PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of MICHAEL THOMAS STOLLER, A Member of the State Bar, No. 120241.	Case No. 16-O-16478-CV DECISION

I. INTRODUCTION

In this contested disciplinary matter, respondent Michael Thomas Stoller (Respondent) is charged with two counts of misconduct in a single matter. Respondent is charged with willfully violating (1) Business and Professions Code[1] section 6103 (failure to obey a court order) and (2) section 6068, subdivision (o)(3) (failure to report judicial sanctions).

The court finds, by clear and convincing evidence, that Respondent is culpable as charged. In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends that Respondent be suspended for two years, that execution of that suspension be stayed, that he be placed on probation for two years, and that he be actually suspended for six months and until he complies with the underlying sanctions order.

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[1] Unless otherwise indicated, all references to section(s) are to the Business and Professions Code.

II. PERTINENT PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a Notice of Disciplinary Charges (NDC) on October 13, 2017. Respondent filed a response to the NDC on November 15, 2017.

On February 9, 2018, a one-day trial was held during which the parties filed an amended "Stipulation as to Facts and Admission of Documents" (stipulation). On February 28, 2018, the parties filed closing briefs, and the court took the case under submission for decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 10, 1985, and has been a member of the State Bar of California since that time.

B. Findings of Fact

The following findings of fact are based on the stipulation and the documentary and testimonial evidence admitted at trial.

Respondent represented Mara Manos in *Make It Nice, LLC v. Mara Manos* (Super. Ct. L.A. County, No. 16B0019) in 2016. Lane M. Nussbaum represented the plaintiff in that matter.

On June 30, 2016, Respondent notified Mr. Nussbaum of an ex parte hearing on July 1, 2016, at 8:30 a.m. in Los Angeles County Superior Court. Mr. Nussbaum appeared on that date and time to find that Respondent had not filed a motion. Mr. Nussbaum later discovered that Respondent had withdrawn his notice via email at 12:47 a.m. on July 1, 2016. In this July 1, 2016 email to Mr. Nussbaum, Respondent wrote: "The ex parte set for tomorrow is being withdrawn and reset for Tuesday July 5, 2016. I apologize for the late notice but was in trial in Oakland and did not get back until late due to plane delays. Thank You."

On July 5, 2016, at 1:37 a.m., Respondent sent an email to Mr. Nussbaum withdrawing the ex parte notice for that day and re-noticing the hearing for July 6, 2016. No reason was given.

On July 5, 2016, at 5:41 p.m., Respondent sent an email to Mr. Nussbaum withdrawing the ex parte notice for July 6, 2016, and re-noticing the hearing for July 7, 2016. Again, no reason was given.

On July 6, 2016, at 10:26 p.m., Respondent sent an email to Mr. Nussbaum stating as follows: "please be advised the ex parte to set aside dismissal default judgment and order or alternative to shorten time and stay the writ of execution scheduled by Mara Manos for tomorrow, July 7, 2016 is being re-noticed for July 08, 2016 in Dept. S at 8:30 – I apologize for the continuous changes but have been in trial in Oakland and finally have returned. Thank you."

On July 8, 2016, Mr. Nussbaum appeared in court for the ex parte hearing. However, on July 8, 2016, at 8:04 a.m., Respondent's secretary, Karen Slyapich, had sent an email to opposing counsel which read as follows: "Apologies for the late notice. however [sic] there have been some difficulties with the papers for the exparte [sic] as Michael has been in trial in oakland [sic] and just returned last night and accordingly today's exparte [sic] will not proceed and please be advised the exparte [sic] to set aside dismissal, default judgment and order or alternative to shorten time and stay the writ of execution scheduled by Mara Manos for today July 8, 2016 is being re-noticed for Monday, July 11, 2016 in Dept S at 8:30."

On July 11, 2016, Mr. Nussbaum filed a motion for sanctions based on Respondent's conduct in setting and resetting the ex parte hearing, without timely notice to opposing counsel, which caused Mr. Nussbaum to rearrange his schedule, cancel plans, continue other hearings, and travel to court on two occasions for the noticed ex parte hearings.

On July 11, 2016, and July 17, 2016, Respondent gave ex parte notice again.

On August 8, 2016, the superior court held a hearing on Mr. Nussbaum's motion for an order issuing sanctions for abuse of process. Respondent was present at the hearing. The court found that most of the eight ex parte notices were re-noticed or withdrawn in an untimely manner. Further, the court found that Mr. Nussbaum was inconvenienced in that he "had to reschedule his other matters, including trials, as a result of receiving multiple Ex Parte Notices from Defense Counsel, and on at least two occasions, Counsel for Plaintiff appeared in court because of Defense Counsel's untimely withdrawal of the ex parte notice." The court found that there was a sufficient legal and factual basis upon which to issue the sanctions order.

The court ordered Respondent to pay opposing counsel sanctions in the amount of $3,000 by October 1, 2016. The court noted, on the record, that it was required to report the sanctions order to the State Bar. Subsequently, the court sent a certified copy of the order to the parties and to the State Bar. On August 10, 2016, Respondent received the written order confirming the sanction and the attached notice of service evidencing the reporting of the sanctions order to the State Bar.

Having been present at the August 8, 2016 hearing, and having received the written minute order following the hearing, Respondent admits that he had actual notice of the sanction order against him. Thus, he was obligated to pay the sanction unless he took action to have the order modified or vacated. He admits he took no such action. Nonetheless, he did not pay the sanction by the October 1, 2016 deadline. Indeed, he still had not paid the sanction as of the date of trial in this matter.

Respondent contends that his failure to comply with the sanctions order is based upon his understanding that the order is on appeal. In essence, Respondent claims that the sanctions order is not yet final.

Respondent is no longer counsel of record in the *Make It Nice, LLC v. Mara Manos* matter. The case is on appeal, and Respondent testified that his former client is now proceeding in propria persona with the assistance of a non-lawyer family friend, Tara Borrelli. Respondent claims that Ms. Borrelli advised him that all orders in the case were being appealed, including the sanctions order. In addition to Ms. Borrelli's representations, Respondent relies upon the reference to the sanctions order in the "Appellant's Notice Designating Record on Appeal" (Notice) as evidence that the sanctions order itself is on appeal as represented to him by Ms. Borrelli.

Mr. Nussbaum remains counsel of record on appeal in the *Manos* case. He confirmed that Ms. Manos is proceeding in propria persona on appeal. As of the date of trial in this case, the appeal was pending and opening briefs had not yet been filed. However, Mr. Nussbaum testified that it was not necessary to wait until the opening briefs were filed to determine the issue on appeal. He credibly testified that the sanctions order is not on appeal. Mr. Nussbaum credibly testified that the issue on appeal is the May 16, 2016 judgment granting plaintiff's motion to compel against Ms. Manos for failing to appear at a deposition, and not the sanction order against Respondent.

In support of his testimony, Mr. Nussbaum, like Respondent, relied upon the "Appellant's Notice Designating Record on Appeal" (Notice) filed on October 19, 2018 by Ms. Manos. Mr. Nessbaum testified that, contrary to Respondent's assertion, the Notice indicates only that the sanctions order is *part of the record* on appeal, but it is *not an issue on appeal.* In the "statement on appeal" section of the Notice, Ms, Manos states that "The proposed statement on Appeal is only for the May 16, 2016 Hearing on Plaintiff's Motion to Compel Deposition of Defendant Mara Manos and Tara Borelli." The Notice also references the July 11, 2016 and July 19, 2016 Hearing for Motion to Set Aside the Judgment and Reconsideration of Motion to Set

Aside the Judgment as "the primary thrust of the appeal." Finally, in the Notice, Ms. Manos designated the reporter's transcripts for the July 11, 2016 and July 19, 2016, hearings, and after language admonishing that "*Rule 8.834(a)(2) provides that your appeal will be limited to these points, unless, on motion, the appellate division permits otherwise*," Ms. Manos writes that the appeal concerns the jurisdiction of the commissioner to hear the motions to compel deposition after both Ms. Manos and Ms. Borrelli filed a motion of refusal to be heard by a commissioner or judge pro tem. Therefore, this court finds that Respondent did not have a reasonable or good faith belief that the sanctions order was on appeal and not final.

At trial, Respondent admitted that he did not report the sanction to the State Bar as required. He testified that he did not report the sanction because the superior court had clearly done so, and he was not aware that he had an independent duty to self-report the sanction. Respondent claims that he mistakenly believed that the court's reporting of the sanctions order to the State Bar satisfied his obligation to do so. This court finds Respondent's claim of mistake unreasonable, especially in light of his prior discipline for failure to report a sanction.

C. Conclusions of Law

Count One—Section 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

To prove a section 6103 violation, OCTC must establish that Respondent knew the sanction order against him was final and binding and that he intended his acts or omissions. (*In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) Bad faith is not a

necessary element of a section 6103 violation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47.)

The superior court issued a sanctions order requiring Respondent to pay $3,000 to Mr. Nussbaum on or before October 1, 2016. Respondent was aware of the sanction order. Respondent took no action to challenge the order in superior court or on appeal. Respondent admitted that he has not paid the sanction.

The court acknowledges Respondent's contention that he did not know that he had an independent right to appeal the sanctions order since he was no longer counsel of record in the case, but finds that his contention is not credible given his 30 years of practice, extensive trial work in federal and state courts, and his having litigated over a dozen appeals. Similarly, Respondent's reliance on the representations of his former client and a non-lawyer (Ms. Borrelli) that the sanctions order is on appeal is also unreasonable, and is clearly contradicted by the Notice of Appeal. For all these reasons, Respondent's assertion that he did not pay the sanction order because it is on appeal, and, thus, not yet final, is not credible.

The court finds by clear and convincing evidence that Respondent failed to comply with the superior court's order when he did not pay the $3,000 sanction by October 1, 2016. The court also finds by clear and convincing evidence that Respondent knew of this final and binding court order and that he intentionally did not comply with the order. Accordingly, Respondent's actions constitute a willful violation of section 6103.

Count Two—Section 6068, subdivision (o)(3) [Failure to Report Judicial Sanction]

Section 6068, subdivision (o)(3), requires an attorney to report to the State Bar any imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than $1,000. That report must be in writing and must be made within 30 days of the time the attorney has knowledge of the sanctions. The sanction order

must be reported even though it is or will be appealed. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866-867.) The willful violation of this duty does not require a bad purpose or an evil intent. (*Ibid.*)

The court acknowledges Respondent's belief that because it was clear that the superior court was required to, and did report the sanction to the State Bar, he did not have an independent duty to report the sanction in addition to the court. This belief, however, was (1) unfounded as the superior court's duty to report does not affect Respondent's duty (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 48) and (2) unreasonable considering he took no action to investigate the reporting requirements or insure that he conformed with them, which is especially troubling given his prior discipline for failure to report sanctions. Ultimately, an attorney's duty to report judicial sanctions falls on his own shoulders and responsibility for compliance is nondelegable.

The court finds by clear and convincing evidence that Respondent failed to report to the State Bar that he was sanctioned on August 8, 2016, by the superior court and ordered to pay $3,000 to opposing counsel. Accordingly, Respondent willfully violated section 6068, subdivision (o)(3).

Aggravation[2]

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds two significant aggravating circumstances.

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

Respondent has two prior records of discipline, which is a significant aggravating factor.

In his first disciplinary matter, Respondent stipulated to a willful violation of rule 3-110(A) of the State Bar Rules of Professional Conduct[3] when he failed to perform competently

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

in several bankruptcy matters. (State Bar Court case No. 09-J-11153.) His misconduct occurred between 2008 and 2009. In mitigation, Respondent had no prior record of discipline and, in aggravation, Respondent committed multiple acts of misconduct and caused significant harm to his clients and the administration of justice. On January 22, 2010, the Supreme Court ordered Respondent suspended for two years, stayed, with two years of probation. (Supreme Court case No. S178052.)

In his second disciplinary matter, Respondent stipulated to certain facts and conclusions of law concerning several different matters. (State Bar Court case Nos. 08-O-12676 (08-O-14737; 09-O-10095; 09-O-10382; 10-O-03290; 10-O-04753; 10-O-08355).) Respondent committed several willful rule 3-110(A) violations when he failed to perform competently in various bankruptcy matters by failing to file petitions or required forms and failing to meet personally with a client. He willfully violated section 6068, subdivision (o)(3), when he failed to report to the State Bar a $2,000 sanction imposed by the bankruptcy court for failing to appear at four meetings. Respondent willfully violated rule 2-100 when he contacted an opposing party who was represented by counsel. He also opened a "multi-state practice" in Arizona, where he is not admitted, to handle bankruptcy matters, and filed several petitions there, in willful violation of rule 1-300(B). In a personal injury case that resulted in a judgment against his client, Respondent did not provide the client's file to his new lawyer until the State Bar intervened, in willful violation of rule 3-700(D)(1). In aggravation, Respondent had one prior record of discipline. However, this was given less weight because the misconduct in both the first and second disciplines occurred contemporaneously. Respondent received mitigation credit for cooperating with the State Bar investigation and entering into a pretrial stipulation. On June 28,

[3] Unless otherwise indicated, all references to rules refer to this source.

2011, the Supreme Court ordered Respondent suspended for three years, stayed, with two years of probation subject to a 60-day actual suspension. (Supreme Court case No. S192474.)

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

Respondent demonstrated indifference towards 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.) Respondent contends that the sanction order is on appeal while his former client is appealing in propria persona. However, the sanction order is clearly not at issue on appeal. Respondent's insistence that the sanction order is on appeal is unreasonable. Respondent did not try to appeal the order or stay it when it was issued. He simply chose not to pay the sanction, and still has not paid the sanction.

In addition, his unreasonable claim that he was not aware of an independent duty to report the sanction shows his indifference. Having been previously disciplined for failing to report a sanction, a heightened level of due diligence should have been pursued.

Hence, his inability to accept responsibility for his misconduct and his indifference toward rectification of or atonement for the consequences of his misconduct is considered a significant aggravating factor.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.)

Good Character (Std. 1.6(f).)

Respondent presented seven good character letters, including four from attorneys, two from clients, and one from a colleague. The character witnesses commented favorably on his

good character, legal proficiency, and zealous advocacy. One also described Respondent's contributions to various charities. However, three of the letters indicate that the individuals were not "aware of the full extent of the misconduct," as required by standard 1.6(f). As such, these three letters are only entitled to limited weight in mitigation. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477.) Further, the references provided did not constitute a "wide range of references in the legal and general communities," and accordingly, the mitigation credit for the character evidence is not significant. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references].)

Respondent testified that he did 50 to 100 hours of pro bono work for Ms. Manos. He also testified that he works with various charities including the Citizens Commission on Human Rights, Artists for Human Rights, and Voices for Freedom. Respondent testified that he has done ad hoc legal work on a limited basis for these charities including reviewing contracts, appearing in court, and organizing fundraisers. The court gives Respondent mitigation credit for his pro bono and community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) However, Respondent offered only his own testimony, and a couple of character letters with a vague and general reference to this pro bono work to establish these efforts. Further, Respondent only generally described this work, and his involvement seems limited mainly to facilitating fundraising connections. The court therefore assigns only modest weight to this mitigation evidence. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

Cooperation with State Bar (Std. 1.6(e).)

Respondent entered into a stipulation of facts and agreed to the admission of certain documents, therefore entitling him to mitigation credit. The stipulation was relevant and assisted the State Bar's prosecution of the case. However, the stipulated facts were not difficult to prove and Respondent did not admit culpability. Accordingly, the court assigns limited weight in mitigation for cooperation. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 [where stipulation was not extensive, involved easily provable facts, and did not admit culpability, respondent's cooperation with the State Bar was assigned limited weight as a mitigating factor].)

IV. 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 1085, 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.) Second, the court looks to decisional law. *(Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7(a) provides that, 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. In the instant matter, the most severe sanction for Respondent's misconduct is found in standard 2.12(a), which provides, in part, that the presumed sanction for violation or disobedience of a court order related to the member's practice of law is actual suspension or disbarment.

Additionally, considering Respondent's record of two prior disciplinary matters, the court looks to standard 1.8(b), which states that disbarment is appropriate where an attorney has two or more prior records of discipline if: (1) an actual suspension was ordered in any prior disciplinary matter; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Respondent received an actual suspension of 60 days in his second disciplinary proceeding.

Standard 1.8(b) does not apply if: (1) the most compelling mitigating circumstances clearly predominate or (2) the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. These exceptions do not apply to Respondent. The factors in aggravation found here considerably overshadow the mitigating circumstances found, which are not compelling. In addition, the present misconduct did not occur during the same time period as his past misconduct.

However, disbarment is not mandatory in a third disciplinary matter even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment not imposed despite two prior disciplines and no compelling mitigating circumstances (analysis under former std. 1.7(b))]. Standard 1.8(b) is not applied reflexively, but is done so "with an eye to the nature and extent of the prior record. [Citations.]"

(*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 289 [attorney not disbarred on third discipline].) A deviation from disbarment under standard 1.8(b) requires the court to articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.) As discussed below, the court finds clear reasons to deviate from disbarment as required under standard 1.8(b).

First, Respondent's two prior disciplines overlapped in time. To properly fulfill the purposes of attorney discipline, the court must examine the nature and chronology of a respondent's prior record of discipline. (*In the Matter of Miller (1990)* 1 Cal. State Bar Ct. Rptr. 131, 136.) In *McCray v. State Bar* (1985) 38 Cal.3d 257, the court did not disbar the attorney in his fourth disciplinary proceeding when it considered (1) the timing of the prior misconduct, where much of the prior misconduct overlapped, and (2) the relatively light discipline imposed previously, the harshest of which was a 30-day actual suspension. The misconduct in Respondent's prior disciplinary matters occurred contemporaneously. In the second disciplinary matter, the court gave his prior discipline less weight for this reason. "It would be improper to penalize an attorney for two 'priors' based on the timing of the complaints rather than the true chronology of the misconduct." (*In the Matter of Jensen, supra,* 5 Cal. State Bar Ct. Rptr. at p. 292.)

Indeed, it is precisely because "respondent's first prior discipline occurred in a separate jurisdiction contemporaneous to the misconduct in the second record of discipline" that the OCTC does not seek disbarment under standard 1.8(b). Like the OCTC, this court also concludes that the chronology and extent of Respondent's past misconduct indicates that a deviation from disbarment would be appropriate in this matter.

Second, both the first and second disciplines involved relatively modest levels of discipline—a suspended sentence and then a 60-day actual suspension.

Third, this is not a case evidencing a common thread of increasingly serious misconduct. Respondent is not a recidivist offender who is unwilling to conform to ethical norms. Respondent's prior disciplinary record reveals one instance of similar wrongdoing—his failure to report judicial sanctions found here and in his second disciplinary matter. However, his misconduct in his second disciplinary matter also involved several instances where he did not perform with competence,[4] an improper communication with a represented party, the unauthorized practice of law, and failure to promptly return a file to a client. In contrast, no such issues have been raised here. Rather, Respondent is culpable here of failing to pay and report a judicial sanction. Moreover, his prior disciplinary matters involved several client matters and instances of wrongdoing. Here, his violations arise from one client matter. Finally, Respondent is not unwilling to pay and report sanctions, but, rather, unreasonably believed that his payment obligations had been stayed pending appeal and his reporting obligations had been fulfilled by the superior court's reporting of the sanctions order to the State Bar.

For all of these reasons, the nature and extent of Respondent's prior disciplines do not justify disbarment. (*In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201, 205, fn. 2 [even on third discipline, disbarment not proper if manifestly disproportionate to cumulative misconduct].)

OCTC recommends that Respondent be placed on actual suspension for six months and until he complies with the court order to pay sanctions. OCTC's discipline recommendation is based on *In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. 41.

In *Riordan*, the attorney was disciplined for failing to act competently, failing to obey a court order, and failing to report judicial sanctions. In aggravation, the court found that he committed multiple acts and harmed the administration of justice. The court found significant

[4] Respondent's first disciplinary matter also involved failing to perform legal services with competence.

mitigation for the attorney's long period of discipline-free practice. He was given mitigation credit for entering into a factual stipulation and diminished weight in mitigation for his good character due to the absence of a wide range of references. Riordan was given a six-month stayed suspension and one year of probation. In the instant matter, Respondent has considerably more factors in aggravation and less mitigation weight than the attorney in *Riordan*, although Respondent's conduct here is less severe.

Respondent asserts that a stayed suspension is appropriate. He cites *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. 862, a case where the attorney was given a private reproval for failing to report and pay sanctions. However, that case does not presently provide clear guidance because it was based on former standard 2.6 which allowed for a stayed suspension for violating a court order, while current standard 2.12(a) calls for a minimum *actual* suspension for such a violation. Moreover, the attorney in *Respondent Y* had no prior disciplinary record and there was no evidence in aggravation. Here, Respondent has a substantial prior record of discipline (including similar misconduct) and significant factors in aggravation.

When comparing all of the relevant factors, the court finds that Respondent's discipline should be greater than the discipline in *Riordan* and *Respondent Y*. First, greater discipline is warranted here because Respondent's prior discipline also involved his failure to report a judicial sanction which should have caused him to be extra vigilant about reporting the underlying sanction. Second, progressive discipline is appropriate in this case. (Std. 1.8(a); *In the Matter of Jensen*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 289.) In light of standard 2.12(a), the underlying misconduct, and the aggravation evidence that outweighs the mitigation evidence, the court concludes that a six-month actual suspension would serve to impress upon Respondent the

seriousness of his duties to comply with all aspects of court orders and to protect the public, the courts, and the legal profession.

V. RECOMMENDATIONS

It is recommended that Michael Thomas Stoller, State Bar Number 120241, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Respondent be placed on probation for two years, with the following conditions:

1. Respondent must be suspended from the practice of law for a minimum of the first six months of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

    i. Respondent pays the $3,000 in sanctions ordered on August 8, 2016, by the Los Angeles County Superior Court in *Make It Nice, LLC v. Mara Manos*, case No. 16B0019, and provides satisfactory proof to the State Bar's Office of Probation in Los Angeles that he has paid the sanctions; and

    ii. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. 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 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 with Respondent's first quarterly report.

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

4. 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 days after such change, in the manner required by that office.

5. 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 the 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.

6. 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.

7. 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 days before the last day of the probation period and no later than the last day of the probation period.

   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.

   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).

   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.

8. 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 Ethics School. If Respondent provides satisfactory evidence of completion of 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.

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

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

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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 or during the period of Respondent's actual suspension, whichever is longer, 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 taking and passage of the MPRE 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.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[5] Failure to do so may result in disbarment or suspension.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: May 11, 2018

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

[5] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 11, 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 Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

STACIA L. JOHNS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 11, 2018.

Paul Barona

Paul Barona
Court Specialist
State Bar Court