

PUBLIC MATTER—DESIGNATED FOR PUBLICATION

Filed September 18, 2020

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	18-N-16608; 18-O-17277 (Consolidated)
	)	
DENNIS EARL BRAUN,	)	OPINION AND ORDER
	)	
State Bar No. 152816.	)	
	)	

Before trial of this consolidated disciplinary proceeding, Dennis Earl Braun stipulated to all of the facts that support the two charges against him: that he willfully violated rule 9.20(c), California Rules of Court<sup>1</sup>, by filing over five months late, his required proof of compliance ordered by the Supreme Court in Braun's third prior discipline; and that he willfully violated Business and Professions Code, section 6068, subdivision (k)<sup>2</sup>, by failing to timely comply with three of his Supreme Court-ordered disciplinary probation conditions.

In determining the proper level of discipline, the State Bar Court hearing judge weighed heavily evidence that Braun had suffered extreme emotional difficulties in late 2017 and 2018, but had recovered by May 2019. She recommended Braun's actual suspension for 18 months and probation. The State Bar's Office of Chief Trial Counsel (OCTC) seeks review arguing that disbarment is the appropriate discipline, considering several serious aggravating circumstances, including that Braun has been disciplined three times previously. Braun has not sought review nor filed a brief in opposition to that of OCTC.

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<sup>1</sup> Further references to rules are to this source, unless otherwise noted.

<sup>2</sup> Further references to sections are to this source, unless otherwise noted.

We review this proceeding independently. (Cal. Rules of Court, rule 9.12; *In re Morse* (1995) 11 Cal.4th 184, 207.) As we discuss *post*, while we accord some mitigation to Braun's evidence, overall, it cannot overcome the significant weight of the aggravating circumstances of this record. Those include that he has twice been found to have violated multiple probation duties in both his last disciplinary proceeding and the present one. As well, a willful violation of rule 9.20 has typically resulted in disbarment. Although disbarment is not mandatory for a California attorney with three prior disciplines, we are unable to reach any reasonable conclusion that would justify us deviating from disbarment in this case. For the protection of the public, the courts, and the legal profession, we have concluded that we must recommend disbarment.

## **I. PERTINENT PROCEDURAL HISTORY**

Braun was admitted to practice law in California in June 1991.

The current proceeding we now review started as a separate rule 9.20 enforcement proceeding filed by OCTC on November 29, 2018, and a separate original disciplinary proceeding filed by OCTC on January 3, 2019, alleging Braun's breach of three of his probation duties. Those duties were: his failure to timely schedule a meeting with his assigned State Bar Office of Probation (Probation) deputy, his failure to meet with that deputy, and his failure to timely submit his first quarterly written probation report due by October 10, 2018.

Initially, Braun did not reply to the Notice of Disciplinary Charges (NDC) alleging his rule 9.20 violation and OCTC sought to enter his default. However, Braun ultimately filed an answer to this charge and the probation violation charge.

In April 2019, the hearing judge ordered these proceedings consolidated for trial (Rules Proc. of State Bar, rule 5.47.)

In May 2019, the parties entered into a comprehensive stipulation as to facts, conclusions of law (Stipulation), and the admission of exhibits into evidence. This removed the need to present evidence establishing Braun's probation and rule 9.20 violations.

This case was tried on issues of degree of discipline, in May and July 2019. The hearing judge filed her decision in late October 2019, recommending an 18-month actual suspension as part of a larger stayed suspension and probation.

OCTC sought our review in November, 2019, urging that Braun be disbarred, or, at the least, that he receive an enhanced suspension. Braun failed to file a reply to OCTC's opening brief and, per procedural rules, we directed that he could not participate in oral argument. (Rules Proc. of State Bar, rule 5.153(A)(2).)

## **II. THE UNDISPUTED FACTS AND OUR CONCLUSIONS FROM THEM SHOW BRAUN'S WILLFUL VIOLATIONS OF RULE 9.20 AND OF THREE PROBATION CONDITIONS**

In his answer to the charges, Braun admitted that he willfully breached his probation conditions—to arrange to meet with his assigned probation deputy, to meet with that deputy, and to timely file his first probation report. He also admitted his failure to file a timely rule 9.20(c) compliance declaration with this court, as required by Supreme Court order.

His pretrial Stipulation of facts with OCTC also admitted these facts as well as facts not charged—that Braun failed to timely file his second probation report, and that he did not notify Probation that he had completed the State Bar's Ethics School program as required.

The hearing judge made findings and concluded from them that Braun had willfully violated rule 9.20 and the three charged conditions of his probation. We shall adopt them as summarized below.

#### **A. Rule 9.20 Violation**

Effective July 13, 2018, the Supreme Court suspended Braun from the practice of law for one year as a revocation of probation it imposed on him in 2016. He was required to comply with the provisions of rule 9.20. As we find *post*, the Supreme Court also imposed a new set of probation conditions on Braun.

Under the actual suspension order, *ante*, Braun had until August 22, 2018, to file with our court a declaration that he had complied with rule 9.20. (See California Rules of Court, rule 9.20(c).) He did not file it until February 11, 2019, over five months after it was due.

However, Probation had notified Braun about five weeks before his compliance date of his duty to comply with rule 9.20. It did this by sending an email to the email address he maintained on State Bar records since December 1, 2009, advising him that it had placed on his private profile on the State Bar's website a letter containing detailed information about his rule 9.20 requirements. Braun received this emailed letter.

On August 28, 2018, about a week after the due date for Braun's rule 9.20 compliance had passed, Probation mailed a letter to Braun at his street address of State Bar record, notifying him that he had not complied with rule 9.20. That letter was returned by the United States Postal Service to Probation, marked undeliverable. However, that same day, Probation sent the same information to Braun at his email address of record and this email was not returned.

Although the hearing judge found that Braun was grossly negligent in failing to timely retrieve notices mailed to his official State Bar record address, she concluded correctly that Braun willfully failed to comply with rule 9.20(c). In his Answer to the charges and in the Stipulation, Braun conceded his culpability of this willful violation and his concession is amply supported by case law. Willfulness of a rule 9.20(c) violation requires neither bad faith nor even actual knowledge of the rule provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181,

1185–1186 [predecessor rule 955].) In his written Stipulation, Braun conceded that he failed to timely file the required declaration, that the State Bar sent notices to him informing him of his rule 9.20(c) filing duties, and that he received one by electronic mail and another sent by electronic mail was not returned. We adopt the hearing judge’s conclusion of Braun’s willful violation of rule 9.20(c).

#### **B. Probation Condition Violations**

Under the actual suspension order, *ante*, as relevant here, Braun was required by August 12, 2018, to schedule a meeting with his assigned probation deputy. He did not do so. Nor did he meet with the probation deputy, as also required.

He was required to submit a quarterly report to Probation commencing on October 10, 2018, as to his compliance with probation conditions. He did not submit his first report until April 9, 2019, six months late.

Probation notified Braun of his probation duties in the same communications we found, *ante*, it used to notify Braun of his rule 9.20 compliance duties. As we found and as Braun stipulated, although Probation’s letter sent via United States Postal Service on August 28, 2018, was not delivered, the earlier email communication of July 12 was received by him. And the August 28 letter was also sent to him via email and was not returned.

From these undisputed facts, the hearing judge concluded that Braun willfully failed to comply with his statutory duty to adhere to three of his probation conditions. (Bus. & Prof. Code, § 6068, subd. (k).) We adopt this conclusion. Just as in rule 9.20 matters discussed *ante*, probation violation matters do not require proof that Braun actually knew the specifics of his probation delinquencies, so long as he received notice of his probation duties. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) The undisputed facts so show.

### **III. STRONG AGGRAVATING CIRCUMSTANCES OUTWEIGH LIMITED MITIGATING ONES**

In advocating the degree of discipline it deems warranted, OCTC must establish aggravating circumstances by clear and convincing evidence as required by standard 1.5.<sup>3</sup> Braun has the same burden to establish mitigating circumstances. (Std. 1.6.)

#### **A. Aggravating Circumstances**

##### **1. Three Prior Records of Discipline (Std. 1.5(a))**

We adopt the hearing judge's finding that Braun's record of three prior disciplines was a significant aggravating circumstance. OCTC does not dispute the weight accorded by the judge to this aggravating factor, and contends that it supports OCTC's advocacy of disbarment.

###### **a. 2003 private reproval (State Bar Court No. 01-O-03607)**

This disciplinary matter was resolved by agreed disposition between Braun and OCTC for a private reproval with some rehabilitative conditions.

Braun represented a client in a personal injury matter. A \$15,000 settlement was achieved. Braun held \$9,000 in trust for the client's medical providers, per lien agreements. However, he willfully failed to perform legal services competently, as required by former rule 3-110 of the Rules of Professional Conduct,<sup>4</sup> by not taking appropriate steps to distribute the funds he held in trust to the client, or to the trustee after the client started bankruptcy proceedings.

The parties agreed in mitigation that Braun had no prior discipline record, and had suffered from extreme difficulties in his family or personal life. There were no aggravating circumstances present.

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<sup>3</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

<sup>4</sup> All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

**b. 2016 stayed suspension (S236449, State Bar Court No. 14-O-06193)**

Effective November 18, 2016, the Supreme Court suspended Braun for one year, stayed, with standard probation conditions lasting two years.

This arose from a contested State Bar Court proceeding in which Braun admitted to certain facts before trial and certain conclusions near the end of trial. It concerned Braun's representation of a client in civil litigation starting in 2011 and continuing into 2015, arising from family law matters.

The State Bar Court hearing judge concluded that Braun improperly withdrew from representation of his client after August 2014, in willful violation of former rule 3-700(A)(2) of the Rules of Professional Conduct. Although the hearing judge also found Braun culpable of failing to act competently toward his client in repeated instances (Rules Prof. Conduct, former rule 3-110(A)), the judge did not assess added discipline for that violation, as OCTC had conceded that it was duplicative of the former rule 3-700(A)(2) violation. Finally, the hearing judge concluded that Braun willfully violated section 6068, subdivision (m), by failing to notify his client of discovery requests from opposing counsel and of the client's need to provide Braun with responses to them.

In aggravation, the hearing judge considered Braun's prior private reproof, the multiple acts of misconduct found in the second proceeding, and the harm caused by his misconduct. In mitigation, the judge gave limited weight to Braun's cooperation with State Bar Court proceedings but substantial weight to his impressive character evidence, attested to by 15 witnesses.

**c. 2018 one-year actual suspension as revocation of 2016 probation (S236449, State Bar Court No. 18-PM-10810)**

Braun did not comply with three conditions of his 2016 disciplinary probation and, in January 2018, OCTC moved our Hearing Department to revoke his probation. Braun did not participate in these proceedings, and the assigned hearing judge deemed his failure to reply to

OCTC's default motion as an admission of its allegations. (Rules Proc. of State Bar, rule 5.314.)

As we stated, *ante*, effective July 2018, the Supreme Court revoked Braun's probation, suspended him for one year, with credit for inactive enrollment, and required him to comply with terms of a newly-imposed set of probation conditions lasting for two years.<sup>5</sup>

The hearing judge found that Braun failed to schedule a required meeting with a Probation Deputy as required, by December 18, 2016. He did not schedule this meeting until nearly two months later, and only after Probation had contacted him about his delinquency.

Braun was required to file his first quarterly probation report by January 10, 2017. Instead, he filed it on February 21, 2017, over a month late, and after Probation informed Braun about his delinquency. Moreover, the hearing judge found that he failed to file his quarterly probation report due January 10, 2018.

Additionally, Braun failed to attend and prove passage of the State Bar Ethics School, within the required one-year period.

In aggravation, the hearing judge considered Braun's two prior disciplines as a significant factor. Also considered a substantial aggravating factor was his multiple violations of his probation duties. Finally, the hearing judge deemed that Braun's failure to participate in the probation revocation proceedings established his failure both to appreciate the seriousness of the charges against him and to understand the import of his duties as an attorney to participate in such proceedings.

## **2. Multiple Acts of Wrongdoing (Std. 1.5(b))**

The hearing judge found that Braun engaged in multiple acts of misconduct involving his duties ordered by the Supreme Court, but assigned only modest weight to this factor, since, in her view, all of Braun's violations arose from his failure to comply with one Supreme Court

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<sup>5</sup> In its definition of a "prior record of discipline," standard 1.2(g) includes discipline imposed for a violation of probation.

order. Although OCTC did not dispute the weight to be accorded this finding, we cannot accept the hearing judge's weight assigned it, as it does not accord with our review of the record.

First, the admitted facts show that Braun violated three duties of his probation and the separate duty to report compliance with rule 9.20(c). Moreover, when the hearing judge in Braun's third disciplinary proceeding was confronted with his similar series of probation violations (without a rule 9.20 violation, as that rule was not imposed upon him), he found that Braun's multiple probation violations were entitled to substantial aggravating weight. We do as well. (See *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, 135–136.)

## **B. Mitigating Circumstances**

### **1. Evidence of Good Character (Std. 1.6(f))**

Braun presented the testimony of five witnesses and the declarations of 18 others to attest to his good character and faithful, diligent representation of clients in highly contested and protracted family law matters up to 2017. Standard 1.6(f) allows mitigating evidence of “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct” to be considered.

The hearing judge noted the strength of this evidence as to the first two elements, but also noted its limitation as to the third element that most of the witnesses did not demonstrate a general understanding of the charges Braun was facing. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 280.) Overall, the hearing judge considered this evidence worthy of moderate mitigating weight. We agree with the judge's weight of this factor.

### **2. Candor and Cooperation to Victims and State Bar (Std. 1.6(e))**

The hearing judge gave Braun significant mitigating credit for his Stipulation with OCTC as to facts and conclusions prior to the trial. In probation and rule 9.20 matters, the facts are generally easily provable and stipulations do not save significant time. (See *In the Matter of*

*Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888, 891 [easily provable facts surrounding misdemeanor state tax conviction].) Yet, here, we agree with the hearing judge's weight accorded this factor. First, Braun admitted to facts beyond the charges of the NDC.<sup>6</sup> Moreover, in submitting his answer to the charges well before his Stipulation, he admitted his culpability of a willful violation of rule 9.20(c). Finally, Braun did not dispute his culpability of a willful violation of probation duties under section 6068, subdivision (k), although his Stipulation technically appeared to be limited to the facts of his probation offenses.

### **3. Remorse and Recognition of Wrongdoing (Std. 1.6 (g))**

We uphold the hearing judge's decision to deny mitigating weight to Braun's claim of it for his belated filings of his rule 9.20(c) declaration, proof of Ethics School compliance, and a delinquent quarterly probation report. To qualify for mitigating weight, these steps would have to be taken spontaneously. (Std. 1.6(b) [mitigation for "prompt objective steps, demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement"].) Here, because of Braun's delinquencies, he was aware that Probation enforcement proceedings were underway.

### **4. Evidence of Extreme Emotional Difficulties (Std. 1.6(d))**

The hearing judge accorded Braun significant mitigation credit for the evidence he submitted that he was suffering from notable depression at the end of 2017 and into 2018, was improving from it sometime in 2018, and had no evidence of impairment by April 2019, just before the time of trial. OCTC disputes this weight given to Braun's evidence, raising concerns about whether it was established by expert evidence, and whether it was established as the cause of Braun's probation and rule 9.20(c) violations. From our independent record review, we agree with OCTC's position, and have decided to accord no weight to this factor.

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<sup>6</sup> We adopted the hearing judge's culpability conclusions and we note that they were limited to the charged conduct. Thus, the issue of uncharged misconduct is not present in this case other than to the extent that it bolsters the breadth of Braun's cooperation. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35–36.)

As we observed in a case last year, where evidence of extreme emotional difficulties was presented as to violations similar to the present case, standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties if (1) the attorney suffered from them at the time of misconduct, (2) expert testimony established them as directly responsible for the attorney's misconduct, and (3) "they no longer pose a risk that the attorney will commit future misconduct."

(*In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 654.)

We discuss the requirements of this mitigating standard, starting with whether expert testimony established them. The only mental health professional who testified at trial, Dr. Lynne Meyer, a practicing psychologist for 27 years, had known Braun for 13 years. However, as the hearing judge noted at trial, Meyer did not testify as an expert witness. Rather, Braun called her as a character witness. Meyer did not treat Braun as a clinician because she had previously had an attorney-client relationship with him. Instead, she suggested that he see another psychologist for treatment. Her conversations with Braun, while frequent over many years, appeared unrelated to his emotional issues.

In this context, Meyer testified that, starting in late 2017 and during parts of 2018, Braun's conversations with her showed his deep depression, anxiety, and shame at not being able to serve his clients, because of his disciplinary probation. In learning about Braun's situation with the State Bar, Meyer relied on his explanation and did not refer to the charges filed against him.

Braun did see psychologist Kathy MacLeay, Ph.D., who had known him for 30 years. MacLeay submitted her declaration, also as a character witness. Braun spoke to her in late 2017 and MacLeay described his mental state as "depressed, deflated, and immobilized" and unable to function on some days. She considered Braun to be suffering from a debilitating depression. To help Braun rebuild his mental, emotional strength and confidence, MacLeay saw him a couple of times a week in person and on the phone, but did not state in what portion of 2017 or 2018 those

meetings occurred, or specify what treatment she provided. She did state her observation that during 2018, Braun had rebounded, transitioning from immobility to taking constructive, corrective action. MacLeay saw Braun return to being the strong, positive professional she had known for many years.

Thus, it is clear that the two psychologists who opined on Braun's depressive symptoms did not do so as experts and they gave limited information of his condition; and, as to Dr. MacLeay, what treatment she provided. This contrasts with *In the Matter of Ampsonah, supra*, 5 Cal. State Bar Ct. Rptr at p. 654, where Ampsonah's treating clinician testified as an expert with adequate details as to that attorney's condition and where character witness testimony was consistent with and complemented the expert's testimony.

We also find that the evidence is not clear and convincing that Braun's depressive condition reported by Drs. Meyer and MacLeay was directly responsible for his misconduct. Dr. Meyer gave no testimony showing that Braun's condition prevented his compliance with rule 9.20 or his several probation conditions. Moreover, neither Drs. Meyer nor MacLeay, who had each known Braun for many years, reported him depressive prior to late 2017. Yet the record before us shows without dispute that Braun's probation violations that led to his third disciplinary case started in late 2016 and were repeated in early 2017—during times that he was apparently functioning well as an attorney, as described by Dr. Meyer and found in character declarations of several other clients.

The record contains written evidence that, in April 2019, Braun consulted with Dr. Meyer and clinical psychologist Dr. Jeffrey Arden and they reported that psychological testing of him showed that he no longer suffered from his depressive condition. However, the record of his participation in the present matter gives us pause in weighing that evidence as heavily as did the hearing judge. Braun originally defaulted in answering the charges in the rule 9.20 enforcement

case. After reinstating his pretrial participation and participating in the trial and after OCTC sought our review to seek disbarment, Braun failed to file a responsive brief on review, resulting in the denial of the opportunity to present oral argument before us. Thus, even if, *arguendo*, Braun had created a nexus between his depression and his non-compliance with his licensure duties, he has not shown adequate recovery from that condition.

In the decision, the hearing judge's discussion of Braun's evidence of extreme emotional difficulty was limited. While concluding that Braun had established a "compelling mitigating factor" worth significant weight, the judge did not focus on the required nexus element. Similarly, the judge summarily concluded that Braun had adequately recovered from his condition.

Given the lack of evidence and based on our independent view of this record, as to what must be shown to sustain Braun's burden to accord mitigating weight to his claim of serious emotional difficulties, we cannot give it any weight. Braun did not establish any of the three requirements of the standard.

#### **IV. THE BALANCE OF AGGRAVATING EVIDENCE OVER MITIGATION CALLS FOR DISBARMENT TO ADEQUATELY PROTECT THE PUBLIC**

Indisputably, the purposes of attorney discipline are the protection of the public, the courts, and the legal profession, the maintenance of high professional standards, and the preservation of public confidence in the legal profession. (Std. 1.1; *Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

A willful violation of rule 9.20 is considered a serious ethical offense for which disbarment is generally considered the appropriate discipline. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)<sup>7</sup> In selecting the apt degree of discipline, each case should be decided on its own facts, after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990)

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<sup>7</sup> As rule 9.20(d) provides, "A suspended [attorney's] willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."

50 Cal.3d 1047, 1059.) However, *Bercovich v. State Bar, supra*, 50 Cal. 3d 116 at p. 131, notes that disbarment is the most consistently imposed sanction in recent post-standards cases under rule 9.20, and that greater consistency in imposing discipline was a key reason for the adoption of the standards.

On occasion, lesser discipline than disbarment has been imposed where the late filing of a compliance affidavit was the only rule 9.20 issue *and* the attorney demonstrated good faith, significant mitigation, and little or no aggravation.<sup>8</sup> For example, an actual suspension is appropriate where an attorney makes an unsuccessful attempt to timely comply, and presents substantial mitigation, including recovery from extreme emotional difficulties. (*Shapiro v. State Bar, supra*, 51 Cal.3d at pp. 255–260; *In the Matter of Amponsah, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 656–657.)

Since Braun has three prior impositions of discipline, when applying the standards to this case, we must also give serious consideration to standard 1.8(b). Although the hearing judge cited the standard in the decision, its applicability to this case was not analyzed at all. The complete lack of a standard 1.8(b) analysis is a serious concern, given the standard’s elements and the nature of Braun’s most recent prior discipline, compared to this proceeding. Standard 1.8(b) provides 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. Braun’s case meets the first and third of these requirements: he previously received a one-year actual suspension; and, as advocated by OCTC and shown by this record, Braun repeatedly failed

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<sup>8</sup> See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Amponsah, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 655–656; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

to comply with his disciplinary probation conditions in two consecutive proceedings, following his 2016 stayed suspension. This factor of repetitive discipline for similar misconduct has been properly recognized as an especially serious aggravating circumstance, since Braun’s prior probation revocation discipline did not serve to rehabilitate him and prevent repetition of the same type of misconduct we now review. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444.) As such, his prior and current misconduct establish his unwillingness or inability to conform to the duties imposed on law licensees.

Moreover, the two specified exceptions to standard 1.8(b) do not apply here. Braun’s present misconduct did not occur at the same time as his prior misconduct, and his limited mitigation is neither compelling nor does it predominate over the significant aggravation for three prior discipline records, and multiple acts of wrongdoing.

We next consider whether any reason exists to depart from the discipline called for by standard 1.8(b). We acknowledge that disbarment is not mandatory as a third discipline. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506–507 [disbarment is not mandatory in every case of two or more prior disciplines].) However, if we deviate from recommending disbarment, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) Upon careful consideration of this record and the goal of public protection, and maintenance of high professional standards, there are no reasons for deviating from disbarment.

The hearing judge compared Braun’s rule 9.20 situation to the facts in *Matter of Amponsah, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 651–653. In our view, *Amponsah* was a fundamentally different case than this one. *Amponsah* had only one prior imposition of discipline, rather than three as in this case. *Amponsah*’s case was his first failure to comply with rule 9.20 and two of his probation conditions, rather than Braun’s two consecutive proceedings

showing his failures to comply with probation duties. The *Amponsah* record showed that, unlike here, Amponsah had made several attempts, albeit unsuccessful, to comply timely with rule 9.20. Amponsah offered convincing evidence of serious emotional difficulty, supported by expert testimony, with strong evidence of his recovery from that difficulty, and the hiring of counsel to assist him in complying with probationary duties going forward, in contrast to Braun's unconvincing evidence of mitigation.

In contrast, we see this case as far more akin to *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131. In that case, Esau was privately reproved by our court, following discipline by another state, for wrongful retention of a client's advanced fees. As part of our court's reproof, Esau was required to comply with certain duties. He failed to comply with several of them, and his period of required compliance was extended for an additional year. Thereafter, he failed to comply with the duties in three areas, and was placed on a stayed suspension, with a new set of probation conditions. Esau failed to submit four probation reports on time and failed to perfect his address change timely. As discipline for these failures, Esau was actually suspended for six months and required to comply with probation conditions and rule 9.20. In the proceeding that led us to recommend disbarment, ordered by the Supreme Court, we found that Esau's sole violation was his willful failure to comply with rule 9.20(c) by filing his required declaration 103 days late. We noted the very limited evidence of good character which Esau introduced and that there was no expert evidence supporting his claims of extreme emotional difficulties.

Although Esau had one more instance of prior discipline than does Braun, for failure to comply with duties attached to earlier discipline, Braun, like Esau, failed repeatedly to comply with probationary-type duties. We are now confronted with Braun's second instance of multiple failures to comply with court-ordered duties.

The concern we expressed in *Matter of Esau, supra*, 5 Cal. State Bar Ct. Rptr. at p. 140 is equally applicable here: “[a]ttorneys who engage in this extended practice of inattention to official actions . . . should not be allowed to create the risk that it will extend to clients resulting in inevitable and grievous harm to them. (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388.)”

To adequately ensure public protection, we recommend Braun’s disbarment.

## **V. RECOMMENDATION**

We recommend that Dennis Earl Braun be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Braun 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.<sup>9</sup>

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment.

## **VI. MONETARY SANCTIONS**

The court does not recommend the imposition of monetary sanctions as all the misconduct in this proceeding/matter occurred prior to April 1, 2020, the effective date of Rules of Procedure

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<sup>9</sup> 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, the attorney is required to file a rule 9.20(c) affidavit even if he or she 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).)

of the State Bar, rule 5.137, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules of Procedure of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

## **VII. ORDER OF INACTIVE ENROLLMENT**

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Braun is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

STOVITZ, J.\*

WE CONCUR:

PURCELL, P. J.

VALENZUELA, J.\*\*

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\*Retired Presiding Judge of the State Bar Court, serving as review judge pro tem by appointment of the California Supreme Court.

\*\*Currently serving as a hearing judge of the State Bar Court, appointed by the California Supreme Court, and designated to serve as a review judge in this matter by the Presiding Judge of the State Bar Court, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar. Review Judges Honn and McGill took no part in the consideration or decision of this review proceeding.

**Nos. 18-N-16608; 18-O-17277  
(Consolidated)**

**In the Matter of  
DENNIS EARL BRAUN**

*Hearing Judge*

**Hon. Yvette D. Roland**

*Counsel for the Parties*

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