PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed July 21, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 09-O-13345,[1] et al.
	)	
LORRAINE DICKSON,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 220841.	)	
	)	

This is respondent Lorraine Dickson's second disciplinary proceeding. It involves our evidentiary rules, on the one hand, and Dickson's serious misconduct, on the other. During the first part of Dickson's trial, the Office of the Chief Trial Counsel of the State Bar (OCTC) presented its case in six client matters by relying on direct testimony from witnesses and documentary evidence. After a break of several months, and over Dickson's objections, OCTC presented its case in the remaining matters by relying on declarations, in lieu of live testimony, and other documentary evidence. Ultimately, the judge found Dickson culpable of 44 counts of misconduct, and further found five factors in aggravation (prior record, multiple acts/pattern of misconduct, dishonesty and concealment, significant harm, and indifference) and one factor in mitigation (emotional/physical difficulties). The judge recommended disbarment.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that the judge erred in relying solely on the witness declarations in lieu of testimony to support his findings in eight client matters. We dismiss those matters, and the counts therein, with prejudice. Nevertheless, we affirm the judge's disbarment recommendation because Dickson is culpable of

[1] This is the lead case number, and the other case numbers are: 09-O-14144; 09-O-14699; 09-O-15412; 09-O-15413; 09-O-15852; 09-O-16083; 09-O-17078; 09-O-18866; 10-O-03039; 10-O-03788; 10-O-05494; 10-O-07869; 10-O-09923; 10-O-10806; 11-O-10307; 11-O-12792; 11-O-13069; 13-O-10280 (Cons.).

21 counts of misconduct, which is serious in its breadth and reveals an ongoing disregard for the public, the courts, and the legal profession.

I. DISMISSALS

We begin with the basis for our dismissals before addressing the misconduct warranting Dickson's disbarment. In this consolidated matter, OCTC charged Dickson with misconduct in 19 matters. The charges include multiple failures to perform services, communicate, account, refund unearned fees, and return client files. In addition, Dickson was charged with trust account violations, violation of a court order, and failure to pay the resulting sanctions. She was also charged with knowingly committing the unauthorized practice of law (UPL) in two superior courts and with violating probation terms from her first discipline.

A. Bifurcated Trial

Over six days in the fall of 2012, OCTC presented its case in six client matters through the testimony of witnesses, including Dickson, and documentary evidence. In turn, Dickson cross-examined the witnesses. The trial was then continued to May 2013 because Dickson underwent emergency surgery.

On April 26, 2013, after several delays and/or continuances in the proceedings, the hearing judge sua sponte issued a trial management conference order (Conference Order) directing the parties to prepare:

> [A] draft detailed statement on separate pages of each witness's proposed testimony as to culpability only . . . . At the [conference], we will go through each statement and determine which witnesses will require cross-examination. If the witness does not require cross-examination, the party proffering the evidence will be ordered to prepare a declaration to be filed as that witness' agreed-upon testimony. (It is important that you prepare the statements carefully and include only that which you are able to present at trial.) As to those witnesses that require cross-examination, only those portions of the statements which are not stipulated to will be allowed as subjects of cross-examination at trial. To the extent that cross-examination is permitted, redirect or recross-examination will also be allowed in the court's discretion.

(Emphasis in original.)

In response, Dickson filed a petition for interlocutory review, asking this court to prohibit the conference as an abuse of discretion. We denied the petition. Then, in her pre-conference submission to the hearing judge, Dickson refused to stipulate to the use of declarations as set forth in the Conference Order. Instead, she vociferously objected on hearsay grounds and argued the contemplated procedure would violate her right to cross-examination as well as impede the judge's ability to assess witness credibility.

No written order issued from the conference, but it appears that the judge verbally ordered OCTC to present its case in the remaining matters using declarations in lieu of live testimony. Further, he ordered that each declarant be present at trial and be made available for cross-examination. OCTC did not object to this procedure, but Dickson did.

When the trial resumed in May 2013, OCTC followed what the judge called an "unorthodox" procedure in the remaining 13 matters. Each declarant was sworn and provided with a copy of his or her declaration. In eight of these matters, Dickson was charged with failure to perform, failure to communicate, and other misconduct. The allegations were based on client complaints — specifically, their recollections of their attorney-client relationships with Dickson. OCTC's sole proof for each matter was the client declaration it had prepared out of court and submitted at trial. On the stand, the declarant authenticated the signature and stated that he or she confirmed the accuracy of the declaration's contents. Each declarant also identified documents described in the declaration, but did not otherwise testify. Dickson objected to the procedure for each witness. She also declined the opportunity to cross-examine the declarants, asserting that her refusal was "not to be construed as a stipulation or agreement to the declaration or the allegations therein." The judge admitted the declarations and the associated documents. Notably, OCTC chose not to elicit Dickson's testimony in these matters.

At the close of OCTC's case, Dickson moved for dismissal on grounds that it had not met its burden. She rested without presenting a defense. The judge dismissed several counts for lack of evidence,[2] and made a tentative culpability finding on 44 counts. The parties submitted evidence in aggravation and mitigation, and later submitted post-trial briefing as directed by the hearing judge. In her 35-page post-trial brief, Dickson renewed her objections to the use of declarations in lieu of live testimony.

On September 23, 2013, the judge recommended disbarment. In his decision, the judge did not address Dickson's objections.[3]

B. Hearsay Evidence Alone Is Insufficient to Support a Finding

Under our evidentiary rules,[4] "[a]ny relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(C).) It follows that even hearsay evidence must be admitted so long as it is relevant and reliable. However, it may only be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(D).)

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[2] A number of counts alleging Dickson's failure to cooperate in these State Bar proceedings were dismissed on OCTC's motion.

[3] Dickson asserts that the decision below contains various factual and legal errors concerning culpability, aggravation, and mitigation. As it is our duty to independently review the record and make findings of fact and conclusions of law, Dickson's alleged errors have been remedied by our opinion, which supersedes the hearing judge's decision. (Cal. Rules of Court, rule 9.12; see *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 436.)

[4] Our evidentiary rules were substantially revised effective January 1, 2011. Previously, the California Evidence Code had been applicable in discipline proceedings, with limited exceptions.

On review, Dickson argues the judge erred in making numerous findings based solely on hearsay. OCTC counters that the declarations were not inadmissible hearsay because the declarants appeared at trial to verify their statements and were made available for cross-examination. We find that the judge erroneously made culpability findings in eight matters based solely on hearsay evidence contained in the clients' declarations.

To be clear, the judge did not err in admitting the declarations. Admission was proper under rule 5.104(C) because the statements are relevant, and signed declarations are the type of evidence relied on in serious matters.[5] Nevertheless, as out-of-court statements offered to prove the truth of the matters stated, the declarations are hearsay evidence, *not* direct testimony, even though the judge gave Dickson an opportunity for cross-examination. (Evid. Code, § 1200(a) [hearsay evidence is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated"]; *id*., § 711 [direct testimony is testimony from witness heard "in the presence [of] and subject to the examination of all the parties"]; see *Elkins v. Superior Court* (2007) 41 Cal. 4th 1337, 1354, 1359 [rejecting argument that declaration constitutes testimony as it is "well established . . . that declarations constitute hearsay"].)

Further, in the eight at-issue matters, the charges were based on clients' disputed versions of events. Without direct testimony, the judge did not have the opportunity to observe the clients' demeanor or evaluate their credibility — essential information where a complaining witness's version of events is the basis for the allegations. (See *Elkins, supra,* 41 Cal. 4th at p. 1358 [testimony of "witnesses given on *direct* examination is afforded significant weight at trial in ascertaining their credibility; cross-examination does not provide the sole evidence

[5] For example, motions are normally based on declarations or affidavits alone. (See *Crocker Citizens Nat. Bank v. Knapp* (1967) 251 Cal.App.2d 875, 880; see also *McDonald v. Superior Court* (1994) 22 Cal.App.4th 364, 370.)

relevant to the weight to be accorded their testimony. [¶] [W]ith a scripted statement, prepared and agreed to by one party in advance, comes the passage of time and with that lapse may come the party's unyielding acceptance of the script. Lost to cross-examination is the opponent's ability to immediately test and dissect adverse testimony"].)

As such, we find the judge improperly relied on declarations "to support a finding." (Rules Proc. of State Bar, rule 5.104(D).) He could only "use" this hearsay to explain or supplement "other evidence." (*Ibid.*) The evidence in the following matters is comprised almost exclusively of hearsay declarations and other hearsay documentary evidence. The few exhibits containing evidence that is admissible over objection in civil actions, such as party statements, do not provide clear and convincing proof of Dickson's culpability.[6]

Accordingly, we dismiss with prejudice these matters: (1) Rundle, 09-O-14144; (2) Williams, 09-O-15412; (3) Michael, 09-O-15413; (4) Scott, 09-O-15852; (5) Toumi, 09-O-18866; (6) Stephens, 10-O-03788; (7) Padilla, 10-O-05494; and (8) Lewis, 10-O-10806.[7] We emphasize that we have not addressed the merits of these client matters, and dismiss them without prejudice to the clients' ability to seek reimbursement from the Client Security Fund.

II. CULPABILITY ESTABLISHED IN NINE MATTERS[8]

OCTC established by clear and convincing evidence that Dickson is culpable of a range of misconduct. Beginning in 2008, Dickson failed to competently perform in six client matters.

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

[7] We adopt and affirm the hearing judge's dismissals with prejudice of Manasseh I (10-O-09923) and Manasseh II (11-O-13069) for lack of evidence.

[8] The hearing judge concluded that Dickson was not culpable of several charges, and OCTC has not requested reversal on review for these charges. While we defer to the hearing judge's factual findings, particularly credibility-based determinations, we may draw our own conclusions from our independent review of the record, whether or not asked to do so. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10.) We conclude, *post*, that the hearing judge erred in certain instances in finding no culpability.

She not only failed to communicate with her clients but often misled them about the status of their legal matters. In each case, she charged a flat fee and worked without a retainer agreement. When she failed to perform as promised, her clients sought refunds. Dickson then claimed, for the first time, that she billed on an hourly basis and refused any refund. In most cases, after her clients complained to the State Bar, she sent them self-serving statements of legal services provided in an attempt to justify her fees. Further, Dickson committed a trust account violation in one client matter, and violated court orders and failed to pay sanctions in another. In three other matters, she knowingly committed UPL, and violated the probation terms from her first discipline, which resulted from similar neglect of her clients.

A. The Harris Matter (09-O-13345)

Liliana Harris hired Dickson in March 2009 to prepare and file a custody and child support agreement. Despite Harris's request, Dickson did not provide a retainer agreement or designate an hourly billing rate. Instead, she agreed to do the work for a flat fee of $2,500, payable in installments. As of May 3, 2009, Harris had paid Dickson a total of $750 in attorney fees and a $350 court filing fee.

Dickson prepared a custody and support petition for Harris, but did not file it, and offered a series of excuses when asked about it. The petition turned out to be deficient due to an error by Dickson. She promised to revise the petition and file it, but never did so.

Frustrated, Harris opted to proceed in pro per in May 2009, and requested a refund and an accounting from Dickson. Her husband explained to Dickson that the couple urgently needed the funds to pay for Harris's mother's funeral. In response, Dickson claimed for the first time that her hourly fee was $450 and that she had already earned more than she had been paid. She also promised to refund the $350 court filing fee, which she never did. Nor did Dickson ever

provide Harris with a copy of the revised petition. Much later, when she learned that Harris had filed a State Bar complaint, Dickson sent her a statement for legal services to justify her fees.

Count One:[9] Since we find that Dickson provided Harris with no legal services of value, we agree with the hearing judge that she is culpable for failure to perform, in violation of rule 3-110(A) of the Rules of Professional Conduct.[10] (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney had "obligation to take timely, substantive action on the client's behalf" and failure to do so violates rule].)

Count Two: We affirm the judge's finding that Dickson failed to provide an accounting, as required by rule 4-100(B)(3).[11] (See *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 211 [attorney had duty to account for advance fees].)

B. The Clark Matter (09-O-14699)

Latresia Clark began an ongoing attorney-client relationship with Dickson around April 2008. When she sought Dickson's legal advice regarding a potential medical malpractice claim, Dickson referred her to Dr. Nachman Brautbar to obtain an expert opinion. Clark advanced Dickson $6,000 in cash on June 13, 2008, to secure the appointment with Dr. Brautbar. Dickson admits she did not put the funds into a trust account.

Clark did not visit the doctor and asked for a refund. Dickson responded by explaining that she applied the cash to her credit card balance, used the credit card to reserve the appointment, and then encountered difficulty in obtaining a refund. She did not return any of the

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[9] The counts not mentioned in our culpability analysis below have been dismissed, as indicated in the previous section.

[10] Rule 3-110(A) of the Rules of Professional Conduct provides that a "member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Subsequent references to rules are to this source unless otherwise noted.

[11] Rule 4-100(B)(3) provides that a member shall "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them . . . ."

funds to Clark, and later unilaterally allocated the $6,000 as fees that she claimed Clark owed her for other legal work.

Dr. Brautbar's testimony revealed that Dickson's credit card story was a fabrication. His office does not accept credit card payments, preferring only cash or check. He testified he was "one hundred percent" certain that his office did not receive a credit card payment from Dickson for Clark's appointment.[12]

Count Six: We agree with the hearing judge that Dickson violated rule 4-100(A)[13] by failing to deposit $6,000 in client funds into a trust account. (See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 280, 283-284 [deposit of cost advances into attorney's personal savings account rather than trust account violated trust fund requirement].)

Count Seven: Dickson violated rule 4-100(B)(4)[14] because she did not promptly refund the $6,000 in advance costs.[15]

C. The Bostick Matter (09-O-16083)

In May 2008, Dickson agreed to undertake all work necessary to create a nonprofit entity on behalf of Harold Bostick, and to qualify the entity for federal and California tax-exempt status. She did not provide a fee agreement and agreed to do *all* necessary work and pay *all* related costs for a flat fee of $6,000, which Bostick promptly paid by June 3, 2008.

Dickson prepared various documents, obtained a federal tax identification number, and filed articles of incorporation with the California Secretary of State for the nonprofit company.

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[12] Dickson has maintained this fabrication throughout the proceedings.

[13] Rule 4-100(A) requires an attorney to deposit into a trust account all funds held for the benefit of a client, including advances for costs and expenses.

[14] Rule 4-100(B)(4) requires an attorney to promptly "pay or deliver, as requested by the client, any funds, securities, or other properties" in the attorney's possession that the client is entitled to receive.

[15] We consider, *post*, Dickson's misappropriation of this $6,000 as uncharged misconduct in aggravation.

She did not, however, complete the work she had been paid to do — most notably, the nonprofit did not become a tax-exempt entity. Throughout the years-long representation of Bostick, Dickson was difficult, often impossible, to contact. She twice misled him by falsely claiming that she had done the necessary filings to obtain the desired tax-exempt status. He discovered this when he followed up with state and federal agencies. Unfortunately, due to the delays caused by Dickson, the project was suspended.

Dickson never returned any funds to Bostick, even after an arbitrator at the Los Angeles County Bar Association Dispute Resolution Services awarded him $3,500 in March 2012. The arbitrator found Dickson did not perform as agreed and overcharged for the minimal work done.

Count Seventeen: We find that the hearing judge erred in finding Dickson not culpable for failure to perform under rule 3-100(A). The judge determined that Dickson prepared what "was required under her retainer agreement." However, there was no written agreement. Pursuant to Dickson's oral agreement and upon receipt of the $6,000, Dickson committed to do *all* work and pay *all* costs necessary to qualify the nonprofit as tax exempt. She did not perform as promised, in violation of the rule.

Count Eighteen: We affirm the judge's finding that Dickson is culpable for failure to respond to Bostick's reasonable status inquiries, in violation of Business and Professions Code section 6068, subdivision (m).[16] Not only was she unresponsive, but she lied to her client.

D. The Robinson Matter (09-O-17078)

In May 2009, Jeffrey Robinson hired Dickson to represent him in a criminal matter (misdemeanor battery). She did not provide a retainer agreement and charged him a flat $5,000 fee, which he began to pay on an installment basis. On May 13 and June 4, Dickson appeared in

[16] Section 6068, subdivision (m), requires attorneys "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." All further references to sections are to this source unless otherwise noted.

court on his behalf. On the latter date, she received actual notice of the next hearing, set for July 10. She did not tell her client about the court date, even though he asked. Neither Dickson nor Robinson appeared, and a bench warrant issued. When Dickson represented to the court that her failure to appear was due to a calendaring error, the warrant was quashed. No sanctions were imposed.

Robinson became dissatisfied with Dickson after her failure to appear and because she refused to discuss his case with him, claiming to be too busy. Nevertheless, Dickson pressed Robinson for his installment payments.

At a contentious meeting on September 21, 2009, Robinson fired Dickson and sought a refund of the $2,850 he had paid to that date. Dickson refused, citing the flat fee arrangement as justification. When Robinson pointed out that she had not done the work he had hired her to do, he claimed she "flip flopped," and suddenly asserted she charged an hourly rate of $450. Dickson claimed she had already done more work than she had been paid for. Thereafter, Robinson proceeded with a public defender, and his case was dismissed. Dickson never refunded any money to Robinson. After he filed a State Bar complaint, Dickson attempted to justify her fees by sending him a self-serving statement of legal services she allegedly provided.

Count Nineteen: We find that the hearing judge erred in concluding Dickson was not culpable for failure to perform, in violation of rule 3-100(A). The judge correctly found that a rule violation was not established by Dickson's failure to appear on July 10, 2009 because it was due to a calendaring error and the resulting bench warrant was quashed. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757 [where calendaring error resulted in failure to timely file interrogatory responses, no basis for charge of failing to competently perform since other discovery was timely handled].) We find, however, that Dickson failed to perform the underlying service for which she was retained — representation through resolution

of the criminal charge. Indeed, she only made three appearances in the case and refused to meaningfully discuss the matter with Robinson. She did not otherwise perform any legal work for him. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931-932 ["An attorney must use his best efforts to accomplish with reasonable speed the purpose for which he was employed. Failure to communicate with and inattention to the needs of a client are grounds for discipline"].) And she exacerbated this conduct by keeping $2,850 in fees on specious grounds.

Count Twenty: We adopt and affirm the hearing judge's dismissal of this count, charging failure to cooperate with the State Bar in its investigation.

E. The Rodriguez Matter (10-O-03039)

In August 2008, Jesus and Miguel Rodriguez were sued in Los Angeles County Superior Court over a boundary dispute with their neighbors. The Rodriguez brothers hired Dickson to represent them. Jesus's girlfriend, Socorro Nunez, lived with them. All three spoke Spanish as their first language and were unsophisticated in legal matters.

Dickson agreed to represent the Rodriguez brothers for a flat fee of $6,000. She testified at trial that she was never paid — a claim she renews on review. After reviewing the trial testimony of Nunez and Jesus, Miguel Rodriguez's declaration, and Dickson's bank records, we find that Nunez deposited a total of $6,000 in cash into Dickson's personal bank account in September and October 2008 as payment for Dickson's defense of the Rodriguezes. We also find that Dickson failed to provide a receipt, despite repeated requests.

1. Dickson Caused Her Clients to Default

In October 2008, Dickson filed demurrers to the complaint on behalf of the Rodriguez brothers. The filing fee check she submitted was returned for non-sufficient funds (NSF). As a result, the court voided the demurrers and entered the Rodriguezes' defaults. The court sent notice to Dickson, who never notified her clients about the bad check or the defaults.

In April 2009, Dickson filed a motion to set aside the defaults. The court granted her motion based on her representation that the NSF check was the result of fraud on her checking account. The court permitted the defendants to answer the complaint, which Dickson did. Unbeknownst to the court, the check Dickson tendered with the April 2009 motion was also NSF. Based on this fact, in September 2009, the plaintiffs moved to vacate the lifting of the defaults and strike the answers. In opposition, Dickson claimed the check was NSF because her bank account had been closed due to inactivity; she made no mention of the earlier fraud claim. We find that Dickson's explanations for her NSF checks are inconsistent, and her bank records do not corroborate her fraud claim.

In October 2009, the court conditionally granted the plaintiffs' motion, but stated it would not vacate the setting aside of the defaults or strike the answers if "all fees that are outstanding have been paid for the checks that were NSF" by December. The court also imposed $790 in sanctions against Dickson personally. She did not inform her clients about the court order but instead collected $790 from them,[17] ostensibly to file a cross-complaint.[18] Dickson did not pay the court-ordered fees or sanctions. Thus, the court struck the answers and reinstated the defaults.

2. Dickson Failed to Respond to Discovery

In June 2009, the plaintiffs served form interrogatories on the defendants. Dickson did not tell the Rodriguezes, and they failed to respond. In August, the plaintiffs moved to compel interrogatory answers and sought discovery sanctions. Dickson did not inform her clients about the motion, did not oppose it, and did not appear at the hearing. In September 2009, the court issued an order compelling responses and awarded sanctions of $540 jointly and severally

[17] As of December 6, 2009, the Rodriguezes had paid Dickson a total of $6,790.

[18] No cross-complaint was filed.

against Dickson and her clients. It issued a separate sanctions order against Dickson personally in the amount of $750, which she never paid.

3. The Rodriguezes Retain New Counsel

Throughout her representation, the Rodriguezes experienced difficulty contacting Dickson. When they did reach her, they received no meaningful information. For example, they were under the impression from Dickson that the case was proceeding normally to a trial set for January 2010. Jesus Rodriguez testified that he received a letter from the court in December 2009 that finally notified him about the defaults. Again, he tried unsuccessfully to speak to Dickson.

The Rodriguezes hired new counsel to have their defaults lifted. Their new counsel tendered their defense to Farmers Insurance Group, who accepted and paid for the defense. However, Dickson failed to return their files and failed to sign a substitution of attorney. To repair the damage Dickson caused, the Rodriguezes had to pay their first appearance fees and all outstanding sanctions and fees in the matter. They also were required to pay a service charge resulting from the NSF checks and additional court-ordered costs and fees to plaintiffs. Notably, Dickson had not tendered the defense to Farmers Insurance, even though opposing counsel alerted her of the need to do so.

4. Culpability

Count Twenty-Six: We adopt and affirm the hearing judge's finding that Dickson failed to perform in the Rodriguez matter, in violation of rule 3-110(A).

Counts Twenty-Seven and Twenty-Eight: Dickson failed to respond to reasonable status inquiries and also failed to communicate significant developments to the Rodriguez brothers, including the NSF checks, the entry of their defaults, and the discovery dispute. As

found by the hearing judge, these failures constitute separate violations of section 6068, subdivision (m).

Count Twenty-Nine: Dickson failed to obey several court orders and failed to pay the resulting sanctions, in willful violation of section 6103.[19]

Count Thirty: We adopt and affirm the judge's finding, due to lack of evidence, that Dickson is not culpable of seeking to mislead a judge.

Count Thirty-One: We disagree with the judge's finding that Dickson is not culpable of an act of moral turpitude, in violation of section 6106.[20] She submitted two NSF checks to the court, and her proffered explanations were inconsistent and uncorroborated by her bank records. We find no basis for concluding she did not act willfully in issuing the checks or did so through simple negligence. Indeed, we find the record clearly and convincingly establishes Dickson was at least grossly negligent in allowing two NSF checks to issue from her personal account. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [issuing NSF checks on personal account constitutes act of moral turpitude].)

Count Thirty-Two: We adopt and affirm the hearing judge's dismissal of this count, charging the failure to cooperate with the State Bar in its investigation.

F. The Washington Matter (10-O-07869)

On October 29, 2009, Dickson agreed to handle a probate matter for Luana Washington. Washington's extended family owned a property for which, unbeknownst to them, Washington's deceased father was listed as an owner on the deed. As a result, they were unable to secure a loan on the property that was needed to complete repairs required by the City of Los Angeles.

[19] Under section 6103, an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear . . . [constitutes cause] for disbarment or suspension."

[20] Section 6106 prohibits attorneys from engaging in any act involving moral turpitude, dishonesty, or corruption.

Dickson was hired to have Washington designated administrator of her father's estate in order to obtain the loan. Dickson did not discuss her fees or provide a retainer agreement.

Over the next months, Dickson repeatedly failed to respond to status inquiries. Washington testified that Dickson's "voice mail was always full." Dickson finally filed a probate petition in February 2010, vaguely blaming the delay on her health problems and her work on another client's trial. The Letters of Special Administration issued in March, but Dickson never arranged for the required publication or completed the probate matter. Despite numerous requests via phone, text, and email, Dickson failed to provide Washington with the probate documents. In fact, she misled Washington by stating she had sent the documents when she had not. Ultimately, Washington had to retrieve copies of the documents from the court.

In March 2010, Dickson sent Washington a statement, charging a $2,000 flat fee for her probate legal services. As of March 10, 2010, Washington's aunt, Nobie Cummings, had paid the $2,000, and Washington had paid Dickson another $1,417.50 in probate-related costs.

Count Forty-Two: We find that the hearing judge erred in determining that Dickson did not fail to perform. The judge dismissed this count on grounds that the family changed its position about the loan on the property and, therefore, no longer wanted to proceed with the probate. We find, however, that the decision to obtain a personal loan rather than a loan on the property, described by Washington as "Plan B," was due to Dickson's failure to act with reasonable speed. We find the family received no services of value for the $2,000 in legal fees because Dickson failed to perform, in violation of rule 3-110(A).

Count Forty-Three: We adopt and affirm the judge's finding that Dickson is culpable as charged for the failure to respond to reasonable status inquiries in violation of section 6068, subdivision (m).

Count Forty-Four: OCTC failed to submit sufficient evidence to establish that Dickson did not maintain client funds in trust, and we affirm the judge's dismissal with prejudice.

Count Forty-Five: We find the judge erred in concluding that Dickson was not culpable for failing to return client papers in violation of rule 3-700(D)(1). OCTC established that probate documents were not returned to Washington, despite her repeated requests.

Count Forty-Six: We adopt and affirm the hearing judge's dismissal of this count, charging the failure to cooperate with the State Bar in its investigation.

G. Dickson Is Culpable of UPL

On December 15, 2010, Dickson failed to appear at trial in her prior discipline case. As a result, the hearing judge entered her default and issued an order placing her on inactive status effective three days from the date of the default. Dickson had actual notice that she was not authorized to practice law as of December 18, 2010, because of her inactive status. She returned to active status on January 6, 2011, when the judge set aside the default entered against her.

1. Riverside County (11-O-10307)

On January 4, 2011, Dickson prepared an ex parte application to vacate and set aside a default judgment entered against her client. In her attached declaration, she stated under penalty of perjury that: (1) on January 4, 2011, she gave notice of the ex parte application to opposing counsel; and (2) she was "a member in good standing duly licensed to practice law in the State of California and the attorney for [the Defendant] in this matter." On January 5, Dickson submitted the application and appeared on behalf of her client in Riverside County Superior Court.

Based on these facts, OCTC alleges Dickson committed UPL, an act of moral turpitude, and that Dickson sought to mislead a judge. OCTC did not present witness testimony or declarations in this matter, relying solely on court documents. Dickson argues that the judge

erred in admitting the court documents because OCTC failed to lay the foundation for or authenticate them. We disagree.

To begin, the judge properly admitted the ex parte application because Dickson did not object to its admission.[21] (See *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1226-1227, fn. 13 [even though declarations contain hearsay, they are competent evidence if received without objection].) The judge also properly admitted the other court documents over objection. Those documents are relevant to the UPL charges, and are "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," given OCTC's representation that they are copies of official court documents. (Rules Proc. of State Bar, rule 5.104(C).)

Further, we observe that the ex parte application was submitted for the non-hearsay purpose of proving that Dickson prepared the application and practiced law while inactive. It was also submitted for the truth of the matter asserted — Dickson's statement that she contacted opposing counsel while on inactive status. However, because this statement is a party admission (Evid. Code § 1220), it "would be admissible over objection in civil actions" and may, therefore, "be sufficient in itself to support a finding." (Rules Proc. of State Bar, rule 5.104(D).) In addition, the January 5, 2011 minute order is admissible over objection as an official record (Evid. Code § 1280),[22] and is therefore sufficient to support our finding that Dickson appeared in court on January 5, 2011 while not an active member of the State Bar.

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[21] The application was admitted without objection on October 31, 2012.

[22] Evid. Code section 1280 permits a court to admit an official record or report without requiring a witness to testify as to its identity and mode of preparation if the court takes judicial notice of the record or if sufficient independent evidence shows it to be trustworthy. (See, e.g., *Bhatt v. State Dept. of Health Services* (2005) 133 Cal.App.4th 923, 929.) Here, the judge properly judicially noticed the minute order and other court documents. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186). Moreover, as discussed above, the court documents were proffered by OCTC as authentic and are, therefore, sufficiently trustworthy to be deemed reliable under our rules. (Rules Proc. of State Bar, rule 5.104(C).)

Counts Fifty-Three and Fifty-Four: We affirm the hearing judge's finding that Dickson engaged in UPL by contacting opposing counsel and filing and appearing on the ex parte application while on inactive status, in violation of section 6068, subdivision(a).[23] We also agree that Dickson *knowingly* provided legal services while inactive, which constitutes an act of moral turpitude. (*In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 641-642 [misconduct involved moral turpitude because attorney appeared in court knowing he was suspended].) For our discipline analysis, we assign no additional weight to the section 6068 violation because the same misconduct underlies the section 6106 violation, which supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 119, 127.)

Count Fifty-Five: We affirm the hearing judge's conclusion that Dickson deliberately sought to mislead a judge by falsely stating in her January 4, 2011 declaration, under penalty of perjury, that she was authorized to practice when she knew she was not so authorized, in willful violation of section 6068, subdivision (d).

County Fifty-Six: We conclude the judge erred in finding Dickson culpable for the failure to cooperate with the State Bar investigation. OCTC relied solely on a State Bar Probation Officer's declaration and other hearsay evidence to establish Dickson's non-cooperation. This hearsay evidence by itself is insufficient to support a culpability finding. (Rules Proc. of State Bar, rule 5.104(D).)

[23] Section 6068, subdivision (a), requires an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125 provides: "No person shall practice law in California unless the person is an active member of the State Bar." (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506 [appropriate method of charging violations of §§ 6125 and 6126 is by charging violation of § 6068, subd. (a)].)

2. Los Angeles County (11-O-12792)

We find that on December 23, 2010 and January 4, 2011, Dickson appeared in Los Angeles County Superior Court on behalf of a client in a dissolution action.

Counts Fifty-Seven and Fifty-Eight: We affirm the judge's finding that this conduct constitutes UPL in violation of section 6068, subdivision(a), and an act of moral turpitude. (*In the Matter of Mason*, *supra*, 3 Cal. State Bar Ct. Rptr. 639, 641-642.) We assign no additional weight to the section 6068 violation because the same misconduct underlies the section 6106 violation, which supports the same or greater discipline. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar. Ct. Rptr. 119, 127.)

Count Fifty-Nine: We find the judge erred in finding Dickson culpable for the failure to cooperate with the State Bar investigation and dismiss this count with prejudice on the same grounds that we dismissed Count Fifty-Six.

H. Probation Violations (13-O-10280)

The Supreme Court order in Dickson's prior discipline placed her on probation subject to conditions. She was required to submit timely quarterly probation reports for a period of 18 months. On at least two occasions, she submitted late reports. We find she is therefore culpable of violating section 6068, subdivision (k), which requires attorneys "[t]o comply with all conditions attached to any disciplinary probation."

Finally, we find the hearing judge erred in finding that Dickson failed to timely attend the State Bar of California Ethics School. At trial, Dickson presented evidence she received an extension of time to satisfy this probation condition and then timely attended Ethics School and passed its test.

III. AGGRAVATION AND MITIGATION[24]

A. Serious Aggravation

The hearing judge found five factors in aggravation: (1) prior record of discipline (std. 1.5(a)); (2) multiple acts/pattern (std. 1.5(b), (c)); (3) dishonesty and concealment (std. 1.5(d)); (4) significant harm to clients (std. 1.5(f)); and (5) indifference (std. 1.5(g)). We affirm and find additional aggravation.

First, on December 30, 2011, the Supreme Court order in Dickson's prior discipline case became effective. (State Bar Court No. 09-O-12845; S196651.) In that matter, the hearing judge found Dickson culpable of the same type of misconduct as in the present case — failures to perform and to communicate. Dickson was suspended for one year, with execution of that suspension stayed, and placed on probation for 18 months, with conditions. Her misconduct was mitigated because Dickson showed she was suffering from extreme emotional and physical difficulties during the time of misconduct. No aggravation was found.

In the present proceeding, the hearing judge diminished the aggravating effect of the prior record because the misconduct occurred from April 2006 to March 2009, which he found substantially overlapped with the period of misconduct in this case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) However, Dickson's misconduct is ongoing because she has yet to refund more than $25,000 in six client matters. Further, Dickson committed UPL and misled the Riverside County Superior Court *after* the notice of charges was issued in her first disciplinary matter. Dickson also violated the terms of her

[24] Effective July 1, 2015, the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct were revised and renumbered. Because this appeal was submitted for ruling before that date, we apply the prior version of the standards, which was effective January 1, 2014 through June 30, 2015. All further references to standards are to the prior version of this source. Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Dickson to meet the same burden to prove mitigation.

probation in that matter. As such, we find that the prior record warrants serious weight in aggravation.

Second, Dickson's misconduct is seriously aggravated by the number of acts and range of wrongdoing. We find an established pattern of her failures to perform and to communicate beginning in 2006.

Third, Dickson's dishonesty, concealment, bad faith, and overreaching warrant significant consideration in aggravation. She worked without fee agreements to her benefit and her clients' detriment, and then acted in bad faith by unilaterally switching from a flat rate to hourly fees in an effort to avoid issuing refunds. She also lied to or otherwise misled her clients.

Fourth, Dickson's clients were significantly harmed as a result of her misconduct, particularly the Rodriguezes. Their defaults were entered, and they were forced to hire new counsel and to pay thousands in sanctions and fees incurred due to Dickson's failures. Washington, Bostick, Harris, and Robinson also have nothing to show for the time spent and the thousands of dollars they paid to Dickson.

Fifth, Dickson has failed to demonstrate any concern for her clients or any insight into the serious nature of her misconduct. Her failure to pay restitution "suggests both a distressing lack of appreciation of the seriousness of [her] misconduct and an absence of remorse for a substantial violation of [her] fiduciary obligations in trust account matters. [Citations.]" (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1036-1037.)

In addition, we find serious aggravation due to Dickson's lack of candor. (Std. 1.5(h).) Not only did she act dishonestly in dealing with her clients, but she also lied under oath about never receiving fees from the Rodriguezes and using advance costs to secure an appointment for Clark. Moreover, she persists in maintaining these falsehoods on review. (See *In the Matter of*

Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [lack of candor may be stronger and more egregious aggravating factor than underlying misconduct].)

We also find, and consider as uncharged misconduct in aggravation, that Dickson intentionally misappropriated $6,000 from Latresia Clark by unilaterally deeming the funds attorney fees and collecting them without client authorization. (*Marquette v. State Bar* (1988) 44 Cal.3d 253, 265.)

B. No Mitigation

The hearing judge found Dickson's extreme emotional and physical difficulties to be a "substantial" factor in mitigation. (Std. 1.6(d).)[25] We disagree. Although Dickson suffered medical and emotional problems, during the relevant time period, she failed to establish that these circumstances caused her misconduct, nor did she prove her difficulties are resolved. More to the point, health problems do not grant an attorney license to behave unethically, as Dickson has done. For years, she took no steps to protect her clients from the risk of harm resulting from her health problems. In addition, the four witnesses who testified to her good character do not represent the wide range of references in the legal and general communities necessary to demonstrate extraordinary good character. (Std. 1.6(f).)

[25] Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct."

IV. PUBLIC PROTECTION REQUIRES DISBARMENT[26]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Disbarment is appropriate because Dickson has, from 2006 through the present, demonstrated a pattern of failing to perform legal services for and failing to communicate with her clients. (Std 2.5(a) [disbarment is appropriate for failing to perform legal services for clients, demonstrating pattern of misconduct].)

Disbarment is also proper because Dickson is culpable of serious acts of moral turpitude — twice knowingly committing UPL, issuing NSF checks, and intentionally misappropriating $6,000 from Latresia Clark. All of these actions were directly related to Dickson's practice of law, and her misappropriation harmed Clark. (Std 2.7 [actual suspension or disbarment is appropriate for act of moral turpitude depending on degree of harm to victim and magnitude of misconduct];[27] see *Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115 [disbarment with no pattern of misconduct but where attorney without prior record committed multiple acts of serious wrongdoing, many of which involved moral turpitude].)

We find that disbarment is more than appropriate here; it is necessary. In this proceeding alone, we have found Dickson culpable of 21 counts of misconduct, involving eight different rule and code violations and six client matters. That list of wrongdoing grows when we include her prior record. Dickson's misconduct is serious, the aggravating circumstances are significant, and

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[26] 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.)

[27] Other applicable standards include: 1.7(a) (where multiple sanctions apply, most severe shall be imposed); 1.8(a) (progressively more severe discipline when attorney has one prior discipline record); 2.2 (rule 4-100 violation shall result in reproval or suspension); 2.1(c) (suspension or reproval for misappropriation not involving intentional or grossly negligent misconduct); 2.6(a) (disbarment or actual suspension for UPL); 2.8(a) (disbarment or actual suspension for disobedience of court order); and 2.10 (actual suspension for failing to comply with discipline condition).

no mitigation is present. Given her habitual disregard of ethical duties and her lack of insight and remorse, the risk is high that she may engage in additional professional misconduct if permitted to continue practicing law. Under such circumstances, we conclude that disbarment is required to protect the public, the courts, and the legal profession.

V. DISBARMENT RECOMMENDATION

We recommend that Lorraine Dickson be disbarred and that her name be stricken from the roll of attorneys admitted to practice law in the State of California.

We further recommend that she make restitution to the following individuals (or to the Client Security Fund to the extent of any payment from the Fund to any of them, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles:

(1) Liliana Harris in the amount of $1,100 plus 10 percent interest per year from May 3, 2009;

(2) Latresia Clark in the amount of $6,000 plus 10 percent interest per year from June 13, 2008;

(3) Harold Bostick in the amount of $6,000 plus 10 percent interest per year from June 3, 2008;

(4) Jeffrey Robinson in the amount of $2,850 plus 10 percent interest per year from September 21, 2009;

(5) Jesus and Miguel Rodriguez in the amount of $6,790 plus 10 percent interest per year from December 6, 2009; and

(6) Luana Washington and Nobie Cummings in the amount of $3,417.50 plus 10 percent interest per year from March 10, 2010.

We further recommend that she must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

VI. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Lorraine Dickson be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective September 26, 2013, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

STOVITZ, J.*

* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.