PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed October 2, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 16-O-10248
	)	
RONALD EDWARD FAULK,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 68325.	)	
	)	

This is Ronald Edward Faulk's third disciplinary proceeding. In his second matter, Faulk stipulated to 26 counts of misconduct in six client matters, including misappropriation of $198,452.80 in client funds. After successfully completing the State Bar's Alternative Discipline Program (ADP), Faulk received a 30-month actual suspension with five years' probation and conditions that required, among other things, the timely filing of quarterly reports and certificates from a certified public accountant (CPA) indicating that Faulk was properly maintaining client funds (client funds certificates or certificates). In this original disciplinary proceeding, a hearing judge found that Faulk violated his probation conditions by repeatedly failing to timely file quarterly reports and client funds certificates, and she recommended his disbarment.

Faulk appeals. He concedes he is culpable, but requests a period of actual suspension on the grounds that he made good faith efforts to comply with the reporting requirements on a timely basis and that any failures were the fault of others. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks that we affirm the disbarment recommendation.

Upon our independent review (Cal. Rules of Court, rule 9.12), we find Faulk culpable of violating the conditions of his probation, and agree with the hearing judge's disciplinary

recommendation. We emphasize that this is his third discipline. Further, Faulk's failure to comply with nondelegable probation conditions, which are designed to effectuate his rehabilitation and protect the public from similar future misconduct, shows that he is either unwilling or unable to conform his conduct to the high ethical standards our profession requires. Under these circumstances, our standards call for disbarment. Finding no compelling reasons to depart from them, we recommend disbarment.

I. RELEVANT PROCEDURAL HISTORY

At the outset, we note that Faulk stipulated to one count of culpability for failing to timely file numerous quarterly reports and client funds certificates, in violation of Business and Professions Code section 6068, subdivision (k).[1] While culpability for this single charge is not contested, the precise number of late-filed quarterly reports and client funds certificates differs between what was charged, what Faulk and OCTC stipulated to, what the hearing judge found, and what we ultimately find.

In the Notice of Disciplinary Charges (NDC) filed on June 21, 2016, OCTC alleged that Faulk late-filed two quarterly reports and 11 client funds certificates (13 total documents) and that he failed to file three client funds certificates. In his answer to the NDC, Faulk admitted he filed the 13 documents late but denied that he failed to file three certificates. Later, the parties realized that Faulk actually late-filed the three missing certificates and three other certificates not mentioned in the NDC. Notably, while OCTC never conformed the NDC to proof, the parties filed a joint Stipulation as to Facts and Admission of Documents on September 20, 2016, wherein they stipulated that Faulk late-filed two quarterly reports and 17 client funds certificates (19 total documents) over a four-year span from April 2012 through April 2016.

[1] Section 6068, subdivision (k), requires attorneys "[t]o comply with all conditions attached to any disciplinary probation." All further references to sections are to the Business and Profession Code.

Nevertheless, in her November 3, 2016, decision, following a trial on the merits, the hearing judge found Faulk late-filed only one of the two quarterly reports and 11 client funds certificates (12 total documents). The judge addressed the remaining six client funds certificates as uncharged misconduct in aggravation.

We independently review the record, as analyzed below, and find that Faulk late-filed one quarterly report and 14 client funds certificates (15 total documents). As uncharged misconduct, we find that Faulk was late in filing three additional certificates.

II. FACTS AND CULPABILITY

We base the following on the parties' stipulation, trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)[2]

A. Underlying Discipline

Faulk was admitted to the practice of law in California on April 26, 1976. In his second disciplinary proceeding (*Faulk II*), Faulk stipulated to committing 26 acts of misconduct in six client matters over the course of several years.[3] The misconduct included four counts of failing to maintain client funds in trust, four counts of misappropriating client funds totaling $198,452.80, three counts of failing to respond to client inquiries, one count of improperly withdrawing from employment, two counts of failing to inform clients of significant developments, three counts of failing to perform legal services with competence, two counts of engaging in moral turpitude by making misrepresentations to clients, two counts of failing to obey court orders, one count of improperly representing clients with adverse interests, one count

[2] All further references to rules are to the Rules of Procedure unless otherwise noted.

[3] Supreme Court Case No. S194066; State Bar Court Case Nos. 04-O-14456 (04-O-14909; 04-O-15387); 05-O-01313; 05-O-03005; 06-O-11029 (Cons.)

of failing to release a client file upon termination of employment, and three counts of failing to cooperate in a disciplinary investigation.

Faulk did not establish any mitigating circumstances. In aggravation, he had a prior record of discipline, and his misconduct involved trust account violations and dishonesty. Also, he caused significant harm to his clients, demonstrated indifference, failed to cooperate with the victims of his misconduct and the State Bar, and committed multiple acts of wrongdoing.

As part of the disciplinary proceedings, Faulk was allowed to participate in the ADP.[4] He was placed on involuntary inactive status effective August 15, 2008, and, after successful completion of the program, he was returned to active status on April 25, 2011. On August 25, 2011, the Supreme Court ordered that Faulk be suspended for five years, stayed, and placed on probation for five years, including a 30-month actual suspension, with credit given for his inactive enrollment from August 15, 2008, to April 24, 2011. The Supreme Court also mandated that Faulk comply with certain probation conditions, including, in relevant part, that:

> Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. . . . [¶] . . . [¶] If Respondent possesses client funds [during a reporting period], Respondent must file with each required [quarterly] report a certificate from a certified public accountant . . . certifying that: Respondent has maintained a [California] bank account . . . ; that such account is designated as a 'Trust Account' or 'Clients' Funds Account'; and that Respondent has kept and maintained [a written ledger, a written journal, all bank statements and cancelled checks, and monthly reconciliations].

On September 8, 2011, the Office of Probation of the State Bar (Probation) sent Faulk a letter at his membership address of record, reminding him of his probation conditions and deadlines, and informing him that any "**[r]equest for extension of time or modification of the terms and conditions** of the discipline order **must be filed with** the State Bar Court Hearing

[4] The ADP provides respondents with the opportunity to obtain treatment and establish rehabilitation from substance abuse or mental health problems and to return to the practice of law in a manner that ensures public protection. (§ 6233; rules 5.380–5.389.)

Department or Review Department." The letter also emphasized, "**You are responsible for timely complying with each and every term and condition whether or not it is reflected in this letter and/or the Quarterly Report form.**" Probation enclosed several supplemental resources with the letter, including quarterly report instructions, which stated:

> **[Y]ou are required to timely complete all of your ordered conditions**. . . . [¶] . . . [¶]Your original signed and dated report[s] must be physically **received in the Office of Probation by the tenth of January, April, July, and October**. **If the tenth falls on a weekend or holiday, you must send your report early; The State Bar is not open on weekends or holidays and does not receive mail or deliveries on those days.** For all conditions, being **even one day late** means that you are **not** in compliance. [¶] The report[s] must contain an **original signature** in order to be filed with the Office of Probation.

B. Quarterly Reports

Faulk stipulated that he failed to timely submit two quarterly reports (his July 2012 and April 2015 reports); however, he disputed at trial that the July 2012 report was late. He testified that he timely submitted an original report on July 10, but Probation sent him a letter the next day rejecting the report because it determined it was a copy, not the required original. Faulk testified that he disagreed with Probation's conclusion, but cured the alleged defect on July 18 by mailing in an original report, which was received and filed by Probation on July 20 (10 days late).

Faulk testified that he completed his April 2015 report on its due date of April 10, and left a note instructing his office assistant, Nicole Umholtz, to deliver it for him as he had a court appearance that day. Umholtz testified that she forgot to deliver the report: "[I]t just slipped my mind. He left it on his desk for me to drive down, and it was Monday before I remembered." On Monday morning, April 13, Faulk hand-delivered the original report to Probation (three days late).

C. Client Funds Certificates

Faulk stipulated that he failed to timely submit 17 client funds certificates (three due in 2012; every certificate due in 2013, 2014, and 2015 [for a total of 12]; and two due in 2016). At trial, he testified that he hired a CPA (first accountant) in early 2012 to prepare the majority of these certificates and to submit them directly to Probation on his behalf, and that 11 of the late filings were attributable to the first accountant. The file-stamped documents produced at trial show that the first accountant did file 11 client funds certificates late between April 2012 and October 2014, ranging in tardiness from seven to 116 days late.

The record demonstrates that the first accountant acknowledged responsibility or partial responsibility for two of these belatedly filed certificates. On November 9, 2012, the first accountant filed Faulk's October 2012 client funds certificate late. In the attached cover letter, he apologized for the tardiness and attributed it to his own personal problems. On August 19, 2013, the first accountant filed Faulk's July 2013 client funds certificate late again. He apologized for the tardiness and stated this time it was due to a miscommunication between Faulk and him.

Both Faulk and Umholtz testified that they were aware of these problems, and that they themselves had issues corresponding with the first accountant's office. Umholtz, whom Faulk made primarily responsible for communicating with the first accountant and his staff, testified that she often had to resend materials to them, which caused delays, and she was "frustrated by [the] lack of consistency." Faulk testified, "There were one or two times I honestly can tell you, based on conversations and the information that I got from Nicole, since I didn't talk to them if they were not on time, that it appeared that they had been late."

The record shows, however, that Faulk was also responsible for at least one of the late filings, as Faulk was delinquent in providing the first accountant with the necessary bank

records. On April 10, 2012—the day the certificate was due—Faulk sent the first accountant his client trust account (CTA) statements. In his cover letter, Faulk stated that he had forgotten to send the materials sooner and was "[s]orry for the late request." When questioned at trial, Faulk attributed his tardiness to the fact that his bank did not have an electronic banking system, and, consequently, his monthly CTA statements did not arrive by mail until the first week of the month, "close to the due date."[5]

Notwithstanding these problems, Faulk continued to use the first accountant's services with little or no supervision over the timeliness of the filings, despite having received two phone calls from Probation (January 29, 2014, and October 16, 2014) informing him that it had not received several client funds certificates. Ultimately, Faulk contacted the first accountant, who then submitted the outstanding certificates.

Faulk terminated the first accountant in December 2014, but did not hire a new CPA (second accountant) for another 15 months.[6] Faulk also did not file any motions with the State Bar Court to request a modification or extension of time to comply, despite having been given

[5] In a second example, Faulk provided the first accountant with his CTA statements on October 22, 2012 (12 days after the certificate was due). Faulk's cover letter similarly stated that he had forgotten to send the records earlier, and again he apologized for the "late request." Nevertheless, at trial, the parties stipulated that Faulk had timely sent his CTA statements to the first accountant for preparation of the October 10, 2012, certificate, but they were allegedly not received, and Faulk had to resend them on October 22, 2012. The hearing judge accepted the facts as stipulated by the parties, as do we. (See *In the Matter of Rodriguez* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 884, 886 [unless parties' stipulation has been set aside, "it remains binding on the parties, and the facts recited in the stipulation are deemed established for purposes of this proceeding"]; rule 5.54(C) [court must approve motion or stipulation for relief from stipulations of facts].)

[6] During this time, Faulk continued to file quarterly reports, but since he had no CPA, he did not properly report and account for his client funds as required. Specifically, in two of his quarterly reports (January and July 2015), he indicated that he possessed client funds and that he had attached CPA-prepared client funds certificates verifying his compliance with his probation conditions when, in fact, he did not attach or file any such certificates. In three other quarterly reports (April 2015, October 2015, and April 2016), he indicated he had no client funds when, in fact, he did, as evidenced by client funds certificates that were later filed by Faulk's second accountant. We note that OCTC did not charge Faulk with misrepresentations, and we do not address culpability for such misconduct.

this information by Probation in September 2011. When asked at trial why he did not seek relief with the State Bar Court, he testified, "You know, I didn't know I could do that. If I had known I was capable of doing that, believe me, I would have done that."

On April 15, 2015, Probation mailed Faulk a letter informing him of his noncompliance with his probation conditions. Specifically, it noted that his April 2015 quarterly report was filed late and his January 2015 client funds certificate was still outstanding.

On April 24, 2015, Faulk left a voice message with Probation. He stated that he had terminated the first accountant and that he was unable, despite contacting several CPAs, to find one willing to do this type of work. Faulk asked if Probation could provide him with an accountant referral. Three days later, Probation sent him a letter advising him that it did not maintain a list of CPAs, could not recommend one, and could not extend due dates for probation compliance. It also informed him that State Bar Court approval would have been necessary to extend the January 2015 certificate deadline.

On September 3, 2015, Probation sent Faulk another letter regarding his noncompliance. In this letter, it identified numerous late-filed and still outstanding client funds certificates.

In March 2016, Faulk hired a second accountant. On May 2, 2016, the second accountant filed six client funds certificates, which had been due January 10, 2015, April 10, 2015, July 10, 2015, October 10, 2015, January 10, 2016, and April 10, 2016; therefore, these certificates were 478, 388, 297, 205, 113, and 22 days late, respectively. Notably, the April 10, 2016, certificate, which was due after Faulk hired the second accountant, was also late.

D. Culpability

As mentioned previously, the parties stipulated that Faulk failed to timely file 19 required probation documents. Notwithstanding the stipulation, however, the hearing judge found by

clear and convincing evidence[7] that Faulk willfully violated section 6068, subdivision (k), by failing to timely file 12 required probation documents: his April 2015 quarterly report and 11 client funds certificates (those due in April, July, and October 2012; January, April, July, and October 2013; and January, April, July, and October 2014). We affirm the hearing judge's findings, but also find that Faulk belatedly filed three additional client funds certificates (those due in January 2015, July 2015, and January 2016) for a total of 15 documents filed late.[8] We also agree with the judge that OCTC did not establish by clear and convincing evidence that Faulk's July 2012 quarterly report was late. Faulk timely submitted the report, albeit a copy, but promptly cured the procedural defect with an original report when notified by Probation.

Faulk does not contest culpability and acknowledges his misconduct warrants discipline. However, he argues that he made a "sincere and good faith effort" to comply with his probation conditions and that "the ultimate sanction of disbarment is a draconian level of discipline given the facts and circumstances surrounding his misconduct." To the extent Faulk seeks a reduction in the level of his discipline based on a good faith argument, we address this in mitigation. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 148 [any good faith effort by attorney to comply with probation is relevant to mitigation rather than culpability];

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[7] 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.)

[8] As discussed above, OCTC charged Faulk in the NDC with failing to file three client funds certificates (his January 2015, July 2015, and January 2016 certificates). It was later discovered that Faulk filed these certificates late, along with three others (his April 2015, October 2015, and April 2016 certificates). The hearing judge noted that OCTC failed to conform the NDC to proof, and thus, she did not assess the additional six certificates in culpability. We agree as to the April 2015, October 2015, and April 2016 certificates, which were not charged in the NDC. However, we disagree with respect to the late-filed, and thus mischarged, January 2015, July 2015, and January 2016 certificates, and find that the NDC provided Faulk with sufficient notice and opportunity to prepare a defense to the charge that he was noncompliant with respect to these certificates. (See *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929 [slight variance in evidence related to noticed charge does not deprive attorney of adequate notice, absent showing his defense was actually compromised].)

In the Matter of Carr (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 253 [attorney's subjective intentions regarding probation compliance are relevant only to aggravation and mitigation].)

III. AGGRAVATION AND MITIGATION

Standard 1.5[9] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Faulk to meet the same burden to prove mitigation.

A. Aggravation

1. Two Prior Records of Discipline (Std. 1.5(a))

We affirm the hearing judge's unchallenged finding that Faulk's two prior records of discipline warrant substantial weight in aggravation. In his first disciplinary matter (*Faulk I*),[10] he was publicly reproved in August 2002 for failing to promptly release a client's file upon request after the client terminated his services in 1999. Despite repeated requests from the client and her new attorney between January and October 1999, Faulk refused to release the file until he was paid copying costs. The parties stipulated to Faulk's lack of prior discipline and cooperation in mitigation, no aggravating circumstances, and the disciplinary disposition. The conditions attached to the reproval remained in effect from approximately August 28, 2002, to August 28, 2003, and required Faulk to comply with the State Bar Act and the California Rules of Professional Conduct, submit quarterly reports, and attend ethics school.

The misconduct in *Faulk II*, as discussed previously, was even more serious and varied than in *Faulk I*. It took place over many years, and involved numerous clients and several acts of moral turpitude, including misrepresentations to clients and misappropriation of funds totaling $198,452.80. Faulk had no mitigation, other than his ADP participation, and overwhelming

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

[10] State Bar Court Case No. 00-O-12963.

aggravation. The fact that his present probation violation matter, which includes failure to timely file numerous client funds certificates, is closely related to Faulk's past disciplinary misconduct that also involved clients' funds renders the prior discipline deserving of more weight in aggravation. (*In the Matter of Broderick*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 151.)

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

Citing *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 157, Faulk argues that "only the most serious instances of repeated misconduct over a prolonged period of time" qualify as multiple acts in aggravation, and his late filings do not rise to this level. However, Faulk misreads this case. In *In the Matter of Crane and DePew*, the court was discussing the requirements for establishing a "pattern of misconduct." (*Ibid.*) With regard to multiple acts, the court found that respondent's numerous violations "clearly" constituted grounds for aggravation. (*Ibid.*) Similarly, Faulk's failure to timely submit 15 separate probation documents significantly aggravates his misconduct. Such discrete and repeated breaches constitute multiple acts of wrongdoing and render his misconduct more severe than might otherwise be encompassed within a single charge under section 6068, subdivision (k). (See *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702 [failure to file 5th and 6th probation reports and proof of continuing education considered multiple acts of wrongdoing].)

3. Uncharged Misconduct (Std. 1.5(h))

The hearing judge analyzed uncharged misconduct in aggravation related to six additional client funds certificates that Faulk stipulated to belatedly filing: the three certificates that were mischarged in the NDC as unfiled documents (Faulk's January 2015, July 2015, and January 2016 certificates) and three others that were not charged at all in the NDC (Faulk's April

2015, October 2015, and April 2016 certificates). Since we addressed the mischarged client funds certificates in culpability, we assess only the latter three in aggravation.

The hearing judge found that the evidence regarding the three late-filed, but uncharged, client funds certificates was based on Faulk's own voluntary stipulation, and elicited for the relevant purpose of establishing the extent of his probation violations. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 36 [uncharged misconduct aggravating when elicited for relevant purpose of inquiring into cause of charged misconduct and where finding based on attorney's own testimony].) However, the hearing judge also found that OCTC was aware of the misconduct and could have amended the NDC to conform to proof; thus, the judge only assigned nominal weight in aggravation. Faulk does not challenge these findings, which we adopt and affirm.

4. Indifference Toward Rectification (Std. 1.5(k))

The record shows that Faulk has not fully acknowledged and accepted responsibility for his wrongdoing, as he continues to display an indifference toward rectification. We are particularly struck by his inconsistent positions, where, on the one hand, he accepts culpability, but, on the other hand, he continues to deflect responsibility by blaming others—the first accountant, his office assistant, and the bank. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 444 [blaming others demonstrates indifference and aggravates misconduct].) Further, as exhibited in a number of ways, Faulk fails to understand how his own acts contributed to the late filings: he asked his office assistant to deliver his quarterly report to Probation the day it was due; he was not punctual in providing necessary financial materials to the first accountant; he showed no evidence of working with his bank to get his CTA statements in greater advance of the required filing dates; he continued to use the services of the first accountant when he knew the accountant was consistently late; and he testified that he "didn't know" he could seek an extension of time to comply with his probation requirements with the

State Bar Court, despite written notice from Probation that he could. Moreover, Faulk testified that for 15 months he could not find a CPA to complete the required client funds certificates, yet, on two occasions during this period, he checked the box on his quarterly reports indicating he had client funds and that a CPA-prepared certificate was attached, and, on three other occasions, he checked the box indicating he had no client funds, all of which were not true.

Faulk, "like any attorney accused of misconduct, ha[s] the right to defend himself vigorously." (*In re Morse* (1995) 11 Cal.4th 184, 209.) However, his conduct "reflects a seeming unwillingness even to consider the appropriateness" of his actions. (*Ibid.*) His demonstrated lack of insight into the seriousness of his actions is particularly troubling because it suggests that the misconduct may recur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781–782.) Accordingly, we find that the record amply establishes Faulk's indifference, and we assign significant weight in aggravation. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 526 [significant aggravation assigned when indifference causes concern that attorney will repeat misconduct and be ongoing danger to public and profession].)

B. Mitigation

1. Good Faith Belief (Std. 1.6(b))

Faulk seeks mitigation credit based on his good faith belief that he "did everything in his power to comply with [his] probation conditions," but that others caused or contributed to the late filings. We reject Faulk's argument for three reasons.

First, Faulk has a nondelegable responsibility to ensure compliance with probation because he, and he alone, was ordered and obligated to timely fulfill his probation conditions.

Second, "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable." (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653; see std. 1.6(b) [mitigation afforded for

good faith belief that is honestly held and objectively reasonable].) We find that Faulk's good faith argument is not objectively reasonable. This is not the case of a one-time, late-filed document based on the unforeseen act of a third party; instead, this case involves *multiple and repeated* delinquencies by Faulk over the course of four years.

Third, Faulk's good faith argument is belied by his indifference, as discussed above, and, in particular, his failure to seek an extension of time with the State Bar Court when he knew he had compliance difficulties. Notably, even after Faulk hired the second accountant, he still belatedly filed his April 2016 client funds certificate.

Under these circumstances, we do not find that Faulk "did everything in his power" to comply with the conditions of his probation; thus, we decline to afford him mitigation for his good faith belief.

2. Extraordinary Good Character Evidence (Std. 1.6(f))

Extraordinary good character evidence is considered mitigating when attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct. (Std. 1.6(f).) In mitigation, Faulk submitted four declarations from former clients who attested to his good character. In addition, his current office assistant and former client, Umholtz, provided in-court testimony about Faulk's character, trustworthiness, and professionalism; in fact, she described him as an "intelligent, honest human being." All of the witnesses demonstrated an understanding of Faulk's past and present misconduct. The hearing judge, however, assigned limited weight to these five witnesses, finding they did not constitute a wide range of references from the general and legal communities. On review, Faulk seeks increased mitigation arguing his witnesses fully satisfy standard 1.6(f). We disagree and affirm the findings of the hearing judge. While Faulk presented several references from the general community, his character evidence did not include anyone from the legal community. (See *In*

the Matter of Kreitenberg (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [character evidence entitled to limited weight where it is not from wide range of references].)

3. Pro Bono and Community Activities

At trial, Faulk provided uncontroverted testimony about his extensive volunteer work. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community activities are mitigating factor].) As an attorney, he served for 18 years as a pro tem judge and mediator/ arbitrator officer with the superior courts. He began his training and official involvement in 1991, and has since specialized in unlawful detainers and civil and small claims cases. He was also trained as a domestic violence counselor on behalf of the Los Angeles County Bar Association and has done pro bono work for the past two years helping others sign up for the program. Additionally, he served for five years as a legislative assistant for the California Trial Lawyers Association, helping to write legislation on behalf of the organization.

The hearing judge assigned limited weight to these activities because they were based on Faulk's testimony alone. On review, Faulk seeks increased weight in mitigation and asks us to consider additional recent activities attested to by some of his character witnesses, which were not included in the hearing judge's decision. Our review of the evidence indicates that three of Faulk's character witnesses stated in their declarations that he provided pro bono legal services to them and their families. One witness stated that, in January 2016, she contacted Faulk for assistance with her deaf daughter's medical case after the Department of Health Care Services denied a recommended surgery to improve her daughter's hearing. Faulk volunteered to represent her and her daughter, free of charge, in all further proceedings. The witness indicated that Faulk did an "incredible job."

Reviewing all of the evidence, we assign considerable weight in mitigation given Faulk's zeal and dedication to pro bono activities, including his extensive years of service with the

superior courts and state and local bar associations, and the free legal services and support he has given to his clients. (*Calvert v. State Bar*, *supra*, 54 Cal. 3d at p. 785 [substantial record of pro bono activities and community services entitled to "considerable weight" in mitigation].)

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

On review, Faulk asks us to affirm the hearing judge's finding that he is entitled to significant mitigation for his cooperation with the State Bar during this proceeding. We disagree, and assign moderate weight. While Faulk stipulated to facts and culpability, he contested some of these issues at trial. Moreover, his violation of section 6068, subdivision (k), was an easily provable offense. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 938 [significant mitigation not afforded where admissions of culpability were easily provable rule violations].)

IV. DISBARMENT IS THE APPROPRIATE DISCIPLINE[11]

The primary issue on review in this case is the level of discipline. The hearing judge recommended disbarment, which OCTC asks that we affirm. Faulk, however, has maintained throughout this proceeding that his misconduct warrants, at most, a 60-day actual suspension. For the reasons set forth below, we recommend disbarment as the appropriate discipline.

Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92) and should be followed whenever possible. (Std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Standard 2.14 applies to violations of probation conditions and calls for a period of actual suspension as the presumed sanction. However, standard 1.8(b) is most apt here, as it specifically instructs that disbarment is appropriate where an attorney has two or more prior

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

records of discipline if (1) an actual suspension was ordered in any of the prior disciplinary matters; (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 his or her ethical responsibilities.[12] Faulk's case meets at least two of the criteria under standard 1.8(b).[13]

First, under standard 1.8(b)(1), Faulk was actually suspended in *Faulk II*. Second, given his combined prior and current misconduct, particularly the magnitude and gravity of *Faulk II* (26 counts of culpability in six client matters, including misappropriation of $198,452.80), Faulk should have taken the utmost care in meeting his professional obligations and ensured strict compliance with his disciplinary probation order. Yet, he did not heed the import of the order, and he violated his probation conditions, which demonstrates under standard 1.8(b)(3) that he is either unwilling or unable to conform to necessary ethical standards.

We also note and express concern over the sheer number of Faulk's delinquent filings over a four-year span. Despite his arguments to the contrary, Faulk's probation reporting requirements were *nondelegable* responsibilities designed to address his underlying misconduct, prevent recidivist acts, and protect the public. (See *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312 [a condition of probation, such as restitution, "serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct"].)

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[12] The two stated exceptions to disbarment under standard 1.8(b) do not apply here because (1) Faulk did not prove compelling mitigation that clearly predominates, and (2) his present misconduct did not overlap in time with his prior misconduct.

[13] We also note that under our progressive discipline standard, there is little, if any, room for discipline less than disbarment due to Faulk's prior 30-month actual suspension. (See, e.g., std. 1.8(a) [if member has single prior record of discipline, sanction must be greater than prior, unless prior was remote and not serious].)

Discipline imposed for the willful violation of probation conditions often calls for substantial, progressive discipline as a reflection of the seriousness with which compliance with probationary duties is held. (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 686.) Moreover, where, as here, a close nexus exists between the previous misconduct (CTA violations and misappropriation, among other misconduct) and the present probation offenses (failure to submit CTA quarterly reports and client funds certificates necessary to ensure ethical and financial accountability), a substantially greater degree of discipline is needed than would otherwise be necessary. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 528.)

This is Faulk's third disciplinary matter since 2002, and *Faulk II* involved very serious misconduct and 30 months of actual suspension. While we acknowledge his good character evidence, cooperation, and considerable showing of pro bono service, these factors do not clearly predominate over his current misconduct. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under former std. 1.7(b) (now std. 1.8(b)) imposed where no compelling mitigation found].) In addition, Faulk's current misconduct is significantly aggravated by his multiple acts of wrongdoing and his indifference toward rectification, which demonstrates a troubling lack of insight such that we are not convinced that continued efforts at rehabilitation will reform his behavior. Hence, we believe Faulk's present failure to comply with probation conditions demonstrates that another period of actual suspension and attendant probation conditions will not suffice to protect the public and the profession. Decisional law and the standards support our conclusion that Faulk's removal from the practice of law is appropriate and warranted,[14] and

[14] See *Barnum v. State Bar*, *supra*, 52 Cal.3d at p. 113 (disbarment where attorney was previously placed on probation followed by suspension and probation revocation, and where depression was not "most compelling" mitigation when weighed against risk of recurrence of misconduct); *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80

finding no reason here to depart from these authorities, we recommend disbarment. (See std. 1.1; *Blair v. State Bar*, *supra*, 49 Cal.3d at p. 776, fn. 5 [requiring clear reasons to depart from standards].)

V. RECOMMENDATION

We recommend that Ronald Edward Faulk be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Faulk 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.

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

VI. ORDER OF INACTIVE ENROLLMENT

The order that Ronald Edward Faulk be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective November 6, 2016, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

(disbarment under former std. 1.7(b) where attorney had two prior records of discipline and was unable to comply with probation conditions and conform conduct to ethical norms).