

Filed November 8, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

| | | |
|--|---|--------------------------------------|
| In the Matter of |) | Case Nos. 12-N-16025; 12-O-12219 |
| |) | (12-O-12410; 12-O-12507; 12-O-12759; |
| MANUEL ANGEL GONZALEZ, |) | 12-O-13128) (Consolidated) |
| |) | |
| A Member of the State Bar, No. 219130. |) | OPINION AND ORDER |
| _____ |) | |

This is Manuel Angel Gonzalez’s third disciplinary proceeding since 2011, and the second time he has taken advantage of clients in immigration and criminal cases. A hearing judge found that Gonzalez (1) failed to comply with rule 9.20 of the California Rules of Court, (2) failed to cooperate with State Bar investigations, (3) engaged in the unauthorized practice of law (UPL), (4) committed acts of moral turpitude, and (5) collected fees while failing to perform, account, or refund fees in five client matters. Gonzalez was disciplined for committing similar client misconduct in 2011.

The hearing judge recommended discipline including a two-year actual suspension, continuing until Gonzalez refunds \$14,400 to clients and proves his rehabilitation. The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, seeking Gonzalez’s disbarment since his two prior disciplines did not reform him. Gonzalez does not challenge the judge’s findings or discipline recommendation, except the actual suspension continuing until he pays restitution.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we agree with most of the hearing judge’s findings. We do not agree with her discipline recommendation because Gonzalez’s recidivist misconduct calls for disbarment under our disciplinary standards.

I. PROCEDURAL HISTORY

OCTC filed the Notice of Disciplinary Charges (NDC) on October 18, 2012, charging 25 counts of misconduct. On November 14, 2012, Gonzalez filed his response, stating that he suffered a “massive stroke” on July 21, 2012, that resulted in serious medical problems. He alleged he experienced several “mini-strokes” that negatively affected his cognitive functions for two years before the stroke, which was during the time of his present misconduct. Given these health issues, the case was first abated in 2013, and ultimately unabated for trial in April 2017.

On September 29, 2017, the parties filed an extensive Stipulation as to Facts; Admission of Documents; and Telephonic Witness Testimony (Stipulation). Gonzalez admitted culpability for failing to timely file a California Rules of Court, rule 9.20 declaration and for not cooperating in three State Bar investigations. A two-day trial took place on October 3 and November 7, 2017. The hearing judge filed her decision on December 18, 2017, finding Gonzalez culpable of 21 counts of misconduct. The judge recommended a two-year suspension continuing until Gonzalez pays restitution and proves his rehabilitation, fitness to practice, and present learning and ability in the general law.

On April 6, 2018, OCTC filed its opening brief on review, requesting that Gonzalez be disbarred. On May 8, Gonzalez filed a two-page responsive brief in which he did not challenge the hearing judge’s decision except to request that we reconsider continuing his suspension until he pays restitution; he stated he wants to “reimburse the parties now that [his] condition has been identified, treated, and [is] in full remission.” On May 18, OCTC filed its rebuttal brief.

On review, neither party contests the hearing judge’s findings of fact or conclusions of law. Though we disagree with the judge’s discipline recommendation, we adopt most of her findings as they are supported by the evidence. We summarize those findings below.

II. FACTS¹ AND CULPABILITY

A. THE RULE 9.20 MATTER (CASE NO. 12-N-16025) [COUNT ONE]

Gonzalez stipulated to violating rule 9.20 of the California Rules of Court (count one). Due to his suspension or involuntary inactive enrollment in two prior discipline cases, he was not entitled to practice law from May 27 to July 26, 2011 (*Gonzalez I*) and from February 6, 2012 (*Gonzalez II*).² The Supreme Court ordered in *Gonzalez II* that he comply with rule 9.20 of the California Rules of Court as follows: subdivision (a) no later than July 7, 2012 (notifications to clients and counsel) and subdivision (c) no later than July 17, 2012 (filing of affidavit showing compliance with subdivision (a)). Gonzalez failed to file his affidavit by the due date. Four days later, on July 21, 2012, he was incapacitated by the stroke. He filed a belated affidavit on November 15, 2012.

B. THE FIVE CLIENT MATTERS

1. The Rivera Matter (No. 12-O-12219) [Counts Two, Four, and Six]³

On February 6, 2011, Salvador Rivera employed Gonzalez to represent him in an immigration removal proceeding. Gonzalez agreed to perform all legal services, including investigation, analysis, document preparation, and appearances. Between February 6 and April 21, 2011, Gonzalez was paid \$1,200 in installment payments. On May 27, 2011, he was suspended from practicing law for 60 days in *Gonzalez I*, but did not notify Rivera.

On May 28 and June 22, 2011, while on suspension, Gonzalez negotiated two checks from Rivera for \$300 each without informing his client that he was suspended. Between

¹ The facts are based largely on the Stipulation, though we also rely on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

² Hereafter, we refer to Gonzalez's inability to practice law as a suspension.

³ The hearing judge dismissed with prejudice counts three, five, nine, and 12.

February and December of 2011, Rivera repeatedly asked about the case status, but Gonzalez did not respond. On July 27, 2011, Gonzalez's suspension ended and his status was changed to active. From August to November 2011, he continued to collect legal fees from Rivera for a total of \$6,015. Between February 2011 and February 2012, he did not file any documents on Rivera's behalf, but spent 50-60 hours working on the case. On February 2, 2012, Rivera terminated Gonzalez's services, and requested a refund of unearned fees. Gonzalez received the letter request, but did not respond, provide an accounting, or refund any fees.

Gonzalez committed three ethical violations: (1) he engaged in an act of moral turpitude, dishonesty, or corruption, in willful violation of Business and Professions Code section 6106,⁴ by receiving advance fees from Rivera during his suspension, when he knew, or was grossly negligent in not knowing, that Rivera paid the fees reasonably believing that Gonzalez was entitled to practice law (count two); (2) he willfully violated section 6068, subdivision (m), by failing to respond to Rivera's status inquiries between February and December 2011 (count four); and (3) he willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct⁵ by failing to render accountings to Rivera (count six).

2. The Castillo Matter (No. 12-O-12507) [Counts Seven, Eight, 10, and 11]

On March 7, 2011, Concepcion Castillo employed Gonzalez to represent her in immigration proceedings to obtain legal residency status and permanent citizenship. Gonzalez agreed to perform all legal services, including investigation, analysis, document preparation, and appearances. Between March 7 and November 29, 2011, Castillo paid Gonzalez several installments totaling \$6,000 in advance attorney fees. On May 27, 2011, Gonzalez was

⁴ All further references to sections are to this source.

⁵ All further references to rules are to this source unless otherwise noted.

suspended from the practice of law for 60 days, but did not notify Castillo. He collected fees from her on May 28 and June 22, 2011, while he was suspended.

On July 27, 2011, Gonzalez's suspension ended, and his status was changed to active. Between March 7, 2011, and January 2012, he did not perform any services on Castillo's behalf. On January 17, 2012, Castillo terminated Gonzalez's services, and asked for a refund of unearned fees. On February 16, Gonzalez sent an email response to Castillo admitting he did not have the funds and asking her to consider using an immigration specialist he found who would perform the work for no additional cost. Ultimately, Gonzalez did not refund the fees or provide an accounting. Castillo filed a State Bar complaint on March 21, 2012.

Gonzalez committed four ethical violations: (1) he committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106, by receiving fees from Castillo during his suspension when he knew, or was grossly negligent in not knowing, that she paid the fees reasonably believing that he was entitled to practice law (count seven); (2) he willfully violated rule 3-110(A) by failing to perform any services he had agreed to provide Castillo (count eight); (3) he willfully violated rule 4-100(B)(3) by failing to render appropriate accountings to Castillo (count 10); and (4) he willfully violated rule 3-700(D)(2) by failing to refund any of the unearned \$6,000 attorney fees (count 11).

3. The Garcia Matter (Case No. 12-O-12759) [Counts 13 and 14]

On January 16, 2012, Robert Garcia consulted with Gonzalez about his incarcerated son, Michael Garcia.⁶ Michael was represented by a public defender, had entered a plea, and was awaiting sentencing.⁷ On January 30, the day of Michael's sentencing hearing, Robert hired Gonzalez and paid him \$2,000 in legal fees to represent Michael. Gonzalez appeared at the

⁶ We refer to Robert and Michael Garcia by their first names to avoid confusion.

⁷ Gonzalez met with Michael at the jail about the potential representation.

hearing and informed the court that he was substituting in as Michael's attorney. Gonzalez requested a continuance, which was granted until February 16, 2012.

On February 6, 2012, Gonzalez was suspended and not entitled to practice law. He failed to inform Robert that he could not represent Michael. Robert discovered Gonzalez's status on his own, and on February 11, requested an accounting and refund of the advance fees. Gonzalez did not provide either to Robert, nor did he appear at Michael's February 16, 2012 hearing.

Gonzalez committed two ethical violations: (1) he willfully violated rule 4-100(B)(3) by failing to provide Robert with an accounting for the \$2,000 fee (count 13); and (2) he willfully violated rule 3-700(D)(2) by failing to refund the unearned \$2,000 advance fee (count 14).

4. The Jordan-Borceguin Matter (Case No. 12-O-12410) [Counts 15 through 19]

On September 27, 2010, Margarita Jordan-Borceguin employed Gonzalez to represent her in an immigration proceeding. Gonzalez agreed to perform all legal services related to the proceeding, including investigation, analysis, document preparation, and appearances. Between September 27, 2010, and May 9, 2011, Jordan-Borceguin paid Gonzalez several installments of advance attorney fees totaling \$4,000.

Between September 27, 2010, and July 7, 2011, Gonzalez did not communicate with Jordan-Borceguin. On May 27, 2011, he was suspended from the practice of law for 60 days, but did not inform her.

On June 28, 2011, Gonzalez received a Notice of Hearing in Removal Proceedings (Notice of Hearing) from the immigration court informing him that Jordan-Borceguin's hearing would be held on February 27, 2012. On July 7, 2011, while Gonzalez was suspended, a letter issued from his law office to Jordan-Borceguin stating that the immigration court had changed her hearing date to February 27, 2012. This letter was from Gonzalez's assistant, but contained letterhead listing "Manuel A. Gonzalez, Law Group" and included an email address of attygonzalez@yahoo.com.

On July 14, 2011, Gonzalez received another Notice of Hearing from the immigration court, this time informing him that the hearing date was changed to February 6, 2012, the date Gonzalez would be suspended. Neither Gonzalez nor Jordan-Borceguin appeared in court on that date. As a result, Jordan-Borceguin's immigration proceedings were terminated and she was ordered for deportation, but hired new counsel. Between September 2010 and February 2012, Gonzalez did not perform any services of value, and did not provide an accounting or refund any advance fees. On March 3, 2012, Jordan-Borceguin filed a State Bar complaint.

Gonzalez committed five ethical violations: (1) he willfully violated rule 3-700(A)(2) by constructively withdrawing from employment without notice or avoiding reasonably foreseeable prejudice to his client and by failing to perform any services for Jordan-Borceguin over an 18-month period (count 15); (2) he committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106, by not informing his client that he was not entitled to practice law at a time he purportedly represented her and provided legal services (count 16);⁸ (3) he willfully violated section 6126 by not informing her of his suspension and by permitting his staff to correspond with her using letterhead indicating he was entitled to practice law, and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a), by holding himself out as entitled to practice law when he was not an active member of the Bar (count 17); (4) he willfully violated rule 3-700(D)(2) by not refunding any of the unearned \$4,000 fees he received (count 18); and (5) he willfully violated rule 4-100(B)(3) by failing to provide Jordan-Borceguin with an accounting of the \$4,000 in advance fees (count 19).

⁸ The NDC charged Gonzalez with moral turpitude for collecting fees while suspended and for not informing his client he was suspended when he purportedly performed legal services. The hearing judge found that Gonzalez collected fees while suspended but the Stipulation establishes that the client paid \$4,000 in fees between September 27, 2010, and May 9, 2011; Gonzalez's 60-day suspension began after that period on May 27, 2011. We find Gonzalez culpable of moral turpitude for not informing his client he was suspended when he purportedly represented her, as alternatively charged in the NDC.

5. The Sebastian Matter (Case No. 12-O-13128) [Counts 20 through 24]

On February 11, 2010, Catalina Aquino Sebastian employed Gonzalez to represent her in immigration proceedings to obtain legal residency in the United States. Gonzalez agreed to perform all legal services related to the immigration proceeding, including investigation, analysis, document preparation, and appearances. Between February 10 and June 17, 2010, Sebastian paid installments of advance attorney fees totaling \$2,400.

On May 27, 2011, Gonzalez was suspended for 60 days, but did not notify Sebastian. Between February 2010 and November 2011, she telephoned Gonzalez repeatedly and asked about the status of her immigration matter. Gonzalez did not respond. When Sebastian called Gonzalez in November 2011, she learned that his telephone had been disconnected and he had moved out of his office. Gonzalez did not inform Sebastian that he was relocating, nor did he provide her with his new address or telephone number.

In December 2011, Sebastian discovered new contact information for Gonzalez. She called him, and they scheduled a meeting. Gonzalez did not appear at the appointed time and place, and did not communicate with her thereafter. In February 2012, Sebastian located Gonzalez's new office in San Diego. She went there to meet with him, but was told by staff that he was no longer eligible to practice law.

Between February 2010 and February 2012, Gonzalez did not perform any services for Sebastian. He did not earn any fees she advanced, and did not provide an accounting or refund. On April 16, 2012, Sebastian filed a State Bar complaint.

Gonzalez committed five ethical violations: (1) he willfully violated rule 3-110(A) by failing to perform any of the services he had agreed to provide (count 20); (2) he willfully violated section 6068, subdivision (m), by failing to respond to his client's telephone calls seeking a status update (count 21); (3) he willfully violated rule 3-700(A)(2) by constructively withdrawing from

employment, failing to perform any services over a two-year period, failing to provide her with status updates, moving his offices without notice, and not taking steps to avoid reasonably foreseeable prejudice to his client (count 22); (4) he willfully violated rule 4-100(B)(3) by failing to provide an accounting of the \$2,400 advance fee and failing to render an appropriate accounting (count 23); and (5) he willfully violated rule 3-700(D)(2) by failing to refund any of the unearned \$2,400 (count 24).

C. STATE BAR INVESTIGATION MATTER (CASE NOS. 12-O-12410; 12-O-12507; 12-O-13128 [COUNT 25])

Jordan-Borceguin, Castillo, and Sebastian filed State Bar complaints against Gonzalez on March 3, March 21, and April 16, 2012, respectively. Shortly thereafter, a State Bar investigator sent letters to Gonzalez requesting, among other things, his written response to the allegations of misconduct and an accounting of time spent on the cases. Gonzalez received the letters but did not reply. On June 1, the investigator sent three emails to Gonzalez, one for each complainant, repeating the requests. Gonzalez received the emails but did not respond.

Gonzalez stipulated to culpability for violating section 6068, subdivision (i), by not providing a written response to the investigator's letters and email, and by failing to otherwise cooperate in the State Bar investigation of the complaints. (*Bach v. State Bar* (1991) 52 Cal.3d 1201, 1208 [duty to cooperate breached where no response to two investigation letters].)

III. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 requires that OCTC must prove aggravating factors by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [evidence that leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Standard 1.6 requires Gonzalez to meet the same burden to prove mitigation.

A. AGGRAVATION

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

Gonzalez has two prior records of discipline.

*Gonzalez I.*⁹ Beginning in 2005, three years after his April 29, 2002 admission to the California State Bar, Gonzalez was hired to perform work in five immigration and two criminal law matters, and was paid a total of \$14,775. Over several years, he failed to perform competently, inform clients of significant developments, respond to client inquiries, provide accountings, return files upon request, and refund unearned fees to five clients.

On November 16, 2010, Gonzalez signed a stipulation as to facts, culpability, mitigation, aggravation, and discipline. Multiple acts of wrongdoing and harm to clients were aggravating factors. Candor and cooperation for the stipulation and remorse for his misconduct and statement that he intended to pay restitution as ordered were mitigating factors.

The parties agreed to two years' suspension, stayed, with two years' probation, including a 60-day actual suspension, and a payment plan of \$110 per month to each of the five clients until the \$14,775 was paid in full. The Hearing Department approved the stipulation, which was filed on December 7, 2010. On April 27, 2011, the Supreme Court ordered the stipulated discipline, which became effective on May 27, 2011.

*Gonzalez II.*¹⁰ On November 15, 2011, the State Bar's Office of Probation (Probation) filed a motion to revoke probation in *Gonzalez I* because Gonzalez failed to pay restitution. On February 3, 2012, a hearing judge found that Gonzalez had not made any restitution payments to the five clients from July to October 2011. In aggravation, Gonzalez had a prior record of discipline, committed multiple acts of misconduct, and demonstrated indifference because he did

⁹ Supreme Court Case No. S190664; State Bar Case Nos. 07-O-13329 (07-O-13827; 08-O-13980; 09-O-12664; 09-O-17424; 09-O-18923; and 10-O-03257).

¹⁰ Supreme Court Case No. S190664; State Bar Case No. 11-PM-18515.

not comply with his probation terms even after Probation sent him a reminder. There were no mitigating factors. The judge recommended that probation be revoked, and that Gonzalez serve the two-year stayed suspension, two years' probation, and an actual suspension of one year. The actual suspension would continue until Gonzalez (1) paid restitution according to the payment plan in *Gonzalez I*, and (2) proved his rehabilitation. On May 8, 2012, the Supreme Court ordered the recommended discipline and included that Gonzalez comply with rule 9.20 of the California Rules of Court. The order became effective on June 7, 2012.¹¹

The hearing judge assigned significant weight to Gonzalez's overall prior record, but she diminished it "somewhat," finding that his misconduct in *Gonzalez II* "occurred after much of the present misconduct." The record does not support this finding.

Gonzalez committed most of his present misconduct in 2011 and 2012, when he knew of both prior discipline cases. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [weight of aggravation for prior discipline record depends on whether attorney had opportunity to heed import of prior proceeding before committing misconduct at issue].) The operative dates to mark his notice of his past wrongdoing are November 2010, when he signed the stipulation in *Gonzalez I*, and November 15, 2011, when Probation filed its motion to revoke probation in *Gonzalez II*.

To illustrate, the following misconduct in the present case, among other instances, occurred after November 2010 (*Gonzalez I*) and/or November 2011 (*Gonzalez II*): (1) in the Rivera matter, in early 2012, Gonzalez's services were terminated and a refund requested, but he provided none; (2) in the Castillo matter, when the client terminated his services in early 2012 and requested a refund, Gonzalez did not respond; (3) in the Garcia matter, Gonzalez was hired

¹¹ This record does not establish whether Gonzalez paid the restitution that was ordered in *Gonzalez II*.

to represent Garcia's incarcerated son in January 2012, and failed to appear for the sentencing hearing in February 2012; (4) in the Jordan-Borceguin matter, in February 2012, Gonzalez did not appear for her immigration hearing; (5) in the Sebastian matter, from February 2010 to November 2011, Gonzalez did not respond to his client's calls after disconnecting his phone and moving his office, and did not appear for a scheduled meeting with his client in December 2011; and (6) from March through June 2012, Gonzalez failed to respond to the State Bar investigator about the Castillo, Jordan-Borceguin, and Sebastian complaints.

After Gonzalez was disciplined in *Gonzalez I*, we find it inconceivable that he did not know it was unethical to collect fees from clients, perform no work, and fail to communicate, provide accountings, or refund unearned fees. The similarity of Gonzalez's past misconduct to his present wrongdoing demonstrates that he is a recidivist offender. Accordingly, we assign full significant aggravation to his prior record of discipline. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render previous discipline more serious as they indicate prior discipline did not rehabilitate]; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841 [great weight placed on common thread among attorney's past and present misconduct].)

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

The hearing judge assigned significant aggravating weight to 21 acts of wrongdoing. We agree. (*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. Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j))

The hearing judge found that the harm Gonzalez caused his clients merited substantial consideration in aggravation. We agree. His misconduct delayed his clients' proceedings, and deprived them of money paid as advance fees for services Gonzalez did not provide.

4. Failure to Make Restitution (Std. 1.5(m))

The hearing judge assigned Gonzalez's failure to refund \$14,400 in unearned fees significant consideration in aggravation. We agree. (*In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [failure to pay \$10,000 in restitution is significantly aggravating].)

5. Highly Vulnerable Victims (Std. 1.5(n))

Though the hearing judge did not find this factor, OCTC requests that we do so. We find that all five clients were highly vulnerable victims, and assign significant aggravation. Garcia, an incarcerated criminal defendant, was vulnerable per se because he was limited in his freedom to assist Gonzalez or stay apprised of his attorney's efforts. (*In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 462, 465, citing *Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053.) The four immigration clients were highly vulnerable because such proceedings can result in deportation. (See *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950 [immigration client status is precarious with potential for serious harm].)

B. MITIGATION

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

The hearing judge assigned significant mitigating credit for Gonzalez's extensive Stipulation wherein he admitted to culpability on two counts and to several facts. OCTC does not challenge this finding, and we agree with it.¹²

2. Physical or Mental Disabilities (Std. 1.6(d))

Mitigation is available for physical or mental disabilities if: (1) an attorney suffered from them at the time of his misconduct; (2) they are established by expert testimony as being directly

¹² Though Gonzalez was culpable for failure to cooperate with the State Bar pre-filing investigation (count 25), we do not diminish the mitigating credit we assign for his pretrial Stipulation. (See *In the Matter of Sampson* (1994) 3 Cal. State Bar Ct. Rptr. 119, 132–133.)

responsible for the misconduct; and (3) the difficulties no longer pose a risk of future misconduct. The hearing judge assigned substantial mitigating weight for Gonzalez's physical difficulties subsequent to his July 21, 2012 stroke; this mitigation applies only to his belated California Rules of Court, rule 9.20 filing. But the judge concluded that a nexus between any mini-strokes and Gonzalez's present misconduct that occurred before the stroke was "a little murkier." The judge assigned limited overall mitigating weight for physical difficulties *before* July 2012, reasoning that Gonzalez committed "remarkably similar" misconduct in *Gonzalez I* in 2006, 2007, and 2008 (before the mini-strokes) and was able to handle other high-level cognitive functions during the time of the present misconduct. Gonzalez does not challenge the hearing judge's finding. Nonetheless, we review the record under our independent duty to do so, and agree with the hearing judge.

Gonzalez testified that mini-strokes preceded his July 21, 2012 stroke, and affected his executive functioning in that he could not think or perform properly. In support, he presented one expert, Dr. Dominick Addario, a neuropsychiatrist, who examined him for the first time on November 4, 2016, four years after his stroke. Dr. Addario testified that, within a reasonable medical probability (which is greater than 50%), Gonzalez (1) would have suffered impairment of neurocognitive functions from late 2009 until July 21, 2012, and (2) was now fit to resume the practice of law.¹³ To reach this conclusion, Dr. Addario reviewed medical records, administered psychological tests, and conducted an interview and examination of Gonzalez, as detailed in his report.

Notably, Dr. Addario's report contains a summary from a report by Delia M. Silva, Psy.D., a neuropsychologist. Gonzalez consulted her months before he contacted Dr. Addario.

¹³ The hearing judge accepted Dr. Addario's expert opinion on the medical issues only and not as to whether Gonzalez was fit to practice law.

Dr. Silva reported that Gonzalez sought to persuade her to report that mini-bleeds had likely caused cognitive deficits before his major stroke. Dr. Silva told him she could not objectively do so. She described Gonzalez as pleasant, but noted that he had poor boundaries, was impulsive, was not forthcoming with information, and was “perseverative” about his history of ischemic attacks and the importance of documenting their cognitive effects.

OCTC requests that no mitigation be afforded for physical or mental disabilities except as to Gonzalez’s belated filing of the California Rules of Court, rule 9.20 declaration, which occurred after the stroke. We agree. Dr. Addario’s testimony and opinion are not persuasive. To begin, they conflict with Dr. Silva’s report. Moreover, as the hearing judge noted, Gonzalez was able to focus well enough to perform various tasks during 2010 to 2012 without signs of cognitive difficulties. For example, he successfully accepted thousands of dollars from five vulnerable clients, deposited numerous installment payments of advance fees, and appeared in court in the Garcia criminal matter. He also sent an email to Castillo in February 2012, admitting he did not have her funds and requesting that she consider an immigration specialist he had located to perform work for no additional cost.

Though Gonzalez suffered a serious medical condition beginning on July 21, 2012, he did not prove that mini-strokes that occurred during the two years before the stroke were “directly responsible for his misconduct,” as the standard requires. (Std. 1.6(d); *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no mitigation credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].) Thus, other than his tardy filing of his California Rules of Court, rule 9.20 affidavit, Gonzalez’s present misconduct is not mitigated by physical difficulties.

IV. DISBARMENT IS THE APPROPRIATE DISCIPLINE¹⁴

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Standard 1.8(b) is most applicable here. (Std. 1.7 [most serious sanction applies].) It provides that disbarment is appropriate when a member has two or more prior records of discipline if (1) an actual suspension was ordered in any previous disciplinary matter, (2) the prior and current disciplinary matters demonstrate a pattern of misconduct, *or* (3) the prior and current disciplinary matters reveal the attorney’s unwillingness or inability to conform to ethical norms.

Gonzalez’s case meets two of these criteria: an actual suspension was ordered in both *Gonzalez I* (60 days) and *Gonzalez II* (one year), and he failed to reform after being disciplined for similar misconduct in *Gonzalez I*, which shows his unwillingness or inability to fulfill his ethical duties.

We may depart from the prescribed discipline of disbarment under standard 1.8(b) where “the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct.” Gonzalez did not make this showing. His mitigation for the pretrial Stipulation and late-filed California Rules of Court, rule 9.20 declaration is not compelling. Nor does it predominate over his misconduct and five factors in aggravation (prior discipline, multiple acts, harm, failure to make restitution, and vulnerable victims). Further, he has engaged in escalating misconduct, committing acts of UPL and moral turpitude in the present case.

¹⁴ 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; and to preserve public confidence in the legal profession. (Std. 1.1.)

The hearing judge reasoned that a two-year suspension was warranted because standard 1.8(b) does not mandate disbarment and, according to case law, a significant suspension was appropriate. The judge relied on *In re Brockway, supra*, 4 Cal. State Bar Ct. Rptr. 944 to support her recommendation for a two-year actual suspension. *Brockway*, an authority not related to standard 1.8(b), is distinguishable. The attorney in *Brockway* received a two-year suspension for abandoning four immigration clients, but he had only one record of discipline for unrelated misconduct, and he paid restitution to his clients. In contrast, Gonzalez abandoned five clients and committed other misconduct, has two prior discipline records (one for similar misconduct), and owes \$14,400 in restitution.

We find that standard 1.8(b), and not *In re Brockway*, guides our analysis. If, like the hearing judge, we were to deviate from the presumptive discipline of disbarment, we must clearly articulate reasons for doing so. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5; std. 1.1 [standards afforded great weight and should be followed whenever possible].) We find none, and Gonzalez failed to present any in his responsive brief.

Just years after his admission to the Bar in 2002, Gonzalez violated his ethical duties to clients and to the State Bar, and violated orders of the Supreme Court and the State Bar Court. He victimized vulnerable clients after being disciplined for doing so, and has already violated terms of a disciplinary probation. We find that further suspension and probation will not prevent him from committing future misconduct that would endanger the profession and, particularly, the public. (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 300 [“respondent should not be admitted to disciplinary probation where there is clear evidence that he or she will not comply with its conditions”].)¹⁵ A full reinstatement proceeding after

¹⁵ In two separate proceedings, State Bar Court hearing judges have determined that Gonzalez owes clients a total of over \$29,000 in unearned fees, yet no evidence credibly

Gonzalez is disbarred is the only measure that will serve the goals of attorney discipline and ensure protection of the public, the profession, and the administration of justice. The relevant decisional law also supports our disbarment recommendation,¹⁶ which makes moot Gonzalez's request on review that he not remain suspended until he pays restitution.

V. RECOMMENDATION

We recommend that Manuel Angel Gonzalez be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted in California.

We further recommend that he 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.

We further recommend that Gonzalez be required to make restitution to (1) Concepcion Castillo in the amount of \$6,000 plus 10 percent interest per year from November 29, 2011, (2) Robert Garcia in the amount of \$2,000 plus 10 percent interest per year from January 30, 2012, (3) Margarita Jordan-Borceguin in the amount of \$4,000 plus 10 percent interest per year

establishes he has made restitution. We reject Gonzalez's argument that loss of his computer files prevented him from paying restitution to his clients in the present case.

¹⁶ Compare *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 (disbarment where three prior disciplines and depression was not "most compelling" mitigation when weighed against risk of recurrence of misconduct) and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 (disbarment where two prior disciplines, attorney was unable to conform conduct to ethical norms, and no mitigation) with *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, 246–248 (three-year actual suspension where three prior disciplines, attorney suffered extreme physical disabilities that caused or contributed to misconduct for 30 years, and mitigation outweighed aggravation).

from May 9, 2011, and (4) Catalina Aquino Sebastian in the amount of \$2,400 plus 10 percent interest per year from June 17, 2010.

Like the hearing judge, we do not recommend restitution in the Rivera case. The record demonstrates that Gonzalez spent 50-60 hours working on the case, and OCTC did not prove by clear and convincing evidence that there were outstanding unearned fees that Gonzalez failed to refund. (Count five in Rivera's case, failure to refund unearned fees, was dismissed with prejudice.)

VI. ORDER OF INACTIVE ENROLLMENT

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

PURCELL, P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.*

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

**Case Nos. 12-N-16025; 12-O-12219
(12-O-12410; 12-O-12507; 12-O-12759; 12-O-13128)
(Consolidated)**

In the Matter of

MANUEL ANGEL GONZALEZ

Hearing Judge

Hon. Patrice E. McElroy

Counsel for the Parties

For State Bar of California:

**Brandon Keith Tady, Esq.
Office of Chief Trial Counsel
The State Bar of California
845 So. Figueroa St.
Los Angeles, CA 90017-2515**

For Respondent:

**Manuel Angel Gonzalez, in pro. per.
2090 Cable St.
San Diego, CA 92107-2529**