PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

May 13, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	16-O-10871 (16-O-14863)
	)	
SCOTTLYNN J. HUBBARD IV,	)	OPINION
	)	[As Modified on June 3, 2020]
State Bar No. 212970.	)	
	)	

In his first disciplinary case, Scottlynn J. Hubbard IV is charged with ten counts of misconduct stemming from statements he made in two separate appeal proceedings concerning actions his father, Lynn Hubbard III,[1] undertook as an attorney representing clients in those two matters. A hearing judge found Hubbard culpable on three counts of moral turpitude, in which he made misleading statements to the United States Supreme Court (U.S. Supreme Court) and the Ninth Circuit Court of Appeals (Ninth Circuit). The judge dismissed six of the charges as duplicative of the three moral turpitude charges found, and she dismissed a charge because the Office of Chief Trial Counsel of the State Bar (OCTC) failed to sustain its burden in proving culpability. The judge's recommended discipline included an actual suspension of one year, continuing until Hubbard provides proof of his rehabilitation, fitness, and present learning and ability to practice law.

Both Hubbard and OCTC appeal. Hubbard argues that he should be exonerated of all charges or, if culpability is found, he should receive more credit in mitigation, the aggravation findings should be dismissed, and the discipline recommendation should be less. OCTC accepts

[1] Further references to Lynn Hubbard are to his first name only to differentiate him from his son; no disrespect is intended.

the hearing judge's recommended discipline; however, it seeks reinstatement of the seven dismissed charges.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, along with most of the aggravation and mitigation findings. We also find Hubbard culpable of the seven charges that were dismissed. After reviewing the record, the relevant standards, and comparable law, we agree with the judge's disciplinary recommendation.

I. PROCEDURAL HISTORY

OCTC filed a Notice of Disciplinary Charges (NDC) on August 7, 2018, alleging ten counts of misconduct: three counts (one, four, and seven) of violating section 6106 of the Business and Professions Code[2] (moral turpitude—misrepresentation); three counts (two, five, and eight) of violating section 6068, subdivision (d) (seeking to mislead a judge); and four counts (three, six, nine, and ten) of violating section 6068, subdivision (b) (failure to maintain respect due to courts and judicial officers). On March 19, 2019, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation), and a three-day trial took place on March 19, 20, and 21. Posttrial briefing followed and the hearing judge issued her decision on June 27, 2019.

II. BACKGROUND FACTS[3]

Hubbard was admitted to practice law in California on May 31, 2001. Until his father's disciplinary suspension in 2016, Hubbard worked in his father's law office, which represented plaintiffs who alleged violations of the Americans with Disabilities Act (ADA). The allegations of Hubbard's misconduct in this case arise from his defense of Lynn's actions in appeal proceedings in two separate cases.

[2] Further references to sections are to this source unless otherwise noted.

[3] The facts included in this opinion are based on the Stipulation, 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).)

A. *Plaza Bonita* Matter

In 2009, Lynn filed an ADA action, *Hubbard v. Plaza Bonita, LP et al*. (*Plaza Bonita* matter), on behalf of his mother, Barbara Hubbard,[4] against several defendants in the United States District Court for the Southern District of California (Case No. 09-CV-1581). During the litigation, Barbara passed away on November 13, 2009. Lynn did not disclose that Barbara had died and, approximately one month later, he sent two of the defendants a settlement agreement containing a signature written as "Barbara Hubbard," which was not, in fact, Barbara's.

On June 13, 2011, a magistrate judge issued an order finding that Lynn, or someone at his direction, signed Barbara's name on the settlement agreement. The judge also found Lynn intentionally deceived and concealed facts from the parties and the court regarding Barbara's death and the origin of her signature. Pursuant to that order, the magistrate judge also ordered that Lynn pay opposing counsel $55,224.05 in sanctions. Hubbard, now representing his father, objected to the sanctions order on June 23, 2011. On July 25, 2013, the district court sustained in part and overruled in part Hubbard's objections to the order, ultimately reducing the sanctions to $49,056.05.

Hubbard appealed the order of monetary sanctions against Lynn to the Ninth Circuit, which affirmed the district court's order on November 12, 2015, and also described Lynn's actions as an intentional deception. Hubbard then petitioned the Ninth Circuit for a rehearing en banc, which was denied. On June 14, 2016, Hubbard filed a petition for writ of certiorari (writ petition) to the U.S. Supreme Court, which also denied Hubbard's appeal.

[4] Further references to Barbara Hubbard are to her first name only to differentiate her from her son and grandson; no disrespect is intended.

B. *Vogel* Matter

On January 23, 2013, Lynn filed an ADA complaint in *Vogel v. Tulaphorn, Inc. et al.* (*Vogel* matter) in the United States District Court for the Central District of California (Case No. 13-CV-00464) on behalf of his client, who alleged that he encountered barriers to access at a McDonald's restaurant. Subsequently, Lynn filed a motion for summary judgment (MSJ). Attached to the MSJ was a receipt, photographs documenting the visit, and a declaration from Lynn's client affirming that he had personally received the receipt when he made a purchase from the restaurant on January 8, 2013.

Shortly after the MSJ was filed, Tulaphorn's attorneys disclosed to Lynn that videotape evidence showed it was not the plaintiff who visited the restaurant on the relevant date, but, instead, Lynn and a female companion. The videotape further showed the female companion, and not the plaintiff, purchasing a drink and receiving the receipt. As a result, Tulaphorn's attorneys filed a motion for terminating sanctions and a request for attorney fees. On November 4, 2013, District Court Judge Phillip Gutierrez held a hearing on the motion and the request, and the next day he granted both. The judge determined Vogel and Lynn engaged in a pattern of falsifying evidence, which amounted to bad faith, given that Vogel never produced any evidence of a different visit to the restaurant nor a sworn statement explaining why he described detailed facts about a visit he later acknowledged did not occur.

Hubbard, acting as counsel for Vogel, appealed the order to the Ninth Circuit. On February 4, 2016, a Ninth Circuit panel conducted oral arguments on the matter. On February 17, the Ninth Circuit panel dismissed Hubbard's appeal. On March 2, Hubbard filed a petition for a rehearing en banc with the Ninth Circuit, which was denied on April 1.

III. HUBBARD IS CULPABLE ON ALL COUNTS CHARGED, INCLUDING THOSE COUNTS DISMISSED AS DUPLICATIVE BY THE HEARING JUDGE

A. Count One: Moral Turpitude—Misrepresentation (Bus. & Prof. Code § 6106)[5] Count Two: Seeking to Mislead Judge (§ 6068, subd. (d))[6] Count Three: Failure to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))[7]

In count one, OCTC charged Hubbard with violating section 6106 by making two misrepresentations in his writ petition to the U.S. Supreme Court in the *Plaza Bonita* matter by stating that, "[t]hroughout [Lynn's] forty-year career [he] has never . . . *never* . . . been found to have committed professional misconduct . . . " and also that,

> Everything that [Lynn] said in this matter was 100% true, 100% of the time; and there is absolutely no evidence that he fraudulently concealed anything from anyone. [Citation omitted.] More importantly . . . [Lynn] did not come close to (much less cross) the line of professional misconduct, unethical behavior, bad faith, or even recklessness. [Citation omitted.] In fact, after eight years of persecution *no one*—not [opposing counsel], not the magistrate, not two district [court] judges, not the State Bar of California, not even the Ninth Circuit panel—has identified what duty [Lynn] supposedly violated.

The hearing judge found Hubbard culpable as charged and determined both statements to be willful misrepresentations in violation of section 6106.

Hubbard argues that his statements were only introductory arguments and thus not material to the issues before the tribunal, and are, in fact, true when understood in context. We find no merit to these arguments. From OCTC's allegations, we find that Hubbard made misrepresentations when he stated that Lynn never committed professional misconduct

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[5] Section 6106 provides, "The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment and suspension."

[6] Section 6068, subdivision (d), provides that an attorney has a duty "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[7] Section 6068, subdivision (b), provides that an attorney has a duty "[t]o maintain the respect due to the courts of justice and judicial officers."

throughout his 40-year career, and that no one, including Lynn's opposing counsel, OCTC, or any judge in the case had identified any ethical duty Lynn violated.

Regardless of where Hubbard's statements were made in the writ petition, they are material. He made them for the relevant purpose of securing an advantageous outcome, namely to obtain a reversal by the U.S. Supreme Court of the order issued against Lynn by the district court. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174–175 [false statement made to tribunal is material when used to secure advantage in forum].)

We also disagree with Hubbard's argument that his statements are true in context. Simply put, the statements found to be material are also untrue factual assertions. It is clear from Hubbard's first statement that he meant to convey Lynn had never been disciplined from his 1976 admission to practice law until the 2016 filing of the writ petition. This statement leaves out the relevant facts that Lynn had been disciplined by the district court and the Ninth Circuit in 2013,[8] and also was found culpable of professional misconduct by a State Bar Court hearing judge in 2015.[9] His other statement—that no one involved in the *Plaza Bonita* matter had identified any duty Lynn had violated—is also an intentional misrepresentation of fact. Both the district court and the Ninth Circuit expressly determined that Lynn intentionally deceived his

[8] In the *Vogel* matter, the magistrate judge referred the matter to the Southern District Standing Committee for Discipline. In December 2012, a disciplinary bench trial was held in district court and Hubbard represented his father. On February 4, 2013, the district court suspended Lynn from the practice of law for one year. Hubbard appealed his father's suspension to the Ninth Circuit, which dismissed the appeal and reciprocally suspended Lynn for one year on December 10, 2013.

[9] In 2014, OCTC filed an NDC against Lynn alleging misconduct in the *Plaza Bonita* matter and a second NDC against him and his associate, Kushprett Mehton, alleging misconduct in the *Vogel* matter. At trial, during the conclusion of OCTC's case-in-chief, it dismissed its case against Mehton. OCTC did not dismiss any charges against Lynn and he was found culpable of professional misconduct in both the *Plaza Bonita* and *Vogel* matters. The hearing judge recommended a one-year actual suspension. Lynn appealed and, on August 4, 2016, we recommended a one-year actual suspension to continue until he proves his rehabilitation, fitness, and present learning and ability to practice law, which the Supreme Court ordered on November 29, 2016.

opposing parties when he failed to inform them that the signature on the settlement agreement was not Barbara's. The hearing judge also found intentional deception based on the district court's reasons for issuing the terminating sanctions against Lynn in 2013.

Case law is well established that moral turpitude includes an attorney's false or misleading statements to a court or tribunal. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786.) We agree with the hearing judge that clear and convincing evidence exists[10] in the record to find that Hubbard made two misrepresentations in his writ petition to the U.S. Supreme Court in willful violation of section 6106.

The hearing judge dismissed count two (§ 6068, subd. (d), seeking to mislead a judge) and count three (§ 6068, subd. (b), failing to maintain respect due to courts and judicial officers) as duplicative of count one. We disagree and reverse. We agree with OCTC's argument that an attorney should be found culpable for all misconduct committed, in order to maintain both the highest professional standards and the public's confidence in the legal profession. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge].)[11]

The evidence, as discussed above, clearly shows that Hubbard's statements were material and intentionally false misrepresentations of fact. We find him culpable of seeking to mislead the U.S. Supreme Court, as alleged in count two, and of failing to maintain respect due it, as

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[10] 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.)

[11] We note that Hubbard cited the California Supreme Court's decision in *Bates v. State Bar* (1990) 51 Cal.3d 1056 to support his argument that dismissal of duplicative charges is the "rule of law." Our reading of *Bates* does not lead us to conclude it would be improper to find additional counts of culpability, with no additional disciplinary weight, where the same facts prove that more than one act of professional misconduct occurred. The court in *Bates* concluded it did not need to "definitely answer" the question of dismissing duplicative allegations of misconduct because the State Bar considered the question moot as a practical matter in determining the discipline for that case. (*Id.* at p. 1060.)

alleged in count three, for the same statements that established culpability in count one. (*In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 520 [same intentional misrepresentation that violates § 6106 also violates § 6068, subd. (d); see *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 282 [attorney has responsibility under § 6068, subd. (b), to not withhold material information from court].) Because these findings of culpability for counts two and three are based on the same facts that establish culpability under count one, we assign no additional disciplinary weight. (*In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520 [no disciplinary weight assigned for additional culpability findings based on same facts].)

B. Count Four: Moral Turpitude—Misrepresentation (§ 6106)
Count Five: Seeking to Mislead Judge (§ 6068, subd. (d))
Count Six: Failure to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

In count four, OCTC alleged Hubbard violated section 6106 when he concealed from the Ninth Circuit panel during oral argument for the *Vogel* matter that the hearing judge in Lynn's disciplinary case found Lynn culpable of acts involving moral turpitude, and that his appeal of that finding was pending before the Review Department. Further, OCTC alleged Hubbard created the false impression that only Lynn's associate Mehton had been charged for misconduct in the *Voge*l matter even though Lynn had also been charged.

At the February 4, 2016 oral argument, the following exchange took place between Hubbard and Judge Milan Smith:

> Judge Smith: Has the State Bar taken any action in connection with the attorneys in this matter?
> Hubbard: With respect to the attorney responsible for the deposition . . . uh . . . the discovery-related abuses, as I indicated in our reply brief . . .
> Judge Smith: What happened?[12]

[12] Hubbard and OCTC stipulated to the above testimony, but disagreed as to whether Judge Smith's question was "What happened?" or "While it happened?" The hearing judge found the distinction irrelevant in the context of the exchange, and we agree.

Hubbard: While it happened, all of this . . .
Judge Smith: No, I mean, what did the State Bar do?
Hubbard: Oh, the State Bar dismissed in the interests of justice, their words. Dismissed all the charges against him.
Judge Smith: Any of the other attorneys?
Hubbard: That was the only attorney.
Judge Smith: The only one?
Hubbard: Yes.

The hearing judge found that Hubbard's exchange with the Ninth Circuit judge was intentionally misleading and constituted an act of moral turpitude in willful violation of section 6106.

Hubbard argues he was "completely truthful" in his responses to Judge Smith's questions about the State Bar proceedings. Hubbard's contentions are not credible when reviewing the questions Judge Smith asked. The judge's initial question, whether the State Bar took action against the attorneys in the *Vogel* matter, was clearly not limited to those who had been dismissed from the State Bar disciplinary proceedings. Further, as the hearing judge properly concluded, after Hubbard declared, "the State Bar dismissed [the charges] in the interest of justice," Judge Smith then followed up by asking about anybody else Hubbard may have failed to mention: "any of the other attorneys?" to which Hubbard responded, "That was the only attorney," meaning Lynn's associate Mehton. By responding as he did, Hubbard presented a false narrative to the judges because he failed to disclose that Lynn had been found culpable of moral turpitude by the hearing judge in February 2015 based on his conduct in the *Vogel* matter and that an appeal of that finding was pending. These statements are misleading because he gave the clear impression that the State Bar took action only against Mehton, whom it later let go.

Hubbard also asserts that he was not required to further explain because "Judge Smith then stopped asking questions about the State Bar proceeding, and Hubbard moved on." This argument is also not credible. Hubbard had a duty to render complete and candid disclosures to the court once it asked a question; it is not the judge's duty to ensure such disclosures, as he implies. Hubbard's intentional failure to disclose material and relevant information to the Ninth Circuit

panel is a dishonest act in violation of section 6106, and we thus find him culpable as charged in count four. (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 177.)

We also find Hubbard culpable of violating section 6068, subdivision (d) (count five), and section 6068, subdivision (b) (count six), based on the same facts that established moral turpitude in count four.[13] (See *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [concealment of material fact misleads judge just as effectively as false statement and violates § 6068, subd. (d); *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 176 [attorney's failure to disclose material information to court related to subject of court hearing is violation of § 6068, subd. (b)].)

C. Count Seven: Moral Turpitude—Misrepresentation (§ 6106)
Count Eight: Seeking to Mislead Judge (§ 6068, subd. (d))
Count Nine: Failure to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

In count seven, the NDC alleged that Hubbard engaged in five acts, each constituting moral turpitude in violation of section 6106 by making false and misleading statements to the Ninth Circuit in his petition for a rehearing en banc in the *Vogel* matter. OCTC also alleged that the same five acts violate section 6068, subdivision (d) (count eight), and section 6068, subdivision (b) (count nine).[14] We discuss each of the five alleged acts separately to determine culpability under the three counts charged.[15]

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[13] We reverse the hearing judge's dismissal of counts five and six as duplicative of count four for the same reasons we reversed her dismissals regarding counts two and three as duplicative of count one. We assign no additional disciplinary weight to these culpability findings. (*In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

[14] As before, we reverse the hearing judge's dismissal of counts eight and nine as duplicative of count seven for the same reasons we reversed her dismissals regarding counts two and three as duplicative of count one.

[15] Where we find an act establishes culpability for one count, no additional disciplinary weight is added to any subsequent count where culpability is also established for the same act. (*In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

1. Hubbard Concealed that Lynn Had Been Found Culpable of Misconduct by the State Bar Court

In count seven, OCTC alleges Hubbard concealed from the Ninth Circuit in the petition for rehearing en banc that the hearing judge had found Lynn culpable of professional misconduct and that an appeal of that finding was pending in the Review Department. In the petition, Hubbard first stated, "The State Bar of California . . . prosecuted [Lynn] and Mehton for professional misconduct and ethics violations." However, in the following sentence he claimed, "The results of *that* prosecution was [*sic*] . . . the prosecutor dismissed all of the charges based on . . . accusations of discovery abuse and manufacturing evidence." The judge found Hubbard's statements deliberate and misleading because he "oscillated" between the charges against Lynn and Mehton, and Mehton's dismissal. The judge also found Hubbard was deceptive by stating in the petition that "[Lynn's] success was so overwhelming that the State Bar actually *appealed* the judge's ruling" because Lynn had also appealed the judge's decision. She found these statements to be a willful violation of section 6106.

We agree with the hearing judge's analysis that Hubbard's statements were intentionally misleading and violated section 6106 because they concealed and were deceptive about Lynn's disciplinary hearing and appeal. Though his argument is not entirely clear to us, Hubbard claims the judge ignored certain documents admitted into the Ninth Circuit record in coming to her conclusions: his January 30, 2015 Motion for Judicial Notice (providing a copy of the NDC, an excerpt of the transcript from Lynn's disciplinary hearing, and a copy of the order dismissing Mehton); Tulaphorn's June 12, 2015 Request for Judicial Notice (providing a copy of the hearing judge's decision); and his June 22, 2015 response to Tulaphorn's request. These documents were not referenced in the rehearing en banc petition and Hubbard cannot now rely on the evidence in the record not brought to the court's attention by him as a path for him to avoid culpability for his

otherwise misleading statements.[16] An attorney is required to render complete and candid disclosures and never seek to mislead. (*Mosesian v. State Bar* (1972) 8 Cal.3d 60, 66.) Acting otherwise constitutes moral turpitude and warrants discipline. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855.) Consequently, we find Hubbard's statements violate section 6106.

We also find that Hubbard's concealment and deceptive statements also sought to mislead the Ninth Circuit, thus violating section 6068, subdivision (d) (count eight). (*Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162–163 [attorney's contention that his failure to disclose material information is irrelevant, when court should have known undisclosed information, is "untenable" and supports violation of § 6068, subd. (d)].) These same statements also failed to maintain the respect due the Ninth Circuit under section 6068, subdivision (b) (count nine). (*Mosesian v. State Bar*, *supra*, 8 Cal.3d at p. 66.)

2. Hubbard Misrepresented to the Ninth Circuit OCTC's Statements Made at Mehton and Lynn's Disciplinary Trial

Also in count seven, OCTC alleges that Hubbard misrepresented to the Ninth Circuit that OCTC admitted during Mehton's and Lynn's disciplinary trial that charges would never have been brought if Lynn had been given an opportunity to provide "a response" at an evidentiary hearing by the district court judge in the *Vogel* matter.[17] When OCTC dismissed the charges against Mehton at the disciplinary trial, it stated, "those counts are dismissed in the interest of

[16] We note that Hubbard argues that he cited to Tulaphorn's request in the rehearing petition as evidence of his disclosure of the Review Department proceedings. His reference to a docket entry as evidence of his disclosure is not sufficient.

[17] Hubbard argues that this allegation, because it does not contain any quote of his from the petition for rehearing en banc, should be dismissed for failure to provide adequate notice of the misconduct he had actually done. We decline to dismiss it. From our reading, this allegation adequately describes the event at Lynn's disciplinary hearing, specifically one statement of the OCTC prosecutor, and OCTC's belief that Hubbard used this statement in a dishonest manner in the petition. In fact, his detailed argument regarding this allegation belies his argument for dismissal. Hubbard's statement from the petition that underlies OCTC's allegation is, "The Court must grant this Petition for Rehearing En Banc, as even the State Bar [p]rosecutor admitted that . . . the district court's charges of professional misconduct and ethics violations would never have been brought if [Lynn and Mehton] had had a chance to respond."

justice . . . the reasoning behind the dismissal of [Mehton's] cases is that the State Bar did not have information prior to . . . where the State Bar might have chosen not to go forward on those charges, had [the State Bar received] a response." The hearing judge found it was clear OCTC's statement regarding "a response" that had not been received referred to the investigation of Lynn and Mehton by the State Bar, and not an opportunity for a response in an evidentiary hearing before the federal district court, as Hubbard stated in the rehearing en banc petition. We agree.

We need not go into detail about Hubbard's argument on this issue because the parties clearly stipulated that OCTC used the word "response" to mean the lack of one to the letters the OCTC investigator sent to Lynn and Mehton, and it did not refer to Hubbard and Vogel's opportunity to have an evidentiary hearing in district court. With such stipulations in place, we find Hubbard's statement in the rehearing en banc petition intentional and misleading and find him culpable of an act of moral turpitude pursuant to section 6106. (*In the Matter of Maloney and Virsik*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 786.)

We also find that the same misrepresentation by Hubbard to the Ninth Circuit in the rehearing en banc petition establishes culpability under section 6068, subdivision (d) (count eight, seeking to mislead a judge) and section 6068, subdivision (b) (count nine, failure to maintain respect due to courts and judicial officers). (*In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 520; *Mosesian v. State Bar*, *supra*, 8 Cal.3d at p. 66.)

3. Hubbard Misrepresented that OCTC Dismissed Charges Immediately after Brenden Brownfield's[18] "Unbelievable" Testimony

Count seven additionally alleges that Hubbard misrepresented to the Ninth Circuit in the petition for rehearing en banc by stating "[Brenden] Brownfield's testimony was so unbelievable that, after he finished, [OCTC] dismissed all of the charges based on his outlandish accusations of

[18] Brendan Brownfield was an opposing counsel in the *Vogel* matter who testified at Mehton and Lynn's disciplinary trial.

discovery abuse and manufacturing evidence!" The hearing judge found Hubbard's statement to be a deliberate misrepresentation. We agree.

Hubbard's claim that his statement was not one of fact, but instead of argument, is baseless. OCTC did not state it was dismissing charges against Mehton due to Brownfield's testimony and, in fact, OCTC did not "[dismiss] all of the charges." The disciplinary charges against Lynn were fully litigated and he was found culpable of moral turpitude. Hubbard's omission of these relevant facts created a false narrative. We find that his misrepresentation was both material and intentional because he sought to mislead the court and secure an advantage by not unequivocally disclosing Lynn's misconduct, which constitutes moral turpitude and violates section 6106. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction to be drawn between "concealment, half-truth, and false statement of fact"].) This same misconduct also supports culpability findings that Hubbard sought to mislead the Ninth Circuit under section 6068, subdivision (d) (count eight) and that he did not maintain the respect due the court under section 6068, subdivision (b) (count nine).

4. OCTC Did Not Prove Hubbard Misrepresented that the Terminating Sanctions in the *Vogel* Matter Were Solely Based on Discovery Violations

Count seven further alleges that Hubbard violated section 6106 by falsely suggesting to the Ninth Circuit that the terminating sanctions in the *Vogel* matter were solely for discovery violations, when he knew that the sanctions were based on Lynn's misrepresentations in the MSJ. The district court's sanctions order was based on a finding that Lynn "acted recklessly and in bad faith . . . and the most logical conclusion to be drawn is that he intended to deceive the defendant." The hearing judge found Hubbard culpable as charged. Upon our review of the record, we determine that Hubbard did partially disclose in the rehearing petition that the district court found Lynn "participated in a pattern of falsification of evidence that amounted to bad

faith[.]" Accordingly, we do not find that OCTC's allegation is supported by clear and convincing evidence in the record. (*Conservatorship of Wendland*, *supra*, 26 Cal.4th at p. 552; See *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291 [all reasonable doubts resolved in favor of attorney].) For the same reasons, we decline to assign culpability under section 6068, subdivision (d) (count eight) or section 6068, subdivision (b) (count nine).

5. Hubbard Misrepresented that Lynn Had a Discipline-Free Record

The final allegation in count seven states that Hubbard violated section 6106 by falsely suggesting to the Ninth Circuit in the petition for rehearing en banc that Lynn did not have a record of professional discipline when, in fact, he had a final record of discipline in the Southern District of California that occurred in 2013. In the petition, Hubbard stated, "[Lynn] has practiced law in California for more than thirty-two years without any record of discipline." The hearing judge found Hubbard committed an act of moral turpitude when he "spuriously suggested" that Lynn had no record of discipline at the time he wrote the statement to the Ninth Circuit in 2016. We agree with her finding. Hubbard argues his reference to a docket entry following his statement, which points to the hearing judge's decision in 2015 that found Lynn had committed professional misconduct, provides sufficient notice for the Ninth Circuit to evaluate the meaning of his statement. This argument is not credible. As stated earlier, Hubbard has a duty to render complete and candid disclosures to the court. (*In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 177.) Hubbard's improper implication and failure to clearly disclose relevant information to the Ninth Circuit in the petition is a dishonest act of moral turpitude in violation of section 6106.

For the same reasons, we also find Hubbard culpable of seeking to mislead the Ninth Circuit, thus violating section 6068, subdivision (d) (count eight), and failing to maintain the respect due the court, thus violating section 6068, subdivision (b) (count nine). (*In the Matter of*

Chesnut, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174; *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 176.)

D. Count Ten: Failing to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

In count ten of the NDC, OCTC charged that Hubbard violated section 6068, subdivision (b), when he attacked the integrity, fairness, and character of United States District Court Judge Philip S. Gutierrez in the petition for rehearing en banc "by falsely claiming that Judge Gutierrez made rulings and findings that Judge Gutierrez knew were incorrect and contrary to the evidence . . . ." In the petition, Hubbard remarked on the district court judge's decision:

> This isn't a case where Judge Gutierrez did not know we were innocent of the charges . . . he did. The record shows that he *knew* that our positions were firmly rooted in binding Ninth Circuit precedent; *knew* that we had never manufactured constitutional standing in an ADA lawsuit (ever); . . . *knew* that Vogel had visited Tulaphorn's restaurant, which is located next to his brother's house, before the filing of the lawsuit and had first-hand knowledge of the facility; *knew* that Vogel's confusion regarding the *actual* date of that visit was traced directly to a clerical error by his lawyers (who not only took full responsibility for their mistake, but worked diligently to correct the record once the mistake was discovered); and *knew* that, given an opportunity, we could have proven all these facts at an evidentiary hearing. It did not matter! The district judge was determined to find that appellants had a history of mendacity, a pattern of deception, and willfully suborned perjury regardless of what the evidence showed; and that is precisely what he did.

The hearing judge dismissed count ten by finding Hubbard's statements were not "directly disrespectful of the district court judge" and insufficient evidence supported the charge.

OCTC argues the hearing judge's dismissal should be reversed, relying, in large part, on our prior opinion in *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775 and the Supreme Court's decision in *Ramirez v. State Bar* (1980) 28 Cal.3d 402. In *Anderson*, we adopted the Ninth Circuit's approach to this issue, as expressed in *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430. As stated in *Anderson*, in determining an attorney's culpability under section 6068, subdivision (b), for statements made that may impugn

the integrity of judicial officers, we are required to first establish that the statement is capable of being proved true or false, such that it cannot be considered a statement of opinion. (*In the Matter of Anderson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 786). Having determined the statement is factual and not opinion, we then determine if it is false, and, finally, if the false statement was made knowingly or with a reckless disregard of the truth. (*Id.* at p. 782.)

First, we find that these statements are considered factual and not opinion, as they assert Hubbard's knowledge of what Judge Gutierrez thought and did. Next, we determine if the statements were false. At a minimum, we find that the first sentence and the last sentence of OCTC's excerpt from Hubbard's petition, as set forth in count ten, are false statements. At oral argument, Hubbard asserted that OCTC did not prove any of the statements false. We disagree and find that OCTC did prove these sentences false. At trial, in response to OCTC's question regarding the evidence he had to prove that his statements about the district court judge were true, Hubbard stated that he had his "personal knowledge." We determine that Hubbard's response reveals that he had only conjecture without factual substantiation, which is sufficient to establish that the statements were false and at a minimum made with a reckless disregard of the truth. (See *In the Matter of Ramirez*, *supra*, 28 Cal.3d at pp. 411–412 ["conjecture without factual substantiation" demonstrates false statement "made with reckless disregard of the truth" sufficient to find culpability under § 6068, subd. (b)].)[19] We therefore find culpability on this count, as the Supreme Court did in *Ramirez*. We reverse the hearing judge and find Hubbard culpable of violating section 6068, subdivision (b).

[19] Regardless of her conclusion on this count, the hearing judge found that Hubbard's statements were "specious because they purport to set forth the [district court] judge's knowledge, when instead they are . . . merely [by] his 'personal knowledge,' and also 'patently misleading.'" (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [judge's factual findings afforded great weight]; Rules Proc. of State Bar, rule 5.155(A).)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[20] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Hubbard to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found this standard satisfied by Hubbard's eight misleading statements to different courts and assigned significant weight. We agree the standard applies, but assign moderate weight. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

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

Uncharged misconduct cannot serve as an independent basis for discipline, but may be used as an aggravating circumstance. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35–36.) The hearing judge did not find Hubbard culpable under count ten. Instead, the judge found uncharged moral turpitude because Hubbard's statements were patently misleading. However, we found Hubbard culpable of violating section 6068, subdivision (b), as alleged in count ten. Accordingly, we do not adopt the judge's finding of uncharged misconduct.

3. Significant Harm to the Administration of Justice (Std. 1.5(j))

The hearing judge found that Hubbard's misconduct harmed the administration of justice through his repeated misrepresentations to multiple courts and assigned significant weight. We disagree and find that this circumstance has not been established. While Hubbard made multiple misrepresentations and a statement impugning the integrity of a federal judge, the record does not

[20] Further references to standards are to this source.

reveal specific evidence that court time or resources were expended as a result. (Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79 [harm to administration of justice where attorney committed multiple acts of misconduct resulting in considerable court resources wasted].)

4. Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. An attorney who fails to accept responsibility for his actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) The hearing judge assigned "great weight" in aggravation for Hubbard's failure to appreciate the wrongfulness of his misconduct. Rather than acknowledging any wrongdoing, Hubbard insists on being exonerated, maintaining that his statements made to the U.S. Supreme Court and to the Ninth Circuit were honest, accurate, and "completely truthful." However, the record makes it clear he engaged in multiple acts of misconduct.[21] While the law does not require false penitence, it does require that an attorney accept responsibility for acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Hubbard has not done this, which demonstrates his lack of insight. We assign substantial weight to his indifference.

5. Lack of Candor (Std. 1.5(l))

The hearing judge found that Hubbard's lack of candor during his testimony and in the documentary evidence at trial was a significant aggravating circumstance. However, pursuant to the wording of standard 1.5(l), lack of candor can only be established from statements or acts that occur "during disciplinary investigations or proceedings." Here, the judge identified only one instance where Hubbard displayed a lack of candor in response to her asking why, at the

[21] We are also troubled that Hubbard told one witness, in asking him to be a character witness, that "political interests . . . want to see him discredited."

Ninth Circuit oral argument in the *Vogel* matter, he did not mention any other attorneys against whom the State Bar had taken action but only discussed Mehton and the dismissal of his charges. His response, that the judges would not let him, is clearly not accurate when one reviews the video of the Ninth Circuit argument. However, while we assign aggravation for his lack of candor to the judge, we instead assign moderate weight as it occurred only once.

B. Mitigation

1. No Prior Discipline (Std. 1.6(a))

Mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. The hearing judge gave no mitigation credit for Hubbard's nearly 15 years of discipline-free practice. Given Hubbard's indifference, the multiple misrepresentations in two different courts during 2016, and his lack of candor in 2019, we cannot conclude that his misconduct is aberrational or unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) In fact, we agree with the judge that future misconduct is "highly likely to recur." Nonetheless, given his years of discipline-free practice, we assign limited mitigating weight for Hubbard's lack of prior discipline. (Cf. *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218 [no mitigation for 13-year discipline-free record where attorney engaged in ten-year pattern of dishonesty and serious misconduct and failed to accept responsibility for wrongdoing].)

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

Hubbard's Stipulation with OCTC is a mitigating circumstance to which the hearing judge assigned moderate weight. We agree because, although the Stipulation was comprehensive, Hubbard did not admit culpability, and "more extensive weight in mitigation is

accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

3. Extraordinary Good Character (Std. 1.6(f))

Hubbard may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge determined that Hubbard was entitled to nominal mitigation for his good character. Upon our review of the record, we disagree.

Nine witnesses, including five attorneys, testified at trial regarding Hubbard's good character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) The other four witnesses included two former clients, and two friends, one of whom works for a Hubbard family-owned business. Each of the witnesses, representing a broad spectrum of the community, had a basic understanding of the charges against Hubbard, except one person who was not an attorney. (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].) The witnesses attested to Hubbard's intelligence, excellent skills as an attorney, and his integrity, including his kindness and trustworthiness. Further, several of the witnesses have known him for lengthy periods of ten years or more. Accordingly, we assign substantial mitigating weight.

4. Community Service

Under *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785, community service is a mitigating factor. The hearing judge gave limited weight to Hubbard's volunteer efforts at his children's school and pro bono work he has done for five families affected by the wildfires in Paradise, California. We also note that one of the attorney character witnesses testified that Hubbard

recently has been an MCLE presenter. We therefore assign some mitigating weight to this circumstance.

V. A ONE-YEAR ACTUAL SUSPENSION THAT REQUIRES HUBBARD TO PROVE HIS REHABILITATION AND FITNESS TO PRACTICE LAW IS APPROPRIATE DISCIPLINE

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 the 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.)

Standard 2.11 applies as it specifically deals with acts of moral turpitude.[22] The hearing judge recommended discipline that included a one-year actual suspension, which is in the range provided in standard 2.11. In reaching this recommendation, the judge relied on three cases: *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269; *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; and *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. 166.

[22] Standard 2.11 provides, "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law." Because we found Hubbard culpable for violating his duties as an attorney under section 6068, subdivisions (b) and (d), standard 2.12(a) applies and also provides that disbarment or actual suspension is the presumed sanction for those violations.

In *Dahlz*, the attorney received a one-year actual suspension for failing to perform, failing to communicate with a client, improperly withdrawing from representation, and committing an act of moral turpitude by misrepresenting a material fact to an insurance adjuster. The attorney's misconduct was aggravated by multiple acts, one prior discipline, client harm, and lack of candor on several occasions to a State Bar investigator and the hearing judge. His misconduct was mitigated by pro bono activities.

In *Hertz*, the court recommended a two-year actual suspension, along with a recommendation that the attorney not be reinstated until he proved his rehabilitation, fitness, and present learning and ability to practice law under former standard 1.4(c)(ii) (now standard 1.2(c)(1)). The attorney was found culpable of trust account violations under former Rule of Professional Conduct, rule 8-101[23] and also for deceiving a superior court judge related to trust account violations, thus violating section 6106, section 6068, subdivision (d), and former rule 7-105(1). In aggravation, the attorney's misconduct included multiple acts; bad faith, dishonesty, and a persistent refusal to account for trust funds; significant harm to his client who incurred considerable attorney fees and had to file a separate lawsuit to get recompense; harm to the administration of justice; and lack of candor and a pattern of engaging in "prolonged deceit" over a five-year period for nine misrepresentations to the superior court, the Court of Appeal, a State Bar investigator, and the opposing counsel and her client. The attorney's conduct was mitigated by significant good character evidence and substantial pro bono and community service.

Finally, in *Chesnut*, a case that recommended a six-month actual suspension, an attorney was found culpable of making misrepresentations to two judges in a single matter, thus violating section 6068, subdivision (d).[24] Aggravating weight was assigned for lack of candor because he

[23] Further reference to rules are to this source.

[24] The same misconduct in *Chesnut* was also found to violate section 6106, but no additional disciplinary weight was given to that culpability finding.

made an untruthful statement during the Hearing Department trial, and also for a prior record of discipline, which included a violation of section 6068, subdivision (d).

While the hearing judge concluded that Hubbard's misconduct was narrower in range than in *Dahlz* or *Hertz*, she determined that a recommendation of a one-year actual suspension, along with the requirement that Hubbard satisfy standard 1.2(c)(1), was necessary given the aggravating factors and the likelihood of future misconduct. OCTC agrees with this analysis and urges us to affirm the judge's recommendation.

Hubbard argues that, if found culpable, *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 or *Drociak v. State Bar* (1991) 52 Cal.3d 1085 should guide us in recommending discipline no greater than that given to those attorneys.[25] We find both cases easily distinguishable as each was found culpable of substantially less misconduct than Hubbard's multiple misrepresentations to two different courts and impugning the integrity of a federal judge. In *Jeffers*, the attorney received probation with no actual suspension for making a misrepresentation to a superior court judge and for not attending a hearing to which he was ordered. In *Drociak*, the attorney received 30 days' actual suspension for making misrepresentations to the opposing party by twice attaching a dead client's presigned verification to discovery documents, which was aggravated by his admission that he had other clients sign blank verifications.

After considering the case law, we determine *Chesnut* and *Hertz* are similar to Hubbard's record of misconduct and establish the low and high ends of the appropriate discipline range to recommend. *Dahlz* is insufficiently analogous to guide us as the facts and misconduct underlying the discipline recommendation in *Dahlz* are very different than in this case. Hubbard's misconduct is more serious than that of the attorney in *Chesnut*. He is culpable of

[25] Hubbard has also argued for exoneration; however, because we have found culpability, dismissal is not appropriate.

three separate instances of moral turpitude for misrepresentation along with an additional act of failing to maintain respect due to courts and judicial officers, which, under the discipline standards, is at the same level of seriousness as moral turpitude. Hubbard seems to argue his misconduct is not as serious as in *Chesnut* because that attorney had a prior discipline for engaging in the same misconduct a second time. We disagree.

We agree with the hearing judge that the extent of the misconduct in *Hertz* is greater than Hubbard's. While only culpable for one violation of both sections 6106 and 6068, subdivision (d), along with a rule violation, the gravamen of Hertz's case was the nine acts of deceit over five years. Those circumstances established the need to recommend a two-year actual suspension, along with a requirement that the attorney prove his rehabilitation, fitness, and present learning and ability to practice law.

Zealous advocacy is a hallmark of our legal system. However, we find Hubbard's actions went beyond zealous advocacy and fell short of his ultimate duty to be truthful and respectful to the courts. A substantial period of discipline in this case is called for, as, under the factors described in standard 2.11 to determine the degree of discipline to recommend, the magnitude of his misconduct is serious and his acts of misconduct occurred in the practice of law. We determine his aggravation is slightly greater than his mitigation given the circumstances established. Thus, we recommend a one-year actual suspension, as the hearing judge did, which is in the middle of the disciplinary range set forth in standard 2.11.

Even though this is his first disciplinary matter, we also recommend that Hubbard be required to prove his rehabilitation, fitness, and present learning and ability to practice law in a State Bar Court proceeding pursuant to standard 1.2(c)(1). While his acts of misconduct

occurred in 2016, his lack of candor in 2019[26] and his complete indifference now make this additional requirement necessary. This further condition will impress upon Hubbard the seriousness of his actions, and it will protect the public, the courts, and the legal profession by providing him the opportunity to prove that he has gained insight into his misconduct before he returns to the practice of law.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Scottlynn J. Hubbard IV be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Hubbard be placed on probation for two years on the following conditions:

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

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, he must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.

4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, he must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. He must report, in writing, any change in the above information to ARCR, within ten days after such change, in the manner required by that office.

5. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, he must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed

[26] The Supreme Court has said that lack of candor may be considered more serious than the misconduct itself. (*In the Matter of Dahlz, supra*, 4 Cal State Bar Ct. Rptr at p. 282.)

by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, he must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

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

7. Quarterly and Final Reports

   a. Deadlines for Reports. He must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, he must submit a final report no earlier than ten days before the last day of the probation period and no later than the last day of the probation period.

   b. Contents of Reports. He must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

   c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

   d. Proof of Compliance. He is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this Opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Hubbard be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or during the period of his actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If he provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. RULE 9.20

We further recommend that Hubbard be ordered to comply with the requirements 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 order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. 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.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.