PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed October 9, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Nos. 16-O-11148 (16-O-15301;
	)	17-O-05139); 17-N-05957
JULIUS MICHAEL ENGEL,	)	(Consolidated)
	)	
State Bar No. 137759.	)	OPINION AND ORDER
	)	

This is Julius Michael Engel's third disciplinary proceeding since 2013 and the third time he has been charged with incompetently representing a debtor in a bankruptcy proceeding. The Notice of Disciplinary Charges (NDC) alleges six counts: failure to perform with competence; failure to refund unearned fees; unauthorized practice of law (UPL) (two counts); failure to comply with rule 9.20 of the California Rules of Court;[1] and misrepresentation regarding compliance with rule 9.20. The hearing judge found culpability on all counts except the alleged failure to refund unearned fees. He found that Engel's misconduct, along with his failure to acknowledge his prior and current misconduct and his lack of respect throughout the disciplinary proceeding, makes clear that no discipline short of disbarment would suffice to protect the public and the courts and maintain confidence in the legal profession.

Engel seeks review and dismissal, arguing, among other things, that the Office of Chief Trial Counsel of the State Bar of California (OCTC) is vindictive, has committed prosecutorial misconduct, and has deprived him of due process. OCTC does not appeal and asks that we affirm the judge's disbarment recommendation.

[1] All further references to rule 9.20 are to this source. All other references to rules are to the Rules of Professional Conduct in effect prior to November 1, 2018, unless otherwise noted.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, most of his aggravation and mitigation findings, and his disbarment recommendation.

I. PERTINENT PROCEDURAL BACKGROUND

OCTC filed the NDC on October 23, 2017. On December 18, 2017, Engel filed a response to the NDC, denying all allegations. The hearing judge found Engel culpable of all but one of the counts following a four-day trial on February 12-14 and March 16, 2018. On June 8, 2018, the hearing judge issued his decision recommending Engel be disbarred and placing him on involuntary inactive status.

After the decision was filed, Engel twice attempted to abate the proceeding. Both motions were denied, and on November 30, 2018, Engel requested review.

II. FACTUAL AND CULPABILITY FINDINGS

A. Introduction

Engel was admitted to practice law in California on December 7, 1988, and has two prior disciplinary suspensions. In the first, the Supreme Court adopted our recommendation of six months' actual suspension, from July 8, 2016 to January 8, 2017 (S232034). There, Engel's misconduct included commingling client funds and incompetently representing a debtor in a bankruptcy proceeding. Engel was suspended a second time, from March 17, 2017 to March 17, 2018 (S238645), for incompetently representing a debtor in a Chapter 13 bankruptcy and failing to return funds.

The current matter involves Engel's misconduct in two client matters, his failure to comply with rule 9.20, and his misrepresentation to the State Bar regarding that compliance.

Engel has been intermittently practicing law with attorney Steele Lanphier for over a decade. The record supports Lanphier's testimony that his office, Lanphier and Associates, and

Engel's office, Engel Law Group, were working as one. The two attorneys shared fees, an office, and office personnel, and served the same clients. Prospective clients responding to advertisements for Engel Law Group or Lanphier and Associates could meet either Engel, Lanphier, or both—despite the fact that the two firms' relationship was not disclosed to the client. We find that both offices acted as a single law firm, but with different names, and jointly represented the complaining witnesses in this matter.

B. The Johnson Matter

Marilyn and Joshua Johnson sought to file a Chapter 13 bankruptcy to avoid foreclosure of their two houses. Marilyn Johnson saw Lanphier's television advertisement, contacted him, and the two agreed to meet. On November 11, 2014, she met with Lanphier and Engel, and Lanphier told her she would be jointly represented in a Chapter 13 bankruptcy proceeding, and provided her a written fee agreement on Engel Law Group letterhead. The agreement required a $2,000 advance payment for legal services, with an additional $2,000 due as the case progressed.

On January 22, 2015, after filing a bankruptcy petition, Engel electronically signed and filed a Chapter 13 payment plan, which was rejected by the bankruptcy trustee. The trustee moved to dismiss the case because the proposed plan failed to include a copy of the Johnsons' recent tax returns, as required by title 11 United States Code section 521, subdivision (e)(2)(A)(i), and contained two substantive faults: (1) a proposed monthly payment of $4,814.44, which was less than their required minimum monthly payments of $4,962.00; and (2) a completion date that would require 106 months, considerably more than the 60-month maximum allowed pursuant to title 11 United States Code section 1325, subdivision (b)(4).

On March 11, Lanphier appeared on behalf of the Johnsons at a court-scheduled hearing on the trustee's motion. The judge ordered a conditional dismissal of the bankruptcy petition if the Johnsons failed to confirm a feasible plan within 75 days.

On April 10, Engel filed an amended petition that included a motion to confirm the amended payment plan. On May 18, the trustee filed an objection to the amended payment plan because (1) Engel again failed to include the Johnsons' recent tax returns, and (2) the plan included monthly payments of $4,900, again less than the minimum required payments, and it would take 89 months to complete, once again, more than the 60-month maximum. No attorney appeared on behalf of the Johnsons at a June 3 hearing, where the court declined to confirm the Johnsons' amended payment plan. The court dismissed the Johnsons' bankruptcy case on the trustee's motion based on the court's prior conditional order.

On June 10, two days after the court's dismissal of the case, Engel filed a new bankruptcy petition with the same defects as in the initial and amended petitions. The proposed Chapter 13 payment plan again failed to include the Johnsons' recent tax returns, and the $4,749 monthly payment that Engel proposed was even lower than the $4,900 previously rejected by the court.

After the bankruptcy court notified the Johnsons and Engel that a creditors' meeting would be held on July 23, 2015, Mrs. Johnson informed Engel that she was unavailable on that date due to a medical procedure. Engel assured her that he would seek a continuance and logged a note in the case management program that he used, stating that he spoke with Mrs. Johnson and promised to seek a continuance. This note was logged by user "JME," the initials of his full name.

On the morning of the scheduled creditors' meeting, Engel requested a continuance by emailing the Johnsons' previous trustee, despite the fact that he had been notified that the case had been reassigned to a new judge and a new trustee had been appointed. As a result of Engel's untimely email to the wrong trustee, neither Engel nor the Johnsons were present at the creditors' meeting. Once again, the trustee filed a motion seeking a conditional dismissal of the case. In an August 19 hearing, attended by the Johnsons but not by Engel, the bankruptcy court ordered a conditional dismissal of the case unless the Johnsons confirmed a plan within 120 days.

On August 25, 2015, Engel filed a motion to confirm a non-existent Chapter 13 plan dated June 11, 2015. Assuming that Engel meant the Chapter 13 proposed plan filed on June 24, the trustee opposed the motion on the basis of substantive errors including a monthly payment of $4,749 and a repayment schedule of 446 months. Further, the proposed plan contained language that the Johnsons were seeking a loan modification, but failed to provide evidence of this fact or the required motion requesting the court's approval. On October 7, Lanphier appeared, instead of Engel, as counsel for the Johnsons for a hearing on this motion. Once again, the court declined to approve the proposed payment plan for the Johnsons.

On December 29, the bankruptcy court dismissed the Johnsons' bankruptcy petition because Engel failed to timely amend the proposed payment plan within 120 days pursuant to the August 19 order. After receiving notification from the trustee's office that the case was dismissed, Mrs. Johnson called Engel's office asking for an explanation. Lanphier and Engel jointly returned Mrs. Johnson's call and apologized that the "date [to respond to trustee's objection] got missed." They told her they would file a new petition and she would pay only the filing fee.

On February 5, 2016, Mrs. Johnson went to the office that Engel and Lanphier shared and they offered her new terms of a fee agreement—a $690.00 advance filing fee and $3,310.00 as the case progressed. Mrs. Johnson complained that it was the attorneys' fault that the case was dismissed twice before. Engel and Lanphier told her to "take it or leave it." On February 11, Lanphier wrote a letter to Mrs. Johnson stating:

> "I understood that you would be back at my office to sign up for a new attempt at a chapter 13 on Saturday February 6, 2016. Then, I was informed that you could not make the Saturday appointment but that you would be in on Monday February 8, 2016. Today is Thursday, February 11 and I have not heard from you. I can only assume that despite your telling me of your fear of not being protected you are not concerned enough to get to my office and complete the documents necessary to protect your property from foreclosure. I am sorry that I do not have the time to continue worryng [*sic*] about your situation. I suggest that you find another attorney to serve your bankruptcy needs."

Two days later, in a letter addressed to both attorneys, Mrs. Johnson stated that she lacked faith in the firm because they could not assure her that a new bankruptcy petition would be filed in a timely manner. She requested a full refund of $2,000 and stated she would report their unethical behavior to the State Bar.

On May 18, 2016, a State Bar investigator sent Lanphier and Engel separate requests for responses to Mrs. Johnson's complaint. Although they jointly signed the response to Brown's investigative inquiry, Engel drafted the letter, which began with "After Mr. Lanphier & I received your letter . . . ." Engel's letter inaccurately stated that both of the Johnsons' bankruptcy petitions were dismissed because the Johnsons failed to make payments to the trustee. The letter concluded with "we believe Mr. & Mrs. Johnson have sever [*sic*] physical and some mental problems and are inclined to blame others for their problems."

Count Two: Failure to Refund Unearned Fees (Rule 3-700(D)(2))[2]

In count two of the NDC, OCTC alleged that Engel received advance fees of $2,000 from the Johnsons, failed to provide any service or benefit to his clients, and thereafter failed to refund any of the $2,000 to the Johnsons upon termination of employment on or about December 30, 2015. The hearing judge determined that Engel earned the $2,000 fee because, by filing a bankruptcy petition for the Johnsons, Engel inadvertently accomplished one of the Johnsons' goals in avoiding foreclosure of their houses. Therefore, the judge dismissed this count. OCTC does not appeal this dismissal. We affirm the judge's decision as being supported by the record.

Count One: Failure to Perform with Competence (Rule 3-110(A))

In count one of the NDC, OCTC alleged that Engel failed to perform with competence, in violation of rule 3-110(A), because he failed to submit required documents with the Johnsons' Chapter 13 petitions filed on January 8, and June 9, 2015. Both of Engel's submissions

[2] For purposes of clarity, our discussion of count two precedes discussion of count one.

neglected to attach the Johnsons' recent tax returns, a certificate of credit counseling, property schedules, and a complete list of creditors, including exact amounts owed. The NDC also alleged that Engel failed to attend a meeting of creditors on July 23, and twice did not submit an acceptable Chapter 13 payment plan, which resulted in dismissal of the Johnsons' bankruptcy petitions.

The hearing judge found that Engel failed to perform with competence, in violation of rule 3-110(A), because he repeatedly and recklessly failed to provide a feasible payment plan for the Johnsons. The judge stated that both proposed payment plans were guaranteed to be rejected because Engel not only failed to timely submit the required documentation but also did not properly calculate (1) the minimum monthly payment necessary to cover trustee fees and creditor claims, and (2) a payment plan that could be completed within a period equal or less than the maximum time allowed by law. We agree.

We find several reasons Engel did not competently represent the Johnsons. He failed to attend two court-scheduled hearings—the first on June 3, and the second on August 19, 2015. He also failed to attend a creditors' meeting on July 23, and failed to timely notify the current trustee of his client's unavailability on that date. He repeatedly failed to properly submit the Johnsons' tax returns and a feasible payment plan to the trustee. Further, we disagree with Engel's argument that the hearing judge's dismissal of count two (failure to return unearned fees) because of an incidental benefit of a delay of the foreclosure, required that we also dismiss count one. Engel's failure to act competently is manifestly reflected in his handling of the Johnsons' case.

The Johnsons were Engel's clients, and the parties signed a retainer agreement on Engel Law Group letterhead. We reject his attempts to dissociate himself from the Johnsons and point the finger at Lanphier as their actual attorney to the exclusion of himself. (*Gadda v. State Bar*

(1990) 50 Cal.3d 344, 353 [attorney cannot relinquish responsibility for case simply by "punting the file downfield to whomever catches it"].)

Engel's evidentiary arguments for this count are likewise meritless. He contends that the hearing judge violated the California Secondary Evidence rule[3] by allowing the Johnsons' trustee's senior attorney to testify relying on the trustee's objection to the proposed payment plan filed by Engel. However, Engel made no timely objections to the admission of this document as a part of the record. Therefore, his attempt at disputing the document's contents fails.

Moreover, the applicable evidentiary standard is Rules of Procedure of the State Bar, rule 5.104(C), which provides that "any 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." We find no error by the hearing judge in allowing the trustee's senior attorney to testify, and we affirm the judge's culpability finding for count one.[4]

C. The Ramirez Matter

Yesenia Ramirez became Engel's client after hearing his radio advertisements offering representation in immigration matters. She sought a U-Visa that would allow her to remain in the United States. The two met in early February 2017 to discuss her case, while Engel was authorized to practice law. Ramirez was unable to pay Engel after their first meeting, so she scheduled another meeting for February 9. On that date, she met with Joseph Guzman, who

[3] The secondary evidence rule, Evidence Code section 1521(a), provides that "the content of a writing may be proved by otherwise admissible secondary evidence. The court shall exclude secondary evidence of the content of writing if the court determines either of the following: (1) a genuine dispute exists concerning material terms of the writing and justice requires the exclusion. (2) Admission of the secondary evidence would be unfair."

[4] Having independently reviewed all arguments set forth by Engel, those not specifically addressed have been considered and rejected as having no merit.

worked at the offices of Lanphier & Associates and Engel Law Group. Guzman asked her preliminary questions and then provided her with a retainer agreement.

In late April 2017, one month after Engel's second suspension was in effect, Ramirez called Engel to inquire about the status of her U-Visa application. Engel claimed that her file must have been misplaced and apologized for the inactivity on her case. He did not disclose that he was suspended from the practice of law, and instead assured her he would work on the matter from then on. Ramirez continued to call his office and was told by Engel's staff members that they were working on her case.

On August 1, 2017, Ramirez went to Engel's office and demanded a refund of her $2,000 for Engel's failure to timely pursue her case. The same day, she wrote a letter to Engel's office demanding a refund by August 4, and disclosing that she intended to file a complaint against him with the State Bar. On August 4, Ramirez received two money orders for $1,000 each. On September 15, Engel replied to a State Bar investigator's inquiry about the Ramirez matter: "I have checked my records and I have never represented this woman. I have checked with my colleague Attorney Lanphier and I believe he had represented her." He enclosed a copy of both money orders. In a follow up response to the investigator, Engel replied that he did not know who wrote his name in the signature line on the retainer agreement. On September 28, the investigator sent Ramirez an email asking her to verify that the attached photograph was Engel. Ramirez confirmed that the man in the photograph was Engel.

Count Six: UPL (Business and Professions Code Section 6068, subdivision (a)[5]

The NDC's sixth and final count of misconduct charges Engel with UPL. While not an active member of the State Bar, he answered Ramirez's phone call one month into his one-year

[5] All further references to sections are to the Business and Professions Code unless otherwise noted.

suspension, did not disclose to her that he was no longer authorized to practice law, and assured her that he would work on her case.

Engel was Ramirez's attorney; he had a duty to inform her that he was suspended and unable to pursue a U-Visa on her behalf. We agree with the hearing judge that Engel held himself out as entitled to practice law when he failed to inform her of his suspension and assured her that he would continue working on her case.

D. Engel's Advertisements while Suspended

The State Bar learned of Engel's professional website and began to monitor it during Engel's two suspensions from July 8, 2016, until January 8, 2017, and from March 17, 2017, until March 17, 2018. The website was still accessible on the date of trial and included Engel's name, the designation of Engel Law Group as a fictitious business name, Engel's picture, and a 2014 copyright notice. The website stated, "if you need representation in either bankruptcy or criminal matter [*sic*], Engel Law Group will give you the zealous and experienced representation that you have the right to for very reasonable rates." At no time during the State Bar's observation, within Engel's two suspension periods, did his website disclose that he was not licensed to practice law.

On March 6, 2017, a State Bar investigator sent Engel a letter inquiring about Engel Law Group's website. Engel responded, "I had some websites at different times in years past, but have not maintained or used one in at least the last 3 years . . ." and "I cannot police the whole Internet for dead websites that might be there." After Engel's reply, the investigator ascertained the website's domain host, Namecheap, and subpoenaed it to produce the website owner's name. Namecheap's records indicated that the owner was Lanphier.

Along with his website ads, Engel advertised for the Engel Law Group on Spanish-language radio stations until the date of trial. In his March 10, 2017 response to the

investigator's inquiry, Engel stated, "I did not authorize or put any ads under my name on the radio during my suspension time." In a follow-up response, he wrote, "I believe your equest [*sic*] constitutes harassment. I haven't made or paid for any radio adds [*sic*]." At trial, Engel and Lanphier testified that they were unaware of the ads during Engel's suspension. The hearing judge determined that they both lacked credibility and candor.

Count Three: UPL (Section 6068, subdivision (a))

In count three, OCTC alleged that Engel held himself out as entitled to practice law when he was suspended from July 8, 2016, to January 8, 2017, and again from March 17, 2017, to March 17, 2018. The State Bar investigator who monitored Engel's website (and eventually sent a letter to Engel) testified that the website was still active on the last day of trial.

The NDC alleged that during these time periods, Engel (1) maintained an Internet website with the title Engel Law Group and Julius Michael Engel, Attorney at Law, and listed his legal experience while omitting his suspension, and (2) authorized and paid for radio advertisements for Engel Law Group, claiming over 28 years of experience and omitting that he was suspended. The hearing judge found Engel culpable as charged.

We agree with the judge and find clear and convincing evidence that Engel engaged in UPL while suspended. "The unauthorized practice of law includes the mere holding out by a[n attorney] that he is practicing or is entitled to practice law." (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [citing § 6126].) An attorney simply may not hold himself or herself out as entitled to practice during a suspension period and "[b]oth express and implied representations of ability to practice are prohibited." (*In re Naney* (1990) 51 Cal.3d 186, 195.) "[A]n attorney cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law when in fact he or she is or will be on suspension." (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [suspended

attorney created false impression of present ability to practice by using terms "Member, State Bar of CA" and honorific "Esq." next to his signature on job application].)

E. Engel Failed to Comply with Rule 9.20 and Misrepresented Compliance to State Bar

The Supreme Court's order suspending Engel for the second time, effective March 17, 2017, included a requirement that he timely comply with rule 9.20. Specifically, subpart (a) required Engel to notify his clients and opposing counsel of his suspension within 30 days, and subpart (c) required Engel to file proof of compliance with rule 9.20 within 40 days.

At the time of the Supreme Court's order, Engel was representing two criminal defendants in the matters of *People v. Felix Arango* and *People v. Jose Solozarno*. In both cases, he failed to notify opposing counsel of his suspension. The assistant district attorneys in both cases testified that neither they nor their office received any communication from Engel about his suspension.

On April 17, 2017, Engel filed a rule 9.20 compliance affidavit, stating under penalty of perjury that he notified all clients and opposing counsel of his suspension pursuant to rule 9.20. The hearing judge found that Engel failed to notify opposing counsel in both criminal matters, as well as his client, Ramirez, that he was suspended from March 17, 2017 to March 17, 2018.

Count Four: Failure to Comply with Rule 9.20

In count four of the NDC, OCTC alleged that Engel failed to comply with California Rules of Court, rule 9.20(a),[6] by April 17, 2017, because he failed to notify his client Ramirez, and opposing counsel in two of his criminal matters, of his suspension from the practice of law. The hearing judge found Engel culpable of count four, and we agree.

We find that Engel represented Ramirez and was the attorney in both criminal matters. A willful violation of rule 9.20 is deemed to be a serious ethical offense, for which, taken on its

[6] Despite the NDC's typographical error in alleging a rule 9.20(c) violation, instead of rule 9.20(a), given the text of the allegations, Engel was put on sufficient notice of the charge in count four.

own, disbarment is generally considered the appropriate discipline and most consistently imposed sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131–132.)

Engel contends that he notified both assistant district attorneys via certified mail and received most, but not all, of the return receipts. Engel was unable to produce any certified mail receipts at trial and stated in his brief that he has no duty to keep such records.

Although rule 9.20(b) does not explicitly state that an attorney has a duty to maintain records of return receipts, we note that the rule specifically designates registered or certified mail as the required means of notification in order to avoid evidentiary issues that may otherwise arise. Further, an attorney has a duty to keep adequate non-financial client records. (See *In the Matter of Valinotti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522). The assistant district attorneys were opposing counsel in matters concerning Engel's clients, and notices to them by registered or certified mail were required by rule 9.20(a).

Likewise, Engel's contention that imperfect notification should suffice for purposes of rule 9.20 compliance is unsupported. To the contrary, strict compliance with rule 9.20 is required because the rule "performs the critical prophylactic function of ensuring that all concerned parties—including clients, co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending—learn about an attorney's discipline." (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187, citing *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467–468, referring to former rule 955, the previous version of rule 9.20.)

Count Five: Misrepresentation (Section 6106)

OCTC also charged Engel with misrepresenting compliance with rule 9.20, in violation of section 6106. OCTC claims Engel committed an act of moral turpitude because he knew, or was grossly negligent in not knowing, that he was dishonest in stating in his rule 9.20 compliance affidavit that he had notified all clients and opposing counsel of his suspension.

Engel maintains that no evidence supports OCTC's contention that he misrepresented his rule 9.20 compliance. Here, he cites as support California Evidence Code section 641—"a letter correctly addressed and properly mailed is presumed to have been received"—and argues that, imperfect notification should be compelling mitigation against disbarment. Engel also asserts that OCTC has a personal vendetta against him and is "shameless in its misconduct."

We reject Engel's arguments because he did not comply with rule 9.20 as noted above, and the record supports the hearing judge's finding that Engel misrepresented his compliance. We find that Engel's misrepresentation as to his compliance with the requirement of notifying clients and opposing counsel of his suspension constitutes gross negligence amounting to moral turpitude. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [acts of moral turpitude include false or misleading statements to court]; *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [attorney who files inaccurate MCLE compliance declaration by affirmation without verifying contents is culpable of moral turpitude by gross negligence].)

III. ENGEL'S PROCEDURAL AND CONSTITUTIONAL ARGUMENTS LACK MERIT

Engel argues that OCTC violated rule 5.103 of the Rules of Procedure of the State Bar because it failed to prove its case and transferred the burden of proof onto him. In both his initial and reply briefs, he claims that the hearing judge attempted to "force the square peg into the round hole" by rehabilitating the OCTC attorney instead of being objective. Engel maintains that the OCTC attorney who prosecuted this matter lacked trial skills and the judge attempted to "clean up her dirty work to give the appearance of due process." He asserts that his 14th Amendment right to due process was infringed upon as a result. In his brief, Engel advances no legal theories under which OCTC purportedly engaged in misconduct. We nonetheless presume that his grievances

against the OCTC attorney are based on Penal Code section 182 and the RICO Act[7] because Engel included these provisions in the title of this section of his opening brief.

Despite Engel's repeated claims that his right to due process was violated, the facts demonstrate he received substantial due process. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' [Citations.]" (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) An attorney's only due process entitlement in these proceedings is to a "fair hearing." (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) Engel has been afforded adequate notice and a fair hearing; therefore, we reject his procedural and due process allegations as conclusory and devoid of factual basis.

IV. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5[8] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Engel to meet the same burden to prove mitigation.

A. Aggravation

1. Two prior records of discipline (Std. 1.5(a))

The hearing judge found Engel's two prior records of discipline to be aggravating factors made particularly significant due to the similarity to his present misconduct and his ongoing failure to conform his conduct to ethical obligations.

We agree and assign substantial weight to this factor. Similarities between prior and current misconduct render previous discipline more serious as they indicate the prior discipline

[7] California Penal Code section 182 provides that for an individual to be convicted of a conspiracy, a prosecutor must show that the individual planned to commit a crime with at least one other person and committed an "overt act" to further that crime. The Racketeer Influenced and Corrupt Organizations (RICO) Act provides further penalties in the prosecution of organized criminal acts.

[8] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

did not rehabilitate the attorney. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444.)

2. Multiple Acts of Misconduct (Std. 1.5(b))

The hearing judge found that Engel's multiple acts of misconduct are an aggravating factor. We agree and assign moderate weight for his culpability for five counts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

3. Lack of Insight and Remorse (Std. 1.5(g))

The hearing judge found that Engel "continues to demonstrate indifference toward rectification of or atonement for the consequences of his misconduct," remains defiant, and lacks insight regarding his behavior.

Engel continues to deflect blame and raises the same unsuccessful arguments as he did at trial—namely, that his clients were Lanphier's or that he was merely an appearance attorney. Further, his briefs are replete with insults towards his clients, the OCTC attorney who prosecuted this matter, and the hearing judge. As such, Engel's behavior demonstrates his inability to recognize or acknowledge the true nature of his conduct or its impropriety. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100–1101 [blanket refusal to acknowledge wrongful conduct constitutes indifference]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while law does not require attorney to be falsely penitent, it "does require that [he] accept responsibility for his acts and come to grips with his culpability [Citation.];" *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 [attorney's lack of insight into wrongfulness of actions may be aggravating factor].) Therefore, we agree with the hearing judge, and assign substantial weight to this factor in aggravation.

4. Lack of Candor (Std. 1.5(h))

The hearing judge assigned substantial aggravation to Engel's lack of candor with the court during his testimony and during the course of the State Bar's investigation. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge's credibility findings].). We agree and also assign substantial weight to this factor.

5. Vulnerable Clients/Victims (Std. 1.5(n))

The hearing judge found that Engel knew the Johnsons were highly vulnerable because they faced the possibility of foreclosure of both their homes. We agree with the judge and note that Ramirez was also a vulnerable client. She was an undocumented immigrant and the victim of a crime who sought legal help from Engel. We assign moderate weight to this factor.

B. Mitigation

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

The hearing judge afforded Engel no mitigation credit for the four witnesses who attested to Engel's good character because their testimony did not meet the requirement of standard 1.6(f) for "a wide range of references in the legal and general communities." Among Engel's witnesses were Lanphier, who was a participant in Engel's misconduct and lacked candor, his son David Engel, then a newly admitted attorney, and two former clients.

We assign nominal weight in mitigation to this character evidence.

2. Community Service

The hearing judge assigned modest weight to Engel's community service. Engel served in the military from 1974 to 1978 and 1982 to 1988, was a correctional officer from 1983 to 1989, and served as a pro tem judge from 1998 to 2008. The judge reduced this mitigation credit, however, because none of the community service occurred within the last nine years and at least one of his positions was paid employment.

We agree and accord Engel modest mitigation weight for community service. However, we find less community service than the hearing judge did. Engel's military service included about three years as a law enforcement specialist and four as a military police officer. His service as a correctional officer began in 1985 but the record does not indicate when it ended. Further, we fail to find clear and convincing evidence that the position was unpaid. Finally, the record shows that Engel served as a pro tem judge for only three years from 2004 to 2007.

V. DISCUSSION

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.) Our disciplinary analysis begins with these standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Here, both standard 2.11, which addresses an act of moral turpitude or intentional or grossly negligent misrepresentation, and standard 2.10(a), which addresses UPL while on a disciplinary suspension, provide that disbarment or actual suspension is the presumed sanction.

Given Engel's disciplinary history, we also look to standard 1.8(b), which states that disbarment is appropriate where an attorney has two or more prior records of discipline if: (1) an actual suspension was ordered in any prior disciplinary matter; (2) the prior and current

disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Engel's case meets the first and third requirements: he previously received six months' and one-year actual suspensions; and, like the hearing judge, we find that Engel repeatedly failed to comply with his ethical obligations despite two attempts by the disciplinary system to motivate him. As such, his prior and current misconduct establish his unwillingness or inability to conform to ethical norms. Moreover, the two specified exceptions to standard 1.8(b) do not apply here. Engel's present misconduct did not occur at the same time as his prior misconduct,[9] and his limited mitigation for community service is neither compelling nor does it predominate over the significant aggravation for two prior discipline records, multiple acts of wrongdoing including misconduct towards vulnerable victims, his lack of candor throughout the disciplinary proceeding, and his indifference.

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].)

Engel has not proffered a valid reason for us to depart from applying standard 1.8(b), and we cannot articulate any. The record shows multiple instances of similar wrongdoing dating back to 2011, including recurring incompetence in representing debtors, blatant violations of

[9] We note that some of his current misconduct occurred before the determination of misconduct in his prior disciplines. However, his current misconduct continued well after he was aware of prior wrongdoing. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 [rationale for considering aggravating impact of prior discipline includes recidivist attorney's inability to conform conduct to ethical norms, so appropriate to consider whether current misconduct is contemporaneous with misconduct in prior case].)

applicable orders, and disrespect for the judicial process. In fact, nearly one-third of his years in practice have been surrounded by either misconduct or discipline.

The State Bar Court has been required to intervene three times to ensure that Engel adheres to the professional standards required of those who are licensed to practice law in California. We conclude that further probation and suspension would be inadequate to prevent him from committing future misconduct that would endanger the public and the profession. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112–113 [disbarment imposed where attorney repeatedly failed to comply with probation conditions since further probation unlikely to prevent future misconduct].) The standards and decisional law support our conclusion that the public and the profession are best protected if Engel is disbarred.[10]

VI. RECOMMENDATION

We therefore recommend that Julius Michael Engel be disbarred and that his name be stricken from the roll of attorneys licensed to practice in this state.

We also recommend that he comply with the provisions of rule 9.20 of the California Rules of Court 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's order in this matter.

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

[10] E.g., *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427 [disbarment where attorney with two prior disciplines committed act of moral turpitude and significant aggravation outweighed limited mitigation]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 [disbarment where attorney with two prior disciplines was unable to conform conduct to ethical norms with multiple aggravating factors and no mitigation].

VII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered Engel to be involuntarily enrolled as an inactive member of the State Bar, as required by section 6007, subdivision (c)(4). The hearing judge's order became effective on June 11, 2018, and Engel has been on involuntary inactive enrollment since that time. He will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

HONN, J.

WE CONCUR:

McGILL, J.

STOVITZ, 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.