

Filed April 20, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 15-O-10406
)	
LEO JOSEPH MORIARTY, JR.,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 140093.)	
_____)	

This is Leo Joseph Moriarty, Jr.’s, third disciplinary proceeding since his 1989 admission to the State Bar of California. In 2000, he received a 30-day actual suspension after stipulating to misconduct in two matters (*Moriarty I*). In 2010, he received a 45-day actual suspension after stipulating to misconduct in one matter (*Moriarty II*).

In the present case, Moriarty is charged with misconduct in two client matters. A hearing judge found him culpable of moral turpitude for: (1) failing to correct a misrepresentation made on his behalf to an administrative tribunal; and (2) intentionally making a false representation to an administrative tribunal. The judge dismissed charges, however, that Moriarty failed to obey orders of an administrative tribunal and failed to report related sanctions to the State Bar. The judge concluded that the specific tribunal involved was not a “court” and that sanctions issued by its administrative law judges (ALJs) were not “judicial sanctions.”

After weighing factors in aggravation and mitigation, the judge considered standard 1.8(b),¹ which provides for disbarment when an attorney has two or more prior records of discipline, subject to certain exceptions. She did not recommend disbarment, though, because

¹ Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

“the timing of [Moriarty’s] misconduct” and “the nature and extent of [his] prior disciplines do not justify disbarment.” Instead, she recommended discipline that included an 18-month actual suspension.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals. It argues that Moriarty is culpable on all counts, additional aggravation should be found, and he should be disbarred even if we affirm the dismissals. Moriarty does not appeal, but requests a dismissal. He contends that the judge correctly dismissed eight counts, but erred in finding him culpable of two counts of moral turpitude. Further, he asserts that even if he is culpable on those two counts, an 18-month actual suspension, not disbarment, is appropriate.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm most of the judge’s findings of fact, her two moral turpitude culpability determinations, and most of her aggravation and mitigation findings. We disagree, however, with dismissal of one of the other charged counts and with her decision not to recommend disbarment. Moriarty’s culpability in the present matter is serious. Coupled with his prior misconduct, some of which mirrors his present wrongdoing, his behavior demonstrates that he is unwilling or unable to follow ethical rules. Further, he failed to prove compelling mitigation. As such, we do not find sufficient justification to depart from standard 1.8(b), and recommend disbarment as necessary to protect the public, the profession, and the administration of justice.

I. PROCEDURAL BACKGROUND

On October 13, 2015, OCTC filed a 10-count Notice of Disciplinary Charges (NDC), charging Moriarty with two counts of seeking to mislead a judge, two counts of moral turpitude through misrepresentation, four counts of failing to obey a court order, and two counts of failing to report judicial sanctions. The parties filed a Stipulation as to Facts and Admission of Documents on January 26, 2016, and a Supplemental Stipulation as to Facts on February 3,

2016. Trial was held on February 2 and 3, 2016, and posttrial briefing followed. On May 23, 2016, the hearing judge issued her decision.

II. FACTUAL BACKGROUND²

Teresa Jacobo and George Mirabal were ex-councilmembers for the City of Bell (City). At all relevant times, Moriarty represented Jacobo and Mirabal in separate matters before the Office of Administrative Hearings (OAH) involving their individual disputes with the City and the California Public Employees' Retirement System (CalPERS) concerning the reduction of their retirement benefits (Jacobo matter and Mirabal matter, respectively).

A. The Jacobo Matter

An OAH hearing was set in the Jacobo matter on September 12, 2014. Moriarty testified that he did not feel well the night before the hearing and, due to his prior medical history, believed he was having a heart attack. Having no medical insurance, he self-treated his symptoms with nitroglycerin and aspirin. That same evening, Moriarty's fiancée spoke to his assistant, Lazaro Machado,³ and explained that Moriarty may be having a heart attack and may need to go to the hospital. Moriarty testified that he instructed Machado to seek a continuance of the next day's hearing. Moriarty emailed Machado, instructing him not to provide his cell phone number to opposing counsel. He also wrote, "Thus I might or might not go to the hospital (none of their business)."

On the morning of September 12, 2014, Machado called the City's and CalPERS's respective counsel and the OAH, and separately informed them that Moriarty was experiencing

² The factual background is based on the parties' two written stipulations, 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).) Moriarty stipulated to most facts in this case, which are largely not in dispute. On review, the issues presented are primarily questions of law.

³ Machado is a former attorney and Moriarty's former law partner who resigned from the State Bar with disciplinary charges pending in November 2004. Those charges involved office mismanagement. He also had a prior discipline record involving misrepresentations to doctors and client trust account violations.

heart problems and could not attend the hearing. Machado told them that Moriarty was going, or had been taken, to the hospital. The OAH treated Machado's call as a request for a continuance, and filed an order that same day granting that request (September 12 Order). The order stated that "Machado reported that he was informed by Moriarty's wife that Moriarty was having heart issues and, therefore, would be unable to attend the hearing [that] morning, and that [Moriarty's] wife had taken [Moriarty] to the hospital." The OAH also ordered Moriarty to file with the OAH and serve on opposing counsel documentation substantiating the medical emergency that rendered him unavailable for the September 12, 2014 hearing. Moriarty received this order.

Moriarty was not hospitalized nor did he seek or obtain any professional medical treatment on September 11 or 12, 2014. He also did not file or serve any documentation, as ordered. Subsequently, the City and CalPERS filed separate motions for sanctions against Moriarty due to his failure to provide substantiating documentation. Each also filed a notice of hearing on its motion, notifying Moriarty that a hearing was set for October 17, 2014. Moriarty received these motions and notices.

Moriarty did not attend the October 17, 2014 sanctions hearing. A special appearance attorney appeared on his behalf and made an oral motion to continue the hearing on the grounds that Moriarty was suffering "health issues" and needed an additional 30 days to file and serve the medical documentation required by the September 12 Order. The OAH denied the oral motion.

On October 21, 2014, the OAH filed separate orders granting the City's and CalPERS's motions for sanctions against Moriarty. In each order, the OAH found that Moriarty's actions in requesting a continuance and subsequently failing to provide the required medical documentation constituted bad faith actions or tactics that were frivolous and solely intended to cause unnecessary delay. The OAH ordered him to pay monetary sanctions of \$1,419.06 to the City

and \$2,966.75 to CalPERS within 30 days. Both orders were served on Moriarty, and he received them.

Moriarty failed to timely pay the sanctions. The City pursued a small claims action against him in superior court. On January 17, 2015, the court entered a judgment requiring Moriarty to pay the City \$1,419.06 in principal and \$91.86 in costs. On April 20, 2015, a notice of entry of judgment was served on Moriarty, which he received. Moriarty has not paid the full sanctions owed to the City,⁴ and has not paid any sanctions to CalPERS. In addition, he has not reported to the State Bar, in writing or otherwise, either of the sanctions imposed by the OAH.

B. The Mirabal Matter

On September 23, 2014—just two weeks after the OAH filed the September 12 Order in the Jacobo matter—an OAH hearing was set in the Mirabal matter (September 23 hearing). Moriarty testified that he was again experiencing health problems prior to the hearing. His fiancée insisted that he should go to the hospital and contacted Machado to express her concern. Moriarty instructed Machado to seek a continuance of the hearing. Either Moriarty or his fiancée informed Machado that Moriarty was at the hospital receiving an angiogram and possibly another angioplasty for a new stent implant.

On September 22, 2014, Moriarty's office, on his behalf, filed a written motion requesting a continuance of the September 23 hearing because he could not attend due to health issues. The motion stated: “[Moriarty] is today at the hospital, receiving an Angiogram and possibly another Angioplasty [*sic*] for a new Stent implant.” Machado provided Moriarty with a copy of the motion within two days after its filing.⁵ In fact, Moriarty was not hospitalized on

⁴ On August 11, 2015, Moriarty entered into an agreement with the City to make monthly payments of \$142.70, beginning on September 1, 2015. He made payments on September 25 and October 29, 2015, but failed to make any further payments. At trial, he testified that he has been financially unable to do so.

⁵ Moriarty testified that “at some point [he] must have seen” it, but does not recall when.

September 22 or 23, 2014, and he did not obtain any medical treatment at or around the time of the September 23 hearing.

On October 8, 2014, the OAH filed a written order granting Moriarty's continuance request (October 8 Order). The OAH ordered Moriarty to file with the OAH and serve on the City's and CalPERS's respective counsel documentation signed by a competent medical professional confirming his hospitalization on September 22, 2014, and his inability to proceed with the September 23 hearing. The OAH order was served on Moriarty, and he received it.

Moriarty did not file or serve any of the ordered documentation. On October 27, 2014, CalPERS filed and served a motion for sanctions against Moriarty due to his failure to do so. Moriarty received the motion.⁶ A hearing on CalPERS's motion was set for November 10, 2014. Ultimately, on November 13, 2014, CalPERS withdrew its motion because Moriarty paid it the full amount requested.

III. MORIARTY IS CULPABLE OF MULTIPLE ACTS OF MISCONDUCT

A. Moriarty Committed Two Acts of Moral Turpitude

- 1. Count One: Seeking to Mislead Judge (Bus. & Prof. Code, § 6068, subd. (d))⁷**
- Count Two: Moral Turpitude (Misrepresentation) (§ 6106)⁸**

OCTC charged Moriarty with violating section 6106 by stating, or causing to be stated, to the OAH that he had been taken to the hospital and would be unable to attend the scheduled September 12, 2014 hearing in the Jacobo matter when he knew, or was grossly negligent in not knowing, that the statement was false, and took no steps to rectify the misrepresentation

⁶ The City did not seek sanctions because it was able to inform its witnesses before they appeared and, therefore, no costs were incurred.

⁷ Further references to sections are to this source unless otherwise noted. 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."

⁸ Section 6106 states in relevant part: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

(Count Two). OCTC also charged Moriarty with violating section 6068, subdivision (d), based on the same facts (Count One). The hearing judge found Moriarty culpable as charged,⁹ but dismissed Count One as duplicative of Count Two because the same misconduct underlies both violations. As detailed below, we find that Moriarty acted with gross negligence and committed an act of moral turpitude. But we dismiss Count One because he did not act with the requisite intent to establish a violation of section 6068, subdivision (d).

Section 6106 applies to misrepresentations and concealment of material facts. (See *In the Matter of Crane and Depew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154-155.) “No distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315, quoted in *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.) It 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.) “The actual intent to deceive is not necessary; a finding of gross negligence in creating a false impression is sufficient for violation of section 6106. [Citations.]” (*Ibid.*)

The evidence here clearly and convincingly¹⁰ demonstrates that Machado misrepresented to the OAH on September 12, 2014 that Moriarty went to the hospital for his heart problems. The OAH’s September 12 Order shows that the misstatement was material and did mislead because the continuance grant was based on Moriarty’s purported medical emergency. However, Moriarty was not hospitalized and did not obtain any medical treatment at that time. Indeed, in sanctioning Moriarty, the OAH concluded that “there was no medical emergency that made

⁹ Although it is not entirely clear, it seems that the judge found that Moriarty violated section 6106 through gross negligence.

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.)

[Moriarty] unable to appear for the September 12, 2014 hearing, and the last-minute continuance request due to a medical emergency was without merit, frivolous and solely intended to cause unnecessary delay.”

There is a lack of evidence that Moriarty directed Machado to make a misrepresentation. However, ample evidence shows that Moriarty had notice that Machado did make a misrepresentation on Moriarty’s behalf and that the OAH relied upon that misrepresentation. Further, despite knowing that Machado was an attorney who had resigned with charges pending and who had a history of making misrepresentations, Moriarty assigned him the task of seeking a continuance from the OAH. Moriarty then took no steps to correct the record despite receiving the September 12 Order that showed the OAH had been misled. Moriarty had a duty to advise the OAH of the true state of affairs (*Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 56 [“Attorneys have the duty to be forthright and honest with the court, and to be honest with each other”]),¹¹ yet he did nothing. As such, we find that Moriarty ratified Machado’s misrepresentation. (See, e.g., *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 101 [attorney’s ratification of assistant’s letter to client that amounted to extortion constituted moral turpitude where attorney did nothing to retract letter].) Doing so constitutes moral turpitude by gross negligence. (See, e.g., *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91 [gross negligence in creating false impression sufficient for violation of § 6106].)

We do not, however, find sufficient evidence to establish that Moriarty intended to deceive the OAH. Thus, we dismiss Count One. (*In the Matter of Chesnut* (Review Dept. 2000)

¹¹ Another administrative entity, the Workers’ Compensation Appeals Board (WCAB), recently reminded attorneys appearing before it of “their continuing duty to timely advise the WCAB (i.e., both the Appeals Board and the [workers’ compensation ALJs]) of any material change in circumstances that could substantially affect cases pending before of it.” (*Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 [2014 WL 4975935, at *10, fn. 24] (Appeals Board en banc).)

4 Cal. State Bar Ct. Rptr. 166, 174 [attorney must act with intent to deceive to violate § 6068, subd. (d)].)

**2. Count Eight: Seeking to Mislead Judge (§ 6068, subd. (d))
Count Nine: Moral Turpitude (Misrepresentation) (§ 6106)**

We also affirm the hearing judge’s finding that Moriarty is culpable of violating section 6106 in the Mirabal matter by causing to be stated in writing to the OAH on September 22, 2014, that “[Moriarty] is today at the hospital, receiving an Angiogram and possibly another Angioplasty [*sic*] for a new Stent implant,” when he knew, or was grossly negligent in not knowing, that the statement was false, and thereafter took no steps to rectify the misrepresentation (Count Nine), and of violating section 6068, subdivision (d), based on the same facts (Count Eight). The judge found that Moriarty intentionally made a misrepresentation, but dismissed Count Eight as duplicative of Count Nine. As detailed below, we disagree with the dismissal of Count Eight.

Like the judge, we find that Machado misrepresented, in writing, that Moriarty went to the hospital and received an emergency medical procedure the day before the September 23 hearing. Although Moriarty and Machado both testified that Moriarty never directed Machado to mislead the OAH by stating that Moriarty went to the hospital, the judge found that neither Moriarty’s nor Machado’s testimony was credible. This credibility finding is entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].) The motion for a continuance—filed just two weeks after the OAH issued the September 12 Order in the Jacobo matter—was specific and included detailed information about Moriarty’s condition as the basis for the request. Yet Moriarty was not hospitalized and did not obtain any medical treatment at or near the time of the

September 23 hearing. As such, we find that Moriarty directed Machado to make the material misrepresentation.

Further, Moriarty again failed to rectify a misrepresentation made by Machado. Moriarty received a copy of the motion soon after it was filed, and received the OAH's order granting his continuance request based on his purported medical emergency. Nevertheless, Moriarty took no steps to correct the record, and thereby violated his ethical duty. (*Williams v. Superior Court*, *supra*, 147 Cal.App.4th at p. 56.) Given these facts, we find that Moriarty committed an intentional act of moral turpitude, and also violated section 6068, subdivision (d). (See *Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315.)

We disagree with the dismissal of Count Eight. Given that the same intentional misconduct underlies the violations of sections 6106 and 6068, subdivision (d), however, we treat them as a single offense involving moral turpitude (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221), and assign "no additional weight to such duplication in determining the appropriate discipline." (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 435, fn. 4.)

3. Moriarty's Arguments Are Unavailing

Moriarty did not appeal, but claims on review that the hearing judge erred in finding him culpable of moral turpitude. OCTC contends that not only did Moriarty not appeal, but he also failed to cite to the record to support his contentions or factual claims, as required. (See Rules Proc. of State Bar, rules 5.152(C) ["appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all facts in support of the points raised by the appellant"], 5.153(A) [same formal requirements apply to appellee].) OCTC asserts that Moriarty's contentions should be rejected on that basis alone. It further argues that even if we consider Moriarty's contentions, the evidence shows he is culpable of making

misrepresentations to an ALJ in two separate cases. Pursuant to our independent review authority, we reject Moriarty's arguments and summarize his key challenges below.

The evidence and our findings refute Moriarty's assertions that: (1) he never sought to mislead anybody; (2) on both occasions, he "was indeed ill and suffering from what he reasonably believed . . . were minor heart attacks"; and (3) he did not need to make any misrepresentations to the OAH to obtain the continuances, and did not do so. As noted above, his failures to correct the record *did* mislead the OAH, and he produced no documentation to substantiate his illness claims. Further, his allegations are baseless as to how the OAH would have ruled had it been presented with accurate information.

We are also unpersuaded by Moriarty's contention that "[t]here was absolutely no tactical advantage gained by [him] and his clients by these continuances. . . ." He used misrepresentations to obtain trial continuances. A misrepresentation of a fact to a court for the purpose of obtaining a continuance has been found to be "a deliberate deceit" and "an intentional violation" of an attorney's duties, including a violation of section 6068, subdivision (d). (*Vaughn v. Municipal Court* (1967) 252 Cal.App.2d 348, 358.) And willful deceit violates section 6106. (*In the Matter of Chesnut, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 174-175.)

In addition, the evidence and our findings disprove Moriarty's arguments that: (1) any misunderstanding based on what was communicated to the OAH by Machado was not at his direction and was not done by any intent to willfully deceive anybody; (2) his actions do not constitute a ratification of what was said or written/sent to the OAH; and (3) at all times, he acted with a good faith belief of what the law required in such circumstances.¹²

¹² As discussed below, given our rejection of the legal rationale that Moriarty contends "justified the dismissals" of the section 6103 and section 6068, subdivision (o)(3), counts in the NDC "on the basis of the lack of constitutional authority," we also reject his argument that such rationale requires the dismissal of the section 6068, subdivision (d), charges as well.

B. Moriarty Failed to Comply with Four OAH Orders

1. Counts Three, Four, Five, and Ten: Failure to Obey Court Order (§ 6103)¹³

OCTC charged Moriarty with three counts of violating section 6103 in the Jacobo matter by failing to comply with the OAH's orders to: (1) file and serve documentation to substantiate his September 12, 2014 medical emergency (Count Three); (2) pay \$1,419.06 in sanctions to the City (Count Four); and (3) pay \$2,966.75 in sanctions to CalPERS (Count Five). OCTC also charged Moriarty with violating section 6103 in the Mirabal matter by failing to comply with the OAH's order to file and serve documentation signed by a competent medical professional confirming his September 22, 2014 hospitalization and his inability to proceed with the September 23 hearing (Count Ten). The hearing judge did not find Moriarty culpable and dismissed these four counts because she concluded that the OAH is not a "court" within the meaning of section 6103. As analyzed below, we find that the hearing judge erred, and we conclude that Moriarty is culpable as charged.

2. Moriarty Knew He Was Failing to Obey Orders While Representing His Clients

To prove failure to obey a court order under section 6103, at a minimum, it must be established that an attorney *knew* what he or she was doing or not doing and that he or she intended either to commit the act or to abstain from committing it. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at p. 787, quoting *King v. State Bar* (1990) 52 Cal.3d 307, 314, italics added by *In the Matter of Maloney and Virsik*.) Moriarty was aware of all four OAH orders, as he stipulated that he received all of them. Yet he failed to file and serve required documentation, pay ordered sanctions, or appeal or seek other relief. It is also equally clear that Moriarty's representation of his clients before the OAH constituted the "practice of law." "The

¹³ Section 6103 provides that an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

cases uniformly hold that the character of the act, and not the place where it is performed, is the decisive element, and if the application of legal knowledge and technique is required, the activity constitutes the practice of law, *even if conducted before an administrative board or commission.* [Citation.]” (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543, italics added.)

3. The OAH Is a Court Within the Meaning of Section 6103

Moriarty asserts that OCTC failed to prove that the OAH is a “court,” a predicate to a finding of a violation of section 6103. We reject his contention, as analyzed below.

The OAH is a division of the Department of General Services, and is under the direction and control of a director appointed by the Governor. (Gov. Code, § 11370.2.) Established by the California Legislature, the OAH is a quasi-judicial tribunal that conducts adjudicatory hearings to resolve disputes involving state and local government agencies. The director appoints and maintains a staff of full-time ALJs, and may also appoint pro tempore part-time ALJs. (Gov. Code, §§ 11370.3, 11502, subd. (b).)¹⁴ When the OAH conducts an evidentiary hearing or adjudicatory proceeding, the ALJs must issue a written decision stating the factual and legal basis for the decision. (Gov. Code, § 11425.50, subd. (a).) An ALJ’s orders are enforceable in the same manner as money judgments or by contempt sanctions (Gov. Code, § 11455.30, subd. (b)), and are subject to judicial review (Gov. Code, §§ 11455.30, subd. (b), 11523). Also, an ALJ “may order a party, the party’s attorney or other authorized representative, or both, to pay reasonable expenses, including attorney’s fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay” (Gov. Code, § 11455.30, subd. (a); accord Cal. Code Regs., tit. 1, § 1040 [same].)

¹⁴ Government Code section 11475.30 defines the term “[c]ourt” as “the agency conducting an adjudicatory proceeding,” and the term “[j]udge” as an “[ALJ] or other presiding officer.”

The statutes cited above specify the powers of the OAH, including the authority of its ALJs to issue orders. The language clearly contemplates that the OAH should be treated as a court and its orders as ones that attorneys must obey. (E.g., Gov. Code, §§ 11455.30, subd. (a), 11475.30.)

We also disagree with Moriarty's position that *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126 can be read to mean that the only administrative agencies that section 6103 applies to are constitutional administrative agencies, such as the WCAB. In *Lantz*, we found that an "order of [a] workers' compensation judge is an order of a court within the meaning of section 6103," and the attorney violated that section by disregarding such an order. (*Id.* at p. 134.) We did not make any finding that other, nonconstitutional administrative agencies fell outside section 6103's scope.

Moreover, there are many reasons to apply the same analysis that we used in *Lantz* to orders issued by the OAH. The Legislature's creation of workers' compensation tribunals (namely, the WCAB) and processes and procedures to resolve workers' compensation disputes (see *In the Matter of Lantz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 134) parallels the purposes of the OAH, which is "a state entity, funded by the state, created to provide adjudicators to decide the fate of those faced with deprivations of property and liberty interests in administrative hearings." (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 336.) Both the OAH and the WCAB are tribunals that adjudicate parties' contentions and property rights, and both resolve issues of fact and law.

Further, final decisions of both the WCAB and other administrative agencies acting in a judicial or quasi-judicial capacity may each have res judicata and collateral estoppel effect. (*Hand Rehabilitation Center v. Workers' Comp. Appeals Board* (1995) 34 Cal.App.4th 1204, 1214 [discussing res judicata and collateral estoppel]; *Traub v. Board of Retirement* (1983) 34

Cal.3d 793, 798 [discussing collateral estoppel]; *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 324 [discussing res judicata and collateral estoppel]; *Pacific Coast Medical Enterprises v. Department of Benefit Payments* (1983) 140 Cal.App.3d 197, 214 [discussing res judicata]; *Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 867 [discussing collateral estoppel]; *Basurto v. Imperial Irrigation District* (2012) 211 Cal.App.4th 866, 878 [discussing collateral estoppel].¹⁵ The OAH hearings in the Jacobo and Mirabal matters were undertaken in a quasi-judicial capacity, and the Supreme Court has noted that OAH ALJs, acting in the related area of employee termination rights, “serve a function and purpose analogous to those of judges in courts of record.” (*California Teachers Ass’n v. State of California, supra*, 20 Cal.4th at p. 336; cf. *Taylor v. Mitzel* (1978) 82 Cal.App.3d 665, 670 [defendant was “immune from liability, both under the federal Civil Rights Act and in tort, since his acts were those of a quasi-judicial officer acting in his official capacity as a hearing examiner employed by the state through the [OAH]”].)

Finally, in comparing constitutional and nonconstitutional agencies, the distinctions between the two are not significant as to an attorney’s ethical duties. The State Bar Act (§ 6000 et seq.), of which section 6103 is part, sets forth a comprehensive scheme for regulating the entire practice of law in California, including when attorneys appear before administrative agencies. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 68-69.) Further, “the standards governing an attorney’s ethical duties do not vary according to the many areas of practice.” (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 511.) Section 6103’s requirement that attorneys obey court orders in connection with the practice of law is thus part of the State Bar Act’s purpose to, inter alia, establish ethical standards, protect

¹⁵ The Supreme Court has noted that: “Indicia of proceedings undertaken in a judicial capacity include a hearing before an impartial decision maker; testimony given under oath or affirmation; a party’s ability to subpoena, call, examine, and cross-examine witnesses, to introduce documentary evidence, and to make oral and written argument; the taking of a record of the proceeding; and a written statement of reasons for the decision. [Citation.]” (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944.)

the courts and the public, and preserve confidence in the legal system and profession. (Cf. *Aulisio v. Bancroft* (2014) 230 Cal.App.4th 1516, 1519 [discussing purpose of State Bar Act and § 6125 (unauthorized practice of law)]; *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [discussing purpose of Rules of Professional Conduct]; § 6001.1 [“[p]rotection of the public shall be the highest priority for the State Bar”].)

“Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system.” (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403.) As the Supreme Court has made clear, “[d]isobedience of a court order . . . demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney’s fitness to practice law [Citation.]” (*In re Kelley* (1990) 52 Cal.3d 487, 495.) Indeed, “[o]ther than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney [than willful violation of court orders].” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) Section 6103 thus plays an integral part in the statutory scheme, as it provides a mechanism to enforce the standards governing attorneys’ conduct before tribunals. We find that this is true whether the tribunal is a court of record, a constitutional administrative agency, or another administrative agency. Therefore, we conclude that section 6103 governs the orders and sanctions of all administrative agencies acting in a judicial or quasi-judicial capacity.

For the above reasons, we find that an order of an OAH ALJ is an “order of the court” within the meaning of section 6103.

4. Moriarty’s Violation of Section 6103 Was Willful

We reject Moriarty’s argument that his failure to comply with the OAH’s September 12 Order (Count Three) and October 8 Order (Count Ten) requiring him to provide substantiating medical documentation was not willful given that it was “impossible” to do so because no such

medical records existed. His purported inability to comply with the orders is not a defense because no evidence shows that he ever sought relief from the orders on the basis of inability to comply. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9 [attorney obligated to obey orders unless steps taken to have them modified or vacated]; see also *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 952 [“no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid”].) Moriarty chose to do nothing, and simply ignored the orders.

We also reject Moriarty’s argument that his failure to comply with the OAH’s two October 21, 2014 sanctions orders (Counts Four and Five) was not willful because it was impossible for him to do so “due to his lack of sufficient financial resources.” Moriarty never established his inability to pay before the OAH, and his claim of financial hardship, even if true, is no defense to nonpayment of sanctions because he failed to seek relief. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [despite financial hardship, attorney culpable for failure to pay court-ordered sanctions when attorney fails to seek relief from order in civil courts because of inability to pay].)¹⁶

Accordingly, OCTC established that Moriarty is culpable as charged in Counts Three, Four, Five, and Ten.¹⁷

¹⁶ We also reject Moriarty’s contention that seeking more time to pay would be a “useless waste of time for everybody” since his ability to pay the sanctions in full was so uncertain.

¹⁷ Moriarty contended at oral argument that decisions of an OAH ALJ are not “final” because they are submitted to a board (which includes nonattorneys) that can decide whether to adopt them. His argument is unavailing. We find that the orders here were final because there is no evidence that Moriarty ever disputed their finality or validity or sought to stay their enforcement or pursued appellate relief. (See *In the Matter of Klein, supra*, 3 Cal. State Bar. Ct. Rptr. at p. 9 [attorney required to obey court order unless attorney takes steps to have it modified or vacated, regardless of belief that order is invalid].)

C. Moriarty Failed to Timely Report Two Sanctions Imposed by the OAH

Counts Six and Seven: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))¹⁸

OCTC charged Moriarty with violating section 6068, subdivision (o)(3), by failing to timely report to the State Bar the sanctions of \$1,419.06 (Count Six) and \$2,966.75 (Count Seven) imposed by the OAH in the Jacobo matter. The hearing judge concluded that Moriarty was not required to report OAH sanctions, noting that the “OAH has no power to enforce monetary sanctions” and “there is a lack of precedent establishing that sanctions issued by an OAH [ALJ] are considered ‘judicial sanctions’ within the meaning of section 6068, subdivision (o)(3).” She thus found him not culpable and dismissed both counts. We disagree.

As we have previously held, “the purpose of section 6068, subdivision (o)(3) is to inform the State Bar promptly of events which *could* warrant disciplinary investigation. Depending on the facts, any such investigation might not even focus primarily on the sanction itself, but on the conduct preceding or surrounding a sanctions order.” (*In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. at p. 866.) Since the practice of law includes litigating before administrative agencies adjudicating matters, it would be inconsistent with the purpose of section 6068, subdivision (o)(3), to exempt sanctions issued by such agencies from an attorney’s reporting requirement. Moreover, that section identifies certain sanctions that need not be reported—i.e., discovery sanctions and sanctions of less than \$1,000. No exemption exists for sanctions imposed by administrative agencies. As such, consistent with our above analysis regarding section 6103, we find that section 6068, subdivision (o)(3), applies to sanctions issued by all administrative agencies acting in a judicial or quasi-judicial capacity. We thus conclude

¹⁸ Section 6068, subdivision (o)(3), requires an attorney “[t]o report to the [State Bar], in writing, within 30 days of the time the attorney has knowledge of . . . [¶] . . . [¶] . . . [t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).”

that the sanctions imposed here by the OAH are “judicial sanctions” within the meaning of section 6068, subdivision (o)(3), which must be reported to the State Bar.¹⁹

We also reject Moriarty’s purported good faith defense. Good faith, or even ignorance of the law, is not a defense to section 6068, subdivision (o)(3). (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 176.) Moreover, the record does not establish that his failure to report the sanctions was attributable to his belief *at the time* that the statute did not require him to report the OAH sanctions. We thus find him culpable as charged.

IV. SIGNIFICANT AGGRAVATION OUTWEIGHS LIMITED MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence (std. 1.5), while Moriarty has the same burden to prove mitigation (std. 1.6).

A. Aggravation

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

Standard 1.5(a) provides that a prior record of discipline may be an aggravating factor. The hearing judge found that Moriarty’s two prior discipline records are a significant aggravating factor. We agree.

Moriarty I.²⁰ On January 13, 2000, the Supreme Court ordered that Moriarty receive three years’ probation with conditions, including a 30-day actual suspension, as the result of his stipulating to three ethical violations in two matters. In one matter, in 1996, Moriarty made false representations to the Los Angeles Municipal Court that a defendant was represented by counsel and that Moriarty was making special appearances for that counsel. However, the defendant was not represented by said counsel, and Moriarty knew or should have known that the court would

¹⁹ We also note that the City’s sanction award was reduced to a superior court judgment on January 17, 2015. Moriarty was served with the notice of entry of judgment on April 20, 2015. He makes no argument that he was not required to report this judgment to the State Bar.

²⁰ Supreme Court Case No. S083255; State Bar Court Case Nos. 96-O-04531; 98-O-00944.

be misled. He was culpable of seeking to mislead a judge and engaging in an act of moral turpitude. In a second matter, in 1997, Moriarty failed to communicate with his client and allowed the dismissal of his client's case with prejudice. He was culpable of improperly withdrawing from employment. In mitigation, he had no prior record of discipline and was candid and cooperative with the State Bar.²¹ No aggravating factors were involved.

Moriarty II.²² On January 22, 2010, the Supreme Court imposed one year of probation with conditions, including a 45-day actual suspension, on Moriarty as the result of his stipulating to three ethical violations in one client matter. In 2005, Moriarty failed to perform legal services with competence by failing to make court appearances on three occasions, permitting his client's case to be dismissed, and failing to take any action to reinstate his client's case after its dismissal. Moriarty was also culpable of failing to keep his client reasonably informed of significant developments and failing to promptly respond to his client's reasonable status inquiries. In mitigation, Moriarty displayed candor and cooperation with the State Bar and demonstrated good character. In aggravation, he had one prior record of discipline, caused significant client harm, and committed multiple acts of wrongdoing.

We observe that Moriarty has repeatedly attempted to mislead tribunals (first in 1996 in *Moriarty I* and again in 2014 in the present case) and abandoned his clients (first in 1997 in *Moriarty I* and again in 2005 in *Moriarty II*). We also note his recurring disregard of adherence to professional responsibilities: in *Moriarty I*, he engaged in an act involving moral turpitude; in *Moriarty II*, he committed multiple acts of wrongdoing and caused significant harm; and in this case, he again committed multiple acts of misconduct, including some involving moral turpitude. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [part of

²¹ The hearing department decision mistakenly stated that no mitigating factors were involved.

²² Supreme Court Case No. S178060; State Bar Court Case No. 07-O-14229.

rationale for considering prior discipline as having aggravating impact is that it is indicative of recidivist attorney's inability to conform his conduct to ethical norms]; *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].)

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

Because we find misconduct that was dismissed by the hearing judge, we also find, unlike the judge, that Moriarty's misconduct is aggravated by multiple acts of wrongdoing. (Std. 1.5(b) [multiple acts of wrongdoing are aggravating circumstance].) In addition to the two acts of moral turpitude found by the judge, we find Moriarty violated four OAH orders and failed to report two judicial sanctions to the State Bar. We thus assign this factor moderate aggravating weight. (See *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 (Std. 1.5(j))

We agree with the hearing judge that Moriarty's misconduct harmed the administration of justice. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) In its sanctions orders, the OAH determined that Moriarty did not experience a medical emergency that prevented him from appearing at the September 12, 2014 hearing. The OAH found that Moriarty's "last-minute continuance request due to a medical emergency was without merit, frivolous and solely intended to cause unnecessary delay." The OAH granted continuances that delayed the Jacobo and Mirabal matters in reliance on Moriarty's misrepresentations, one of which was intentional. Such actions undermine the ability of a tribunal to rely on an attorney's word. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 220.) The hearing judge found that this harm was a significant aggravating

factor. We differ from the judge, however, and find that the harm to the administration of justice caused by these continuances is only a moderate aggravating factor.

4. Indifference (Std. 1.5(k))

The hearing judge correctly found that Moriarty fails to appreciate the wrongfulness of his misconduct. Indeed, Moriarty stated multiple times during the trial below that there was no need to correct the record or clarify the actual circumstances surrounding his continuance requests since he had already obtained the continuances. His attitude reveals a lack of understanding of his ethical responsibilities as an attorney, as demonstrated by his testimony that he understood “that the reporting of judicial sanctions is something that’s kind of low on the food chain with respect to reportability.” Like the hearing judge, we assign significant weight to Moriarty’s indifference because his lack of insight makes him an ongoing danger to the public and the legal profession. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence but does require respondent to accept responsibility for acts and come to grips with culpability].)

B. Mitigation

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

We agree with the hearing judge that Moriarty is entitled to limited mitigating weight for his cooperation with the State Bar. (Std. 1.6(e) [mitigation credit permitted for spontaneous candor and cooperation displayed to State Bar].) Moriarty entered into an extensive pretrial factual stipulation, as well as a supplemental factual stipulation, which expedited the trial, although many of the facts were easily provable. (*In the Matter of Gadda, supra*, 4 Cal. State Bar Ct. Rptr. at p. 443 [factual stipulation merits some mitigation].)

2. No Other Mitigating Factors

The judge correctly found that Moriarty did not establish any other mitigating factors. First, Moriarty did not present clear and convincing evidence that his heart problems or *any* medical issues were directly responsible for his misconduct. (See std. 1.6(d) [mitigation credit permitted for extreme emotional difficulties or physical or mental disabilities suffered by member at time of misconduct under certain circumstances].) Second, he failed to establish any mitigation for good character because his one character witness, Lazaro Machado, did not constitute the requisite “wide range of references in the legal and general communities.” (Std. 1.6(f).) Machado testified regarding Moriarty’s generosity and pro bono work. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono work and community service are mitigating circumstances].) Specifically, he noted that Moriarty frequently helped clients without charging them, assisted other attorneys, and made loans to various individuals, often without expectation of repayment. Nevertheless, the testimony was provided in very general terms. Without a clear description of the type and extent of these acts, we do not have clear and convincing evidence of their nature and scope. Thus, we can afford them no mitigating credit.

V. DISBARMENT IS THE APPROPRIATE DISCIPLINE²³

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92), and should be followed whenever possible (std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11).

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Here, both standard 2.11, which addresses an act of

²³ 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 standards for attorneys. (Std. 1.1.)

moral turpitude or intentional or grossly negligent misrepresentation, and standard 2.12(a), which addresses disobedience or violation of a court order related to a member's practice of law or the duties required of an attorney under section 6068, subdivision (d), provide that disbarment or actual suspension is the presumed sanction.²⁴

Furthermore, given Moriarty's disciplinary history, we also look to standard 1.8(b), which states that disbarment is appropriate where an attorney has two or more prior records of discipline if: (1) an actual suspension was ordered in any prior disciplinary matter; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Moriarty's case meets two of these criteria: he previously received 30- and 45-day actual suspensions; and, like the hearing judge, we find that his prior and current misconduct establish his unwillingness or inability to conform to ethical norms. Moreover, the two specified exceptions to standard 1.8(b) do not apply here. Moriarty's present misconduct did not occur at the same time as his prior misconduct, and his limited mitigation for cooperation is neither compelling nor does it predominate over the significant aggravation for two prior discipline records, multiple acts of wrongdoing, significant harm, and his indifference.

We next consider whether any reason exists to depart from the discipline called for by standard 1.8(b). We acknowledge that disbarment is not mandatory as a third discipline. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate (analysis under former std. 1.7(b))]; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [to fulfill "purposes of lawyer discipline, we must examine the nature and chronology of respondent's record of discipline"].) However, if we deviate from

²⁴ Standard 2.12(b), which provides that reproof is the presumed sanction for violation of duties required of an attorney under section 6068, subdivision (o), is also applicable.

recommending disbarment, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].)

Moriarty has not identified an adequate reason for us to depart from applying standard 1.8(b), and we cannot articulate any. Further, we reject the hearing judge's reasons for deviating from recommending disbarment—i.e., because “the timing of [Moriarty's] misconduct” and “the nature and extent of [his] prior disciplines do not justify disbarment.” The record shows multiple instances of similar wrongdoing dating back to 1996, repeated abandonment of clients, blatant violation of applicable orders, and a troubling similarity between Moriarty's present misconduct and the misconduct underlying *Moriarty I*. We also note that his misconduct in *Moriarty II* occurred shortly after his *Moriarty I* probation ended, and his present misconduct occurred shortly after his *Moriarty II* probation ended. Moreover, we find that the metes and bounds of the misconduct here are greater than the judge found. The record depicts an attorney who, for much of the past two decades, was either committing repeated, serious misconduct or being monitored on probation.

We emphasize that attorneys are sworn officers of the courts, and “[i]t is, of course, an extremely serious breach of an attorney's duty to lie in statements made to the court.” (*In re Aguilar* (2004) 34 Cal.4th 386, 394.) Practically speaking, courts simply cannot function unless they can trust that attorneys appearing before them are telling the truth. Honesty is absolutely fundamental in the practice of law; without it, “the profession is worse than valueless in the place it holds in the administration of justice.” (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.)

The State Bar Court has been required to intervene three times to ensure that Moriarty adheres to the professional standards required of those who are licensed to practice law in California. We conclude that further probation and suspension would be inadequate to prevent him from committing future misconduct that would endanger the public and the profession.

(*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112-113 [disbarment imposed where attorney repeatedly failed to comply with probation conditions since further probation unlikely to prevent future misconduct].) The standards and decisional law support our conclusion that the public and the profession are best protected if Moriarty is disbarred.²⁵

VI. RECOMMENDATION

We recommend that Leo Joseph Moriarty, Jr., be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

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

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

²⁵ E.g., *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427 (disbarment where attorney with two prior disciplines committed act of moral turpitude and significant aggravation outweighed limited mitigation); *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 (disbarment where attorney with two prior disciplines was unable to conform conduct to ethical norms with multiple aggravating factors and no mitigation).

VII. ORDER OF INACTIVE ENROLLMENT

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Leo Joseph Moriarty, Jr., 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).)

HONN, J.

WE CONCUR:

PURCELL, P. 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 No. 15-O-10406

In the Matter of

LEO JOSEPH MORIARTY, JR.

Hearing Judge

Hon. Yvette D. Roland

Counsel for the Parties

For State Bar of California:

**Allen Blumenthal, Esq.
Office of the Chief Trial Counsel
The State Bar of California
180 Howard St., 7th floor
San Francisco, CA 94105-1639**

For Respondent:

**Leo J. Moriarty, Jr.
Law Office of Leo J. Moriarty
4605 E. 1st St.
Long Beach, CA 90803 - 3118**