PUBLIC MATTER—DESIGNATED FOR PUBLICATION

Filed February 23, 2021

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-O-30131
	)	
FERNANDO FABELA CHAVEZ,	)	OPINION
	)	[As Modified on April 16, 2021]
State Bar No. 86902	)	
	)	

A hearing judge found Fernando Fabela Chavez culpable of failing to comply with California Rules of Court, rule 9.20,[1] as ordered in his prior disciplinary case, and of making grossly negligent misrepresentations in his rule 9.20 compliance declaration. For lack of proof, the judge dismissed a third charge of seeking to mislead a judge. The hearing judge recommended discipline including a two-year actual suspension, continuing until Chavez proves rehabilitation and fitness to practice law.

Chavez appeals, arguing he is not culpable. Alternatively, he seeks a 30-day actual suspension if we find culpability. The Office of Chief Trial Counsel of the State Bar (OCTC) did not appeal but requests more aggravation and less mitigation.

After independently reviewing the record under rule 9.12, we affirm the hearing judge's findings and discipline recommendation. Chavez committed serious misconduct but proved extensive mitigation and that he did not act in bad faith. Having served a one-year actual suspension in his prior discipline case, the recommended two-year actual suspension is appropriate progressive discipline for Chavez's misconduct.

[1] All further references to rules are to this source unless otherwise indicated.

I. PROCEDURAL BACKGROUND

OCTC filed a three-count Notice of Disciplinary Charges (NDC) on March 20, 2019, alleging that Chavez (1) failed to obey rule 9.20, (2) sought to mislead a judge, and (3) engaged in an act of moral turpitude by making misrepresentations in his rule 9.20 compliance declaration filed with the State Bar Court. OCTC filed an amended NDC on June 27 (ANDC), charging the same violations with additional supporting facts. Chavez filed timely responses to the NDC and the ANDC. On December 2, the parties filed a detailed pretrial Stipulation as to Facts and Admission of Documents (Stipulation). The hearing judge held trial on December 17, 2019 and issued her decision on March 16, 2020.

II. CHAVEZ'S PRIOR DISCIPLINE CASE

Chavez was admitted to practice law in California in June 1979, and he has one prior record of discipline. In a November 15, 2016 Review Department opinion, we found him culpable of several ethical violations stemming from his grossly negligent supervision of his office manager. Chavez's misconduct led to mishandling $750,000 in settlement funds and culpability for: (1) failing to maintain a total of $133,500 in client funds in his client trust account (CTA), in violation of former rule 4-100(A)) of the Rules of Professional Conduct;[2] (2) commingling, in violation of former rule 4-100(A); (3) grossly negligent misappropriation of over $65,000 from one client and $10,000 from another client, in violation of Business and Professions Code section 6106;[3] and (4) failing to obey a superior court's order to establish a blocked account to hold a $10,000 minor's compromise settlement for his client, in violation of section 6103. Aggravation was assigned for multiple acts of misconduct and significant client harm, and mitigation was credited for 31 years of discipline-free practice, extraordinary good

[2] All further references to former rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

[3] All further references to sections are to this source.

character, pro bono work, and community service. We recommended discipline including a two-year stayed suspension, three years' probation, and a one-year actual suspension.

On March 10, 2017, the Supreme Court issued its order adopting the recommended discipline.[4] The Supreme Court order became effective on April 9, 2017. It required Chavez to comply with the notification provisions of rule 9.20(a) within 30 calendar days of the effective date[5] and with the reporting requirements of rule 9.20(c) within 40 calendar days of the effective date.[6] The order warned that failure to comply "may result in disbarment or suspension."[7]

III. FACTS[8] AND CULPABILITY

A. Count One: Failure to Obey Rule 9.20

Chavez began transferring responsibility for cases to other attorneys in January 2017, even before the Supreme Court order was issued on March 10. He engaged an attorney experienced in discipline matters to assist him with his rule 9.20 obligations. In early May 2017, Chavez and his attorney discussed the suspension order and rule 9.20 compliance. Chavez testified that the attorney asked him if he still had any outstanding cases. Chavez responded that "there might be a

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[4] Supreme Court Case No. S239147; State Bar Case No. 13-O-12150.

[5] Rule 9.20(a)(1) and (4) require an attorney to do the following: (1) notify clients being represented in pending matters, along with any cocounsel, of the suspension and consequent disqualification to act as an attorney after the suspension's effective date; (2) notify clients to seek other legal advice if there is no cocounsel; (3) notify opposing counsel in pending litigation; (4) if no opposing counsel, notify adverse parties of the suspension and consequent disqualification to act as an attorney after the suspension's effective date; and (5) file a copy of the notice with the court, agency, or tribunal before which the litigation is pending.

[6] Rule 9.20(c) requires an attorney to file an affidavit with the Clerk of the State Bar Court showing compliance with the provisions of the order entered under this rule within the time prescribed in the order after the effective date of the suspension.

[7] Rule 9.20(b) specifies strict mailing guidelines for notification. All notices must be by registered or certified mail, return receipt requested, and must contain an address for the suspended attorney.

[8] The facts are based on the stipulated facts, the trial evidence, and the hearing judge's factual and credibility findings, to which we give great weight. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032].)

couple of cases, or one, where I'm on the complaint, but I'm not actively handling the case." Following the discussion, the attorney sent an email to Chavez on May 4, 2017, stating "I understand that, on the date that the Supreme Court of California issued its suspension order, you were still attorney of record in a least of couple of cases . . . [and] you were ordered to comply with rule 9.20 of the California Rules of Court." The attorney informed Chavez that "[t]hese things must be done no later than next Monday, May 8, 2017, which is the 30th day from the effective date of your suspension." The attorney also provided sample language for the client letters and notice to the courts along with a partially completed rule 9.20 compliance declaration.

Count one of the ANDC charges Chavez with violating rule 9.20(a)(4) by failing to file the notices of his suspension in court cases where he was counsel of record on the date the Supreme Court filed its order—March 10, 2017. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [for compliance with rule 9.20(a), operative date for identification of "clients being represented in pending matters" and others to be notified is filing date of Supreme Court order and not any later "effective" date of order].) Chavez stipulated that he was attorney of record in four cases on March 10, 2017, and he did not file notices of suspension with those courts. The cases were: (1) *Atenco-Moreno v. Solorio*, Monterey County Superior Court, case no. M123023; (2) *Ramirez v. McCreary*, Santa Clara County Superior Court, case no. 16CV290284, (3) *Loya-Pacheco v. Jimenez*, Santa Clara County Superior Court, case no. 16CV300393, (4) *Cantu vs. Hawkins*, Santa Clara County Superior Court, case no. 2015-1-CV287074.

Chavez argues he is not culpable of failing to file notices with the court because he did not receive the March 10, 2017 order from the Supreme Court nor did his attorney provide it to him. By law, Chavez is presumed to have been served with the order. Under Evidence Code section 664, it is acknowledged that an official duty has been regularly performed; we therefore find a presumption that the Supreme Court Clerk properly performed his or her official duty in

serving Chavez and his attorney as provided in rule 9.18(b).[9] Chavez failed to rebut this presumption—the hearing judge found his testimony that he did not receive the order was not credible. The judge reasoned that since Chavez began transferring cases in January 2017 due to the impending suspension, it was not believable that he would fail to anticipate receipt of the suspension order from the Supreme Court or to request it from his attorney. (Rules Proc. of State Bar, rule 5.155(A [findings of fact are entitled to great weight].) We agree considering that the Review Department opinion recommended a two-year suspension in November 15, 2016 and Chavez's attorney referenced the Supreme Court Order in his May 4, 2017 email. We give great weight to the judge's credibility finding and adopt it. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032 [hearing judge's credibility findings entitled to great weight]; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 121 [where factual finding rests on testimonial evidence, administrative committee who heard evidence is in better position to evaluate conflicting statements after observing demeanor of witnesses and character of testimony].)

Chavez also argues he is not culpable because he was not obligated to file court notices since he had removed himself from the cases at issue. He filed substitutions of attorney in *Ramirez* on March 30, in *Cantu* on March 31, and in *Loya-Pacheco* on April 17, and informed his clients in January and February 2017 that he would be suspended. We reject this argument for two reasons. First, Chavez did not notify his clients by registered or certified mail, return receipt requested, as required by rule 9.20. Second, filing substitutions of attorney in pending cases after the Supreme Court order is filed but before the effective date of the order does not fulfill rule 9.20 compliance obligations. (*In the Matter of Eldridge* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 413, 416–417.)

[9] Rule 9.18(b) provided that the Supreme Court Clerk shall "mail notice of [the filing of a discipline order] to the member and his or her attorney of record, if any, at their respective addresses . . . ."

As to the *Atenco-Moreno* case, Chavez argues he was not required to report it because the case was settled in January 2017. Though settled, the case had not been dismissed and remained pending at the time of the Supreme Court order on March 10, 2017. In fact, Chavez continued to work on the case after this date. He filed a petition to approve a compromise on April 5, 2017, including a declaration stating he was attorney of record for plaintiff, and he received settlement checks in exchange for a dismissal and release on May 3, 2017.

We find that OCTC proved by clear and convincing evidence that Chavez is culpable for failing to comply with rule 9.20 in all four cases, as charged in count one.[10] Chavez's arguments are contrary to the Stipulation that states he did not file court notices in all four cases that were pending on March 10, 2017. Notably, Chavez had still not filed the appropriate court notices by the time of trial, in December 2019.

B. Count Three: Moral Turpitude—Misrepresentation (§ 6106)

Count three of the ANDC charges Chavez with misrepresenting in his rule 9.20 compliance declaration that he made the proper notifications to counsel and the courts. His counsel provided him with a pre-filled-out rule 9.20 compliance declaration with pertinent instructions. The checked boxes indicated that Chavez had notified all opposing counsel of his suspension by certified or registered mail, return receipt requested, filed a copy of the notice with courts where cases were pending, and provided notice to his clients by certified or registered mail. Chavez testified he reviewed the declaration on May 5 and filed it on May 11, 2017. In fact, he had not performed the tasks when he signed and filed declaration.

Chavez's statements were grossly negligent misrepresentations amounting to moral turpitude. Although he testified he reviewed the document, he was clearly careless in doing so as

[10] C*onservatorship of Wendland* (2001) 26 Cal.4th 519, 552 (clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind).

it was entirely inaccurate—he had not filed notices with the courts and had not provided appropriate certified notices to opposing counsel or unrepresented parties in cases pending on March 10, 2017. (See *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90–91 [omitting not being entitled to practice law in application to become arbitrator amounts to moral turpitude by gross negligence]; *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [filing inaccurate MCLE compliance declaration by affirmation without verifying contents amounts to moral turpitude by gross negligence].)[11] Chavez had a duty to review the compliance declaration for accuracy before he signed it under penalty of perjury and failed to do so. Compliance with rule 9.20 is critically important because it ensures that all concerned parties learn of an attorney's discipline and allows the Supreme Court to monitor compliance with conditions of suspension. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187; *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467–468.) Chavez is culpable as charged.[12]

IV. CHAVEZ'S FURTHER DEFENSES DO NOT REFUTE CULPABILITY

A. Chavez's Contention that Specific Intent or Bad Faith is Required to Prove Violation of Rule 9.20 is Unavailing

Chavez argues that he did not have the requisite level of intent to be found culpable of violating rule 9.20 because he did not do so willfully, and he acted in good faith. We reject his argument. The level of intent required to prove a rule 9.20 violation is general intent and not a

[11] The hearing judge dismissed count two that Chavez sought to mislead a judge when he filed his false rule 9.20 declaration, in violation of section 6068, subdivision (d). OCTC did not appeal this dismissal and we adopt it. No evidence established that Chavez's careless review of the document his attorney prepared amounts to intentional deception absent other evidence (*In the Matter of Chesnut* (Review. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174 [attorney must act with intent to deceive to violate § 6068, subd. (d)]), though it may constitute moral turpitude by gross negligence, as discussed above.

[12] Any argument by Chavez that he is not culpable because he did not receive the Supreme Court order is inapplicable here. In this count, he is charged with misrepresenting to the court in his compliance declaration that he provided appropriate notices. Whether he received the Supreme Court order has nothing to do with his affirmative act of submitting an erroneous rule 9.20 compliance declaration.

measure of good or bad faith. (See *Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [willfulness under rule 9.20 does not require bad faith or intent to violate law or to injure another]; *Lydon v. State Bar*, *supra*, 45 Cal.3d at p. 1186 [culpability under Cal. Rules of Court, former rule 955, now rule 9.20, does not require bad faith or actual notice of provision violated].) Chavez's failure to file the required notices constitutes a willful violation of rule 9.20.

B. Chavez's Reliance on his Attorney's Advice or Employee's Assistance Does Not Excuse Compliance with Rule 9.20

Chavez contends that he should not be found culpable because he relied on the advice of his attorney, who did not make it clear that he had to file notifications in all matters pending on the date the Supreme Court order was filed. Reliance on one's attorney is not a defense, but it may be considered in mitigation. (*Sheffield v. State Bar* (1943) 22 Cal.2d 627, 632.) Also, Chavez's request to his employee to list cases in which he was counsel of record is not a defense for his rule 9.20 violation. When Chavez made the request in May 2017, no evidence proves that the list comprehensively reflected cases pending as of March 10, 2017, the date of the Supreme Court order. Chavez had the sole responsibility to ensure that he identified all cases pending on that date to properly comply with rule 9.20. He failed to do so and is therefore culpable.

V. AGGRAVATION AND MITIGATION[13]

A. Aggravation

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

The hearing judge assigned substantial aggravating weight to Chavez's 2017 prior record of discipline discussed above. We agree. Chavez committed moral turpitude offenses in both cases—misappropriations in his past case and misrepresentations in his present case. Moreover, he committed the same misconduct in both cases by failing to obey court orders. In the prior

[13] Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. Chavez has the same burden to prove mitigation. (Std. 1.6.)

case, he violated a superior court order to create and fund a minor's account and in the present case, he violated a Supreme Court order for compliance with rule 9.20. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between previous and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].)

B. Mitigation

1. Good Character (Std. 1.6(f))

Mitigation is available for "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." (Std. 1.6(f).) The hearing judge assigned moderate weight. Based on the quality and quantity of the testimony, we increase the weight to substantial.

Chavez presented five witnesses who testified and one witness declaration. The live witnesses included an attorney, Chavez's secretary of 30 years, a client, a longtime friend, and a former California assemblyman and senator. The declarant was an associate in Chavez's office. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) The witnesses spoke highly of Chavez's character, describing him as honest and trustworthy. Most had known him for a long time—from 20 to 40 years. He was described as a person with a "one-in-a-million type of character," and who had served as a mentor to other attorneys. The former senator testified about Chavez's good character, considered him as family, and confirmed his deep commitment to the community. Though many witnesses did not have detailed knowledge of Chavez's misconduct, the totality of this impressive evidence of good character merits substantial weight in mitigation.

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

The hearing judge assigned substantial mitigation for Chavez's cooperation for entering into a detailed Stipulation. We agree. (Std. 1.6(e) [spontaneous candor and cooperation displayed to victims of misconduct or to State Bar are mitigating].) We reject OCTC's request that we assign less weight because the stipulated facts were easy to prove and Chavez disputed culpability. Whether facts are easy to prove is just one aspect to consider in assigning mitigating weight to the Stipulation. Chavez's cooperation conserved judicial time and resources and he stipulated to facts that formed the basis of our culpability findings in count one. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts].)

3. No Mitigation for Reliance on Attorney

Chavez's attorney was experienced in California discipline matters and sought to assist him with his 9.20 obligations. The hearing judge found a "lack of clarity in the information provided by counsel" to Chavez and assigned substantial mitigation for reliance on the attorney. (*Sheffield v. State Bar*, supra, 22 Cal.2d at p. 632 [reliance on counsel in disciplinary matter may be considered in mitigation].) We decline to assign mitigation credit. Chavez did not prove by clear and convincing evidence that he reasonably relied on unclear statements from his attorney. In fact, his attorney followed up on a conversation they had with a May 4, 2017 email that provided instructions for rule 9.20 compliance, including pre-populated forms to file after Chavez provided the appropriate notices. Chavez had adequate notice to comply with rule 9.20 because he received the Supreme Court order as well as an explanatory email from his attorney.[14]

[14] We decline OCTC's request for aggravation for multiple acts of misconduct (std. 1.5(b)) and indifference (std. 1.5(k)); these factors have not been established by clear and convincing evidence.

VI. TWO-YEAR SUSPENSION IS PROPER PROGRESSIVE DISCIPLINE[15]

Our disciplinary analysis begins with rule 9.20 itself—it provides in relevant part that a willful violation is cause for disbarment or suspension. (See also *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [Supreme Court has established that rule 9.20 violation is serious ethical breach for which disbarment is generally considered appropriate discipline].) We also look to the standards (*In re Silverton* (2005) 36 Cal.4th 81, 91) and comparable case law (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310–1311), noting that each case must be decided on its own facts after a balanced consideration of relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.) Discipline less than disbarment has typically been imposed for rule 9.20 violations where the attorney demonstrated good faith, made unsuccessful attempts to file the compliance declaration, proved significant mitigation with little aggravation, or presented other extenuating circumstances.[16] The facts of this case justify discipline less than disbarment but greater than the one-year actual suspension ordered in Chavez's previous discipline case. (Std. 1.8(a) [sanction must be greater than that imposed in prior discipline unless remote in time and earlier misconduct not serious].)

The hearing judge found guidance in *Shapiro v. State Bar* (1990) 51 Cal.3d 251. In *Shapiro*, the Supreme Court imposed discipline including a one-year actual suspension for violation of California Rules of Court, former rule 955(c). The attorney late-filed a compliance declaration partially due to inadequate advice from the Bar's probation monitor, orally notified

[15] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

[16] See, e.g., *Durbin v. State Bar*, *supra*, 23 Cal.3d 461 (6-month actual suspension for partial compliance and mix-up in communication regarding requirements); *In the Matter of Rose* (1994) 3 Cal. State Bar Ct. Rptr. 192 (9-month actual suspension concurrent with probation violation for attempt to file; no harm and recognition of wrongdoing but one prior discipline).

clients and others of his suspension, and made prompt efforts to correct his declaration once he learned it was insufficient. (*Id*. at p. 260.)

We agree with the hearing judge that Chavez's misconduct was significantly more serious than in *Shapiro*—his compliance declaration contained false statements and there is no evidence he has filed corrected declarations. In addition, he violated court orders in both his past and present disciplinary cases. However, Chavez's case is less serious than other rule 9.20 matters where disbarment has been ordered.[17]

We reject Chavez's request for a 30-day suspension, based on *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527. In *Friedman*, the attorney complied with the notice provisions of California Rules of Court, former rule 9.55 (precursor to rule 9.20) but failed to timely file a compliance declaration. The court recommended a 30-day actual suspension, finding the attorney substantially complied, filed an accurate declaration 14 days late after discovering his error, cooperated in the discipline proceedings, and acknowledged his misconduct. A 30-day suspension would represent a departure from the requirement of progressive discipline (Std. 1.8(a)), and we decline to make such an exception given Chavez's misconduct, its similarity to a past serious discipline case, and the lack of compelling mitigation.

We affirm the hearing judge's recommended two-year actual suspension continuing until Chavez provides proof of rehabilitation and fitness to practice pursuant to standard 1.2(c)(1). We agree with the hearing judge that Chavez's mitigation and attempt to comply with rule 9.20 makes disbarment unduly punitive. However, the circumstances here support a lengthy actual suspension at the upper range as appropriate progressive discipline. (Std. 1.2(c)(1) ["Actual

[17] See, e.g., *Bercovich v. State Bar*, *supra*, 50 Cal.3d 116 (attorney did not comply with rule 9.20 and had two records of discipline); *Dahlman v. State Bar* (1990) 50 Cal.3d 1088 (attorney did not comply with rule 9.20, demonstrated indifference to disciplinary system, and did not appear at hearing); *Phillips v. State Bar*, *supra*, 49 Cal.3d 944 (attorney failed to file one rule 9.20 form and the second one was two years late; five prior discipline cases; and aggravation for habitual disregard of clients).

suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met"].) An 18-month actual suspension is not adequately progressive given Chavez's recent 2017 past discipline and his violations of court orders in both cases. A more significant suspension is required to impress on Chavez the seriousness of his misconduct and the consequences that occur when he fails to follow his ethical duties as an attorney. Our recommendation balances Chavez's misconduct and his prior record of discipline with his mitigation for cooperation and extraordinary good character.

VII. RECOMMENDATION[18]

It is recommended that Fernando Fabela Chavez, State Bar Number 86902, be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. **Actual Suspension.** Chavez must be suspended from the practice of law for a minimum of the first two years of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Chavez 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 his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Chavez's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Chavez must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Chavez must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and

[18] We do not recommend that Chavez take and pass the State Bar's Ethics School or the Multistate Professional Responsibility Examination because he was previously ordered to do so in Supreme Court No. S239147.

telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Chavez must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Chavez must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his 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, Chavez may meet with the probation case specialist in person or by telephone. During the probation period, Chavez must promptly meet with representatives of the Office of Probation as requested and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries and provide any other information requested.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Chavez's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Chavez must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Chavez must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports.**

    a. **Deadlines for Reports.** Chavez 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, Chavez must submit a final report no earlier than 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.** Chavez must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he 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. Chavez is directed to maintain proof of 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 actual suspension has ended, whichever is longer. Chavez is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Commencement of Probation/Compliance with Probation Conditions. 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 Chavez has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

9. Proof of Compliance with Rule 9.20 Obligation. Chavez is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he 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 whom Chavez sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Chavez 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.[19] Failure to do so may result in disbarment or suspension.

[19] 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*, *supra*, 32 Cal.3d at p. 45.) Further, Chavez is required to file a rule 9.20(c) affidavit even if he had no clients to notify on the date the Supreme Court filed its order. (*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).)

IX. 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 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 Proc. 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, it should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

X. 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, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.

No. SBC-19-O-30131

In the Matter of

FERNANDO FABELA CHAVEZ

Hearing Judge

Hon. Manjari Chawla

Counsel for the Parties

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