduct warrants significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Good Character (Std. 1.6(f).)

Respondent presented character testimony and declarations from seventeen witnesses. Respondent's character witnesses included attorneys, clients, friends, and doctors. Respondent's character witnesses demonstrated a general understanding of the alleged misconduct and,

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[14] Based on the limited evidence before the court, it has not been established that the transaction or its terms were unfair or unreasonable to Yates.

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

nonetheless, praised his integrity, intelligence, commitment, compassion, and trustworthiness. Respondent's extensive array of character witnesses warrants substantial weight in mitigation.

Volunteer and Pro Bono Work

Respondent's volunteer work with the Make a Wish Foundation and the Community Hospice of Modesto, as well as his extensive pro bono work, warrants significant weight in mitigation.

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 two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

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.

In this case, the standards provide a broad range of sanctions. Standards 2.4, 2.7(c), and 2.18 apply in this matter. The most severe sanction is reflected in standard 2.18, which states that disbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the standards.

OCTC requested that Respondent be found culpable on all counts and disbarred. Respondent, on the other hand, argued that he should not be found culpable on any of the counts and, consequently, this matter should be dismissed. The court looked to the case law for guidance and found *Bach v. State Bar* (1991) 52 Cal.3d 1201, to be helpful.

In *Bach*, the Supreme Court imposed a suspension of 30 days and until the attorney paid restitution in a single client matter. In that case, the attorney failed to perform competently, withdrew his representation without the client's consent or court approval, failed to refund unearned fees, and failed to respond to written inquiries from an OCTC investigator. The attorney in *Bach* had no prior discipline, but the Supreme Court found that his lack of insight and his attitude toward discipline evidenced his lack of cooperation.

Respondent's misconduct in the present case is a little more serious than *Bach*. *Bach* only involved the abandonment of a single client, while the present case also involves seeking an agreement to withdraw a State Bar complaint and failing to avoid adverse interests. That said, the present case involves considerably less aggravation and more mitigation than *Bach*, including

Respondent's good character evidence, as well as his pro bono and volunteer service. Accordingly, this court concludes that the present matter warrants a level of discipline similar to *Bach*.

Therefore, having considered the evidence, the standards, and the caselaw, the court concludes that a 30-day period of actual suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that respondent Jakrun S. Sodhi, State Bar number 200851, be suspended from the practice of law in the State of California for one year, 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 30 days 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.

Ethics 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 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 this session. If Respondent provides satisfactory evidence of completion of the Ethics 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.

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 the conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination 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 requirement.

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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: October 29, 2018

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 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 San Francisco, on October 29, 2018, 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:

ROBERT EUGENE CAREY,JR.
CHRISTOPHER P. SUN
CAREY & CAREY
706 COWPER ST
PALO ALTO CA 94301

☒ 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 October 29, 2018.

Lauretta Cramer
Court Specialist
State Bar Court