PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

Filed January 9, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 10-O-09718
	)	
MICHAEL THOMAS MORRISSEY,	)	OPINION
	)	
A Member of the State Bar, No. 62195.	)	
	)	

This is Michael Thomas Morrissey's fifth discipline proceeding. The hearing judge found Morrissey culpable of three counts of misconduct because he: (1) failed to obey an order issued by the hearing department of the State Bar Court during his fourth disciplinary proceeding; (2) acted with moral turpitude when he falsely declared under penalty of perjury that he had complied with the order; and (3) failed to cooperate with an investigation into the matter by the State Bar Office of the Chief Trial Counsel (State Bar). At trial, much of Morrissey's testimony was contradicted by other witnesses whom the hearing judge found more credible. Finding no mitigation and significant aggravation, the hearing judge recommended that Morrissey be disbarred.

Morrissey seeks review, contending that the hearing judge made procedural and evidentiary errors that require reversal. He argues that the evidence shows he substantially complied with the order in his fourth discipline case and did not lie about his compliance. As to his failure to cooperate with the State Bar investigation, Morrissey claims he was unaware of this proceeding until shortly before trial because his wife, who was also his secretary, concealed it from him. He also attacks the discipline process in its entirety as unconstitutional. Although the

State Bar did not seek review, it supports the hearing judge's decision and contends that Morrissey is additionally culpable of failing to competently perform legal services.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), considering the specific factual findings raised in Morrissey's briefs.[1] (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) We find that Morrissey is culpable of four counts of misconduct, including failing to perform competently, for which he established no factors in mitigation. Given Morrissey's extensive prior record, the presumptive discipline, absent compelling mitigation, is disbarment under Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.7(b).[2] We see no reason to depart from the standard, and find that in order to protect the public, the courts, and the legal profession, Morrissey should be disbarred.

I. MORRISSEY'S PROCEDURAL CHALLENGES

A. Procedural History

The State Bar filed the instant Notice of Disciplinary Charges (NDC) on June 2, 2011, alleging five counts of misconduct. On June 28, 2011, a response was filed on Morrissey's behalf.[3] Thereafter, the court set pretrial conference and trial dates. On October 3, 2011, the day of the pretrial conference, Morrissey faxed a letter to the State Bar Court, stating that he had only learned the night before of the entire discipline matter because his wife had intercepted all communications from the State Bar. In his letter, he requested the pretrial conference be continued. After he failed to appear at the October 3 pretrial conference, the hearing judge

[1] Having independently reviewed all the arguments raised by Morrissey, those not specifically addressed herein have been considered and are rejected as lacking merit.

[2] Unless otherwise noted, all further references to "standard(s)" are to this source.

[3] Morrissey later claimed the response was filed by his wife without his knowledge.

issued an October 4, 2011 order advising him of the previously set October 11, 2011 trial date. When he failed to appear at trial, his default was entered.

On October 20, 2011, Morrissey moved for relief from default. The hearing judge granted the motion, allowed him to file a new response, and set the trial date for December 2, 2011. On November 14, 2011, Morrissey moved to continue the trial, claiming that he had first learned of these proceedings on October 19, 2011. The hearing judge denied his request for a continuance. Trial was held on December 2, 5, and 6, 2011, and continued on January 9 and 10, 2012.

B. Morrissey's Procedural Challenges

Morrissey asserts that the hearing judge improperly denied his request for a trial continuance and, thus, he was denied the opportunity to conduct discovery, research, or otherwise prepare for trial. We disagree. "Continuances are generally disfavored in disciplinary proceedings, and the hearing [judge] has discretion to exercise reasonable control over the proceedings in order to avoid unnecessary delay. [Citations.]" (*Jones v. State Bar* (1989) 49 Cal.3d 273, 287.) The hearing judge gave Morrissey the benefit of the doubt in setting aside his default after Morrissey claimed that he learned of the matter on October 2, 2011, but then failed to appear at trial on October 11, 2011, or otherwise seek timely relief. In the November 4, 2011 order setting aside Morrissey's default, the hearing judge set a pretrial date and a new trial date of December 2, 2011. We see no error of law or abuse of discretion in the hearing judge's decision to maintain Morrissey's second trial date, and Morrissey has failed to set forth any actual prejudice he suffered. (Rules Proc. of State Bar, rule 5.49 [continuances granted only upon showing of good cause]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [absent actual prejudice, party not entitled to relief from hearing judge's procedural ruling].)

We also reject Morrissey's generalized claim that the hearing judge was biased against him. Morrissey provided no specific evidence of bias. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 688 [rejecting overbroad bias claim].)

Furthermore, we find that the hearing judge did not violate Morrissey's due process rights by placing him on inactive enrollment after issuing a decision recommending his disbarment. Such an inactive enrollment order is statutorily required after a disbarment recommendation is made under Business and Professions Code section 6007, subdivision (c)(4).[4] (*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1126 ["procedures for the involuntary inactive enrollment of attorneys under section 6007, subdivision (c) satisfy the requirements of due process"].)

Finally, Morrissey generally challenges the constitutionality of the State Bar Court. However, the Supreme Court has "long recognized the regulatory ability of the State Bar, and [has] found that the procedural safeguards provided by the Rules of Procedure of the State Bar are adequate to ensure that administrative due process will be observed." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928 [absent showing of specific prejudice, application of State Bar Rules of Procedure not deemed inherently unfair].) We find no merit to Morrissey's generalized objection to the discipline process.

II. FINDINGS OF FACT[5]

A. Morrissey's Fourth Disciplinary Proceeding

Morrissey was admitted to practice law in California in December 1974, and has four prior records of discipline. Much of his prior misconduct, which occurred between 1992 and

[4] Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

[5] The hearing judge found much of Morrissey's testimony not credible. We give great deference to this finding (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 951), which is clearly supported by the record. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's findings entitled to great weight].)

2003, was attributable to his depression and alcohol abuse. The instant discipline matter primarily relates to Morrissey's failure to comply with a court order during his fourth disciplinary proceeding.

In 2002 and 2003, Morrissey was convicted of four alcohol-related crimes, including a hit-and-run while driving under the influence of drugs. (Veh. Code, §§ 20001, subd. (a), 23152, subd. (a).) The State Bar transmitted to this court certified copies of Morrissey's convictions to determine whether they constituted cause for discipline. In response, Morrissey requested participation in the State Bar Court's Alternative Discipline Program (ADP).

On October 2, 2006, the hearing judge admitted Morrissey into the ADP. Based on the parties' stipulation,[6] the hearing judge stated that she would recommend a six-month period of actual suspension if he successfully completed the ADP. Pursuant to section 6233,[7] to lessen the impact of the recommended suspension, the hearing judge also agreed Morrissey could serve the recommended six-month suspension in three 60-day suspension periods. As discussed below, each time Morrissey was suspended under section 6233, he was ordered to give notice of his inactive enrollment in his cases by complying with a modified version of the California Rules of Court, rule 9.20.

B. Hearing Judge's Second 60-Day Suspension Order during his ADP Case

On July 13, 2010, the hearing judge placed Morrissey on his second 60-day suspension, effective July 13, 2010 to September 13, 2010, which is the relevant period in the present

[6] As required under the ADP, the parties filed a First Amended Stipulation re Facts and Conclusions of Law, which addressed Morrissey's four conviction matters and one original proceeding that was based on four sanction orders he received in his civil litigation practice.

[7] Section 6233 provides: "An attorney entering the diversion and assistance program pursuant to subdivision (b) of Section 6232 may be enrolled as an inactive member of the State Bar and not be entitled to practice law. . . ."

disciplinary proceeding. In addition to his suspension, Morrissey was ordered to perform the following tasks within 30 days (i.e., no later than August 12, 2010):

> [a.] Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment pursuant to Business and Professions Code section 6233 and his consequent disqualification to act as an attorney effective July 13, 2010. In [the] absence of co-counsel, respondent must also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
>
> b. Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled or notify the clients and any co-counsel of a suitable place and time where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
>
> c. [R]efund any part of fees paid that are unearned; and
>
> d. Notify opposing counsel in pending litigation, or, in the absence of counsel, the adverse parties, of respondent's inactive enrollment and *consequent disqualification to act as an attorney* effective July 13, 2010, and file a copy of the notice with the agency, court, or tribunal before which the litigation is pending for inclusion in the respective file or files. [Italics added.]

The order also provided:

> All notices required by this order must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to respondent.
>
> Furthermore, within 40 days after the effective date of his inactive enrollment [i.e., no later than August 22, 2010], respondent must file with this court an affidavit showing that he has fully complied with the requirements set forth above. The affidavit must also set forth an address where communications may be directed to respondent.

C. Morrissey's Inadequate Notice to his Client and the Court

On August 12, 2010, the last day to provide notice of his second 60-day suspension, Morrissey sent by certified mail a "Notice of Inactive Status" to opposing counsel in *Nader*

Automotive Group, LLC v. Volkswagen Group of America, Inc. et al. (*Volkswagen*).[8] This Notice of Inactive Status reads in its entirety:

> PLEASE TAKE NOTICE that Michael T. Morrissey, one of the attorneys of record for NADER AUTOMOTIVE GROUP, LLC and NADER EGHTESAD, plaintiffs in this action, will be inactive from July 13, 2010, through and including September 13, 2010.

Morrissey also claims he attempted to file the Notice of Inactive Status with the Ventura County Superior Court via a fax filing company. Morrissey maintains he received confirmation from the fax filing company that it had received his request for filing, but the company denies sending it. Even if the fax filing company had sent confirmation that it received the request for filing, Morrissey never received a confirmation that the company actually filed the Notice with the court, which is part of its protocol. The Notice of Inactive Status was not entered in the Ventura County Superior Court's docket in *Volkswagen*, and neither the court nor the filing company has any record of it.

Morrissey also sent Eghtesad a letter on August 12, 2010 that stated:

> Enclosed is a copy of a Notice of Inactivity covering the periods from July 13, 2010 to September 13, 2010. These have been filed in all of your cases. As you know this notice prevents me from practicing law. Like last time I have made arrangements with Mr. Machado to cover your files in my absence.
>
> We have been trying to reach you for months to no avail. Please contact Tracey or Mr. Machado immediately. If you fail to contact us you will lose your cases.

Morrissey attached to the letter a Notice of Inactive Status that had been filed in a different case on behalf of Eghtesad in San Mateo County Superior Court. Although Morrissey sent this notice to Eghtesad by certified mail, he never received the return receipt. Instead, on September 24, 2010, the notice was returned to Morrissey as unclaimed by Eghtesad.

[8] As discussed below, Morrissey had filed the complaint in *Volkswagen* in Ventura County Superior Court on behalf of his client, Nader Eghtesad.

D. Morrissey's August 23, 2010 Inaccurate Compliance Declaration

On August 23, 2010, one day late, Morrissey filed with the hearing department of the State Bar Court a declaration he signed under penalty of perjury. In it, he stated:

> I have fully complied with the [July 13, 2010] order. [¶] I have duly notified all opposing counsel, all clients, co-counsel, and all tribunals of my inactive enrollment for a period of sixty days running from July 13, 2010 to and including September 13, 2010 and have fully complied with the court's order by serving said notices to counsel and clients by U.S. Certified Mail, Return Receipt Requested. [¶] I have also filed with the clerks of the court of all tribunals where I have pending matters notice of my inactive enrollment and the period of same.

On September 14, 2010, the hearing judge granted Morrissey's petition to return to active enrollment. The court found good cause to grant the petition, based on Morrissey's supporting evidence "that he has been in full compliance with the requirements of his enrollment in the ADP."[9]

E. Morrissey's Representation of Nader Eghtesad

Morrissey represented Nader Eghtesad in several civil matters in 2010, including the *Volkswagen* matter. However, over the course of the *Volkswagen* litigation, the relationship between Morrissey and Eghtesad became strained. By March 2010, Eghtesad's trust in Morrissey had deteriorated, and Morrissey had difficulty communicating with Eghtesad. On April 7, 2010, Morrissey sent Eghtesad an e-mail warning that Eghtesad's failures to respond and to provide information and documents necessary to pursue the *Volkswagen* claims "leaves me no recourse but to withdraw. . . . [¶] You will need to get another lawyer because I have exhausted my abilities to help you."

[9] The hearing judge also filed an order on September 13, 2010, finding that Morrissey had successfully completed the ADP, directing the clerk to file the 2006 Stipulation, and recommending the six-month actual suspension. On May 26, 2011, the Supreme Court ordered discipline including a six-month actual suspension, with credit for Morrissey's two prior 60-day suspension periods.

Despite this warning, Morrissey continued to pursue the litigation, filing a first amended complaint in *Volkswagen* a week later on April 14, 2010. Then, on April 20, 2010, he sent Eghtesad another e-mail stating that Eghtesad's lack of cooperation required him to withdraw and instructing him to find replacement counsel. But again, Morrissey did not seek leave from the court to withdraw and continued to litigate the case. In fact, after Volkswagen filed a demurrer and moved to strike the first amended complaint, Morrissey filed an opposition and appeared at a hearing on June 23, 2010, requesting 60 days to conduct discovery and amend the complaint. The court sustained Volkswagen's demurrer with leave to amend and set August 20, 2010, as the "drop dead date" to file the second amended complaint. Subsequently, Morrissey served a request for discovery on Volkswagen on July 3, 2010.

Meanwhile, in May 2010, the hearing judge in Morrissey's ADP discipline case had indicated that his second 60-day suspension period would commence as early as July 1, 2010.[10] But at the June 23, 2010 hearing before the Ventura County Superior Court, Morrissey failed to mention any upcoming period of suspension, and in fact, requested the 60 days' leave to amend the complaint. Then, on July 12, 2010, Morrissey appeared at his ADP status conference where he was ordered to go inactive the next day. Also on July 12, Morrissey filed in *Volkswagen* a notice of association of counsel, naming as co-counsel Robert Machado, an attorney who was both his officemate and ADP monitor. Morrissey was suspended from July 13 to September 13, 2010.

No amended complaint was filed in *Volkswagen* by the August 20 deadline. On September 13, 2010, opposing counsel left e-mail, telephone, and fax messages for Morrissey and Machado that he would present an ex parte application to dismiss the matter to the superior

[10] We take judicial notice of the ADP Status Conference Orders in Morrissey's fourth discipline case filed on February 4, May 12, and July 13, 2010. (Evid. Code, § 452, subd. (d)(1).)

court the next day. Later that day, Machado signed and filed a Motion to Be Relieved As Counsel on behalf of himself and Morrissey in *Volkswagen*. The Ventura County Superior Court entered judgment dismissing the entire action on September 14, 2010, the same day the State Bar Court hearing judge restored Morrissey to active status. No one appeared on behalf of Eghtesad, who was still Morrissey's client, at the hearing on the ex parte application to dismiss the matter. The Ventura County Superior Court later denied the motion to be relieved as counsel as moot since the *Volkswagen* action had been dismissed.

F. Discipline Investigation

Eghtesad complained to the State Bar after the *Volkswagen* case was dismissed. On December 3, 2010, a State Bar investigator sent Morrissey a letter asking him to respond in writing to questions about the Eghtesad matters. Morrissey requested and received two extensions of time to respond to these inquiries. However, he never responded.

III. CULPABILITY

A. Count One: Failure to Obey a Court Order (§ 6103)[11]

The NDC alleges that Morrissey violated section 6103 because he failed to comply with the hearing judge's July 13, 2010 suspension order in his ADP proceeding by: (1) failing to notify the court and his clients of his suspension; and (2) failing to deliver the *Volkswagen* file to his co-counsel Machado. The hearing judge found that Morrissey was culpable of both acts of misconduct by clear and convincing evidence.[12] We agree that Morrissey violated section 6103 because he failed to notify Eghtesad and the Ventura County Superior Court of his suspension,

[11] Section 6103 provides: "A wilful 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."

[12] Clear and convincing evidence requires a finding of high probability that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

but we find insufficient evidence to establish he did not deliver the *Volkswagen* file to Machado.[13]

Morrissey failed to obey the July 13, 2010 order in two ways. First, the content of Morrissey's Notice of Inactive Status, which merely states he "will be inactive" on particular dates, does not comply with the specific requirement that he explain his "consequent disqualification to act as an attorney," and is misleading without this information. The purpose of the notification is the same as the notice of suspension required by California Rules of Court, rule 9.20, in that it "performs the critical prophylactic function of ensuring that all concerned parties – including clients, cocounsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending – learn about an attorney's discipline. [Citations.]" (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Morrissey's incomplete notice circumvented this purpose.

Second, in at least two instances, Morrissey failed to provide notice as required by the hearing judge's order. Neither Eghtesad nor the Ventura County Superior Court in the *Volkswagen* case received notice of his suspension. Morrissey waited until the last day to mail the notice to Eghtesad by certified mail, despite knowing that he had been having trouble communicating with his client for months. And Morrissey failed to include the notice specific to the *Volkswagen* case, which, as stated above, was inadequate. As for the Ventura County Superior Court, Morrissey did not follow the proper procedure for fax filing and failed to otherwise verify that the notice was filed.

Morrissey's incomplete attempts to mail the notice to Eghtesad and fax it to the Ventura County Superior Court provide no defense to his misconduct. Nor does his contention that he complied in nearly 70 other client matters. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 532-533 [substantial compliance with notice requirement

[13] Machado testified he had access to Morrissey's files and that Morrissey went over pending matters with him before each suspension.

insufficient to avoid culpability for violation but possible factor in mitigation]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47 [bad faith not element of § 6103 violation].) Morrissey knew of the hearing department's notification requirements, but failed to ensure his compliance. As such, he willfully disobeyed the hearing department's July 13, 2010 order in violation of section 6103. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467 [willfulness "does not require any intent to violate law, or to injure another, or to acquire any advantage. . . . Only a general purpose or willingness to commit the act or permit the omission is necessary"].)

B. Count Two: Moral Turpitude – Misrepresentation (§ 6106)

The NDC alleges Morrissey committed acts involving moral turpitude, dishonesty, or corruption in violation of section 6106 when he falsely stated under penalty of perjury in his August 23, 2010 declaration that he had notified the court and Eghtesad of his suspension. We agree with the hearing judge that Morrissey is culpable.

Morrissey contends that he should not be held accountable for misstatements in his August 23, 2010 declaration because he mailed the notice to Eghtesad as he represented, and he did not know the fax filing was not successfully transmitted to the Ventura County Superior Court. However, "[t]he 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.]" (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786.)

In light of his declaration under penalty of perjury, Morrissey was required to verify the accuracy of his statements. He should have received verification from the fax filing company or checked with the Ventura County Superior Court to confirm the notice was filed. As for notice to Eghtesad in the *Volkswagen* case, Morrissey was required, at the very least, to inform the hearing judge after the notice was returned as undeliverable. Instead, he chose to let the misinformation stand. When misleading information is presented to a court, "[n]o distinction

can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]" (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) In making a declaration to this court that proved to be false, Morrissey violated section 6106.

C. Count Three: Failure to Perform with Competence (Rule 3-110(A))[14]

The NDC alleges that Morrissey intentionally, recklessly, or repeatedly failed to perform legal services with competence by failing to file a second amended complaint in *Volkswagen*, failing to ensure that Machado filed an amended complaint, permitting the matter to be dismissed, and failing to take any further action on behalf of Eghtesad after the June 23, 2010 hearing in that matter. The hearing judge found no violation of this rule because Morrissey could not practice law at the time that the second amended complaint was due, and the NDC failed to charge Morrissey with failure to withdraw when Eghtesad became unresponsive. Based on our independent review, we disagree and conclude Morrissey is culpable.

Morrissey recklessly failed to perform competently in violation of rule 3-110 by employing a litigation strategy that resulted in dismissal of *Volkswagen*. He failed to timely withdraw as counsel, to properly notify the court of his suspension, and to oppose the dismissal once he was reinstated. (*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 685 [rule 3-110(A) violations for trial strategy that risked dismissal by waiting until last minute to extend five-year statutory trial deadline, stipulating that request for extension would run while respondent in lengthy trial, and not filing mandatory brief resulting in separate dismissal for failure to prosecute]; see also *In the Matter of Bragg* (Review Dept. 1997) 3 Cal.

[14] Rule 3-110(A) requires: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

State Bar Ct. Rptr. 615, 627 [rule 3-110(A) violation where attorney continued to perform some actions in civil matter for three years after concluding case was not meritorious].)[15]

D. Count Five: Failure to Cooperate in State Bar Investigation (§ 6068, subd. (i))

The NDC alleges that, despite requesting and receiving two extensions to respond to the State Bar investigator's letter, Morrissey failed to file a written response. The hearing judge found Morrissey culpable of this violation, and we agree. (*Bach v. State Bar* (1991) 52 Cal.3d 1201, 1208 [failure to respond to two successive investigator's letters violated § 6068, subd. (i)].)

The hearing judge found that Morrissey's testimony that his wife had concealed the letters lacked credibility. Again, we agree. Not only is his explanation implausible, if true, it is unacceptable. We note that if Morrissey's wife concealed as many communications and filed as many false statements as he claims, his gross neglect of his obligation to supervise his office staff would support a finding of culpability. (E.g., *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [attorney culpable of moral turpitude for gross negligence due to lax office procedures resulting in non-attorney employee signing legal documents and matters being dismissed].)

IV. SUBSTANTIAL AGGRAVATION AND NO MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)). Morrissey has the same burden to prove mitigating circumstances (std. 1.2(e)).

[15] Count Four alleged that Morrissey violated section 6068, subdivision (m), by failing to inform Eghtesad of a significant development – that he was suspended and had associated in Robert Machado as co-counsel. The hearing judge found no culpability and dismissed this count, which the State Bar does not challenge. We adopt the dismissal as the facts supporting Count Four are duplicative of the facts relied on in Counts One through Three.

A. Three Factors in Aggravation

1. Four Prior Records of Discipline (Std. 1.2(b)(i))

Morrissey's prior records of discipline are a serious factor in aggravation. His prior misconduct mirrors his current misconduct and is cause for considerable concern.

***Morrissey I* (Supreme Court No. S059441; State Bar Court Nos. 94-O-17568 et al.)**

In June 1998, Morrissey was first disciplined with a six-month stayed suspension and one-year probation for misconduct that occurred from 1992 until 1995. That proceeding involved a conviction referral consolidated with original discipline proceedings involving five clients. Morrissey stipulated that his misdemeanor conviction for battery upon his ex-wife in violation of Penal Code section 242 warranted discipline. He also stipulated to 18 counts of misconduct involving his clients, including: failing to perform legal services competently; improperly withdrawing from employment; failing to return client files; failing to refund unearned fees; failing to maintain client funds in a trust account; failing to account; and failing to communicate.

Morrissey's misconduct was aggravated by multiple acts of misconduct, but mitigated by his lengthy discipline-free practice and the 1994 misconduct of his former wife and law partner. The parties stipulated that in 1995, his ex-wife drained the Morrissey firm accounts and changed the firm address and phone number unbeknownst to Morrissey, so that for some time he did not receive mail and phone messages from clients.[16]

***Morrissey II* (Supreme Court No. S096353; State Bar Court No. 00-O-13182)**

In June 2001, the Supreme Court ordered a two-year stayed suspension and a 45-day actual suspension as part of his two-year probation. Morrissey stipulated that he failed to comply

[16] We note the resemblance to Morrissey's claims regarding his current wife in the present case.

with two terms of probation ordered in *Morrissey I*. In aggravation, Morrissey had a prior record of discipline, and in mitigation, he displayed candor and cooperation.

***Morrissey III* (Supreme Court No. S103208; State Bar Court No. 00-O-15438)**

In March 2002, the Supreme Court ordered Morrissey suspended for two years and until he met the requirements of standard 1.4(c)(ii), execution stayed, with an actual suspension of 60 days. Morrissey stipulated that between November 1999 and May 2000, he failed to perform competently when his client's civil matter was dismissed because Morrissey failed to respond to or appear pursuant to an OSC. He also improperly withdrew from employment without notifying the client or taking steps to avoid prejudice to the client.

Aggravating Morrissey's misconduct was his prior discipline, which also showed a pattern of misconduct. Morrissey contended that office personnel were concealing his mail, so he was unaware of communications from the court or his client. Morrissey received mitigation for his staff's concealment because he had "taken steps to assure that this situation will not reoccur."[17]

***Morrissey IV* (Supreme Court No. S191620; State Bar Court Nos. 03-C-03823 et al.)**

As discussed above, Morrissey's fourth discipline involved four convictions and one original discipline proceeding. His misdemeanor convictions were in 2002 and 2003 for: (1) hit-and-run (Veh. Code, § 2000, subd. (a)); (2) driving under the influence of drugs (Veh. Code, § 23152, subd. (a)); (3) driving under the influence of alcohol with blood alcohol level over .08%

[17] Morrissey also filed a declaration in *Morrissey III,* explaining why his response to the NDC was filed almost two months late. He first blamed his paralegal, whom he identified as his current wife Tracey McCarroll: "Unfortunately, I never received the charges that the State Bar filed against me in this matter. Apparently, my paralegal confused these with an ongoing matter I was involved in . . . ." He speculated that either his courier service or the State Bar was responsible for the failure to file two earlier responses he allegedly sent: "I cannot say whether the courier service sent both copies to the State Bar or whether they actually did service it properly and the Office of Chief Trial Counsel misplaced it. [¶] Under either version, however, I am blameless in this part of the transaction, or at least my failings are due to inadvertence, surprise, or excusable neglect."

(Veh. Code, § 23152, subd. (b)); and (4) driving with a suspended driver's license (Veh. Code, §14601). The original discipline matter involved four separate monetary sanction orders in favor of parties against whom Morrissey was opposing counsel in two different civil matters between February and September 2004. The sanctions were ordered against Morrissey personally and totaled approximately $29,000. He stipulated to violating section 6103 by willfully failing to pay the sanction orders.

In aggravation, Morrissey had three prior records of discipline, committed multiple acts of misconduct, and committed misconduct surrounded by dishonesty and concealment by lying to the police that his client was driving. In fact, Morrissey was driving at the time of the hit-and-run incident. In mitigation, Morrissey was candid and cooperative with the State Bar, had marital and financial difficulties, suffered severe back problems, established his good character, completed residential treatment for his chemical dependency, and ultimately successfully completed the ADP.

2. Multiple Acts of Misconduct (Std. 1.2(b)(ii))

The hearing judge properly concluded that Morrissey committed multiple acts of misconduct. Morrissey failed to comply with a court order, committed acts of moral turpitude, failed to perform competently, and failed to cooperate with the State Bar. We consider these multiple acts to be a significant factor in aggravation.

3. Lack of Insight (Std. 1.2(b)(v))

We also agree with the hearing judge that Morrissey demonstrated indifference to the consequences of his misconduct. As in the past, he blames many parties, including his client, his wife, a superior court, and a fax filing service for his misconduct. He denies that the evidence presented in this case demonstrates that he made a false statement under penalty of perjury to the court: "[a]ll the evidence shows is that there was an unexplained failure in the facsimile process,

unreported to [him], and most likely [attributable to the fax filing service]." "[B]y implying . . . that his misconduct constituted a mere technical lapse, [Morrissey] evinces a lack of understanding of the gravity of his earlier misdeeds and the import of the State Bar's regulatory functions." (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 806.) We assign significant weight to his lack of insight into his misconduct.

B. No Factors in Mitigation

Morrissey introduced no evidence in mitigation, and the hearing judge found none. We agree.

V. MORRISSEY'S MISCONDUCT CALLS FOR DISBARMENT

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. 1.3.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Our analysis begins with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young*, *supra*, 49 Cal.3d at p. 267, fn. 11), and give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) We focus on standard 1.7(b), which is the most severe and deals with an attorney who has been disciplined more than twice.[18]

[18] Standard 1.6(a) directs that when multiple acts of misconduct call for different sanctions, we apply the most severe sanction. Other applicable standards include: 2.3, which provides for actual suspension to disbarment for moral turpitude violations under section 6106; 2.4(b), which calls for reproval or suspension for willfully failing to perform services in an individual matter; 2.6, which provides for suspension to disbarment for violations of an attorney's duties under sections 6068 and 6103; and 2.10, which provides for reproval to suspension for all other violations not covered by a particular standard.

Standard 1.7(b) provides that an attorney who commits professional misconduct who "has a record of two prior impositions of discipline . . . shall be disbar[red] unless the most compelling mitigating circumstances clearly predominate." The standard guides us to recommend disbarment in cases such as this one with multiple disciplines and no mitigation. (E.g., *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under std. 1.7(b) imposed where no compelling mitigation]; compare *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [disbarment under std. 1.7(b) not imposed where compelling mitigation included lack of harm and no bad faith].) We see no reason presented in this case to depart from disbarment as recommended by standard 1.7(b).

In view of the factors unique to this case, disbarment is warranted and necessary to protect the public, the courts, and the legal profession. Morrissey has failed to meet his professional obligations for nearly two decades in five separate disciplinary proceedings. Overall, he has demonstrated at least "pervasive carelessness" toward his practice and compliance with ethical rules since 1992. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 796.)

We also find that Morrissey's discipline record presents a disturbing pattern involving disrespect for clients and the judicial process, and an utter disregard for his professional responsibilities. In addition to the false impression he left with the hearing judge in his ADP proceeding, he previously lied to a police officer about a driving offense. And on five occasions, he blamed members of his office for his failures to communicate with clients, courts, or the State Bar. Considering his past and present misconduct, it appears that he is either "unwilling or unable" to conform his behavior to the rules of professional conduct. (*Barnum v. State Bar*, *supra*, 52 Cal.3d at p. 111.) "We believe that the risk of [Morrissey] repeating this misconduct would be considerable if he were permitted to continue in practice." (*McMorris v. State Bar*

(1983) 35 Cal.3d 77, 85.) Guided by standard 1.7(b) and relevant supporting case law,[19] we find that Morrissey's misconduct calls for disbarment.

VI. RECOMMENDATION

We recommend that Michael Thomas Morrissey be disbarred and that his name be stricken from the roll of attorneys.

We further recommend that he 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 calendar 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, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

VII. ORDER

The order that Morrissey be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective March 24, 2012, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.

[19] *McMorris v. State Bar*, *supra*, 35 Cal.3d 77 (disbarment in fifth discipline proceeding for five counts of misconduct, including §§ 6103 and 6106 violations and habitual course of misconduct); *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607 (disbarment in fifth discipline proceeding after applying std. 1.7(b) where pattern of misconduct, indifference to disciplinary orders and no compelling mitigation); *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966 (disbarment in fifth discipline proceeding for repeated violations of court orders, failure to report sanctions, and unauthorized practice of law with no mitigation and aggravation including indifference, multiple acts, and acts of bad faith, dishonesty, and concealment).