PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed December 11, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	17-O-05226
	)	
EDWARD STEPHEN ORCHON,	)	OPINION
	)	
State Bar No. 67039.	)	
	)	

In his first disciplinary case after 41 years of practice, Edward Stephen Orchon was charged with seven counts of misconduct for the improper handling of his client trust account (CTA) in two related client matters. The hearing judge found Orchon culpable of six counts: two of moral turpitude for misappropriation; two of failing to maintain client funds in his CTA; and two of failing to maintain proper CTA records. The judge recommended discipline including a one-year actual suspension. Orchon appeals and does not contest any of the judge's culpability findings, including that he misappropriated client funds through his gross negligence. He argues the law and record warrant an actual suspension that does not exceed 30 days and specifically challenges the judge's aggravation and mitigation findings and the judge's reliance on certain cases in making her discipline recommendation. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we uphold the judge's recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, but assign less weight to Orchon's sole aggravating circumstance and more weight to his mitigating circumstances. Given that Orchon's mitigation, particularly his 40-plus years of discipline-free practice, significantly outweighs his aggravation,

we conclude that a 30-day actual suspension will adequately serve the goals of discipline (i.e., protecting the public, the courts, and the legal profession).

I. PROCEDURAL BACKGROUND

On October 1, 2018, OCTC filed a seven-count Notice of Disciplinary Charges (NDC) charging Orchon with two counts of failing to maintain client funds in his CTA, in willful violation of rule 4-100(A) of the California Rules of Professional Conduct[1] (counts one and two); two counts of misappropriation, in violation of Business and Professions Code section 6106[2] (counts three and four); one count of commingling, in willful violation of rule 4-100(A) (count five); and two counts of failing to maintain records of client funds, in willful violation of rule 4-100(B)(3) (counts six and seven). On November 4, 2019, the hearing judge held a one-day trial during which she granted OCTC's oral motion to dismiss the commingling charge with prejudice. The parties subsequently filed an extensive Stipulation as to Facts and Admissions of Documents (Stipulation), in which Orchon stipulated to culpability regarding counts one, two, six and seven. Posttrial closing briefs followed, and the judge issued her decision on January 30, 2020.

II. FACTUAL BACKGROUND[3]

Orchon was admitted to practice law in 1975. He handled personal injury cases between 1975 and 1977 after which he stopped practicing in the area of personal injury for the next four decades of his career. The majority of Orchon's practice involved representing corporate clients

[1] All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

[2] All further references to sections are to this source.

[3] We base the factual background on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) We also give great weight to the judge's credibility findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility issues "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].)

that were billed hourly at rates set forth in retainer agreements. Therefore, Orchon had minimal experience with contingency fees and CTA requirements.

On April 15, 2016, Jose F. Moran and Karla Martinez were injured in a car accident. The attorney who was originally handling their claims died soon after being hired. On September 27, Orchon became their attorney. He settled their claims before filing a lawsuit, and, pursuant to the contingency fee agreement he and his clients had signed, Orchon was entitled to 33⅓ percent of any gross recovery obtained.

On December 1, 2016, Geico General Insurance Co. issued two settlement checks, each for $11,500: one payable to Orchon and Moran, and the other to Orchon and Martinez. On December 6, Orchon deposited both checks (totaling $23,000) into his CTA at Wells Fargo Bank. On December 16, Orchon paid Moran and Martinez each a one-third share of their settlement ($3,833.33, totaling $7,666.66 for both) from the CTA. After he was paid his one-third share for his fees, Orchon and his clients agreed that he would attempt to negotiate with their medical providers for a lower payment to settle their medical debts. Thus, Orchon was required to maintain $3,833.33 in his CTA for each client (totaling $7,666.66) until he either paid the medical providers or paid the clients so they could pay their respective medical providers directly.

Orchon did not successfully negotiate a reduction of the medical bills nor did he issue any funds to a medical provider. An impasse developed due to a chiropractor's unwillingness to reduce his bills and his failure to provide the clients' billing records despite Orchon's request. Emails indicate that Orchon was in contact with the chiropractor's office between February and June 2017, during which time he offered to settle his clients' medical bills for less than the full amount. The chiropractor declined Orchon's settlement offer.

Beginning on February 17, 2017, Orchon's CTA fell below the $7,666.66 he was required to hold for Moran and Martinez. On that date, his CTA balance was $1,075, and it continued to drop until it reached a low of $20 by August 1.

On October 17, 2017, in response to a complaint filed by Moran and Martinez, OCTC sought information from Orchon about their claims. OCTC asked that he disclose the status of any payments to medical providers and provide any correspondence between the medical providers and him, as well as his CTA bank statements, journal, ledgers, and reconciliations from the time Orchon received any funds on behalf of Moran and Martinez.

After Orchon received an extension to respond, his counsel provided multiple responses to OCTC's inquiries. In the initial response, on December 4, 2017, Orchon's counsel asserted that his client had only retained money to which he was entitled but had inadvertently given both clients more money than they were owed in light of the outstanding medical bills. Orchon's attorney also provided copies of the requested CTA bank statements. In that letter, his counsel also offered that Orchon would pay the outstanding bills without seeking funds from his clients if OCTC could obtain the bills that Orchon unsuccessfully requested from the chiropractor.

On March 21, 2018, OCTC responded to a March 6 letter from Orchon's attorney and acknowledged two checks Orchon had written from his CTA to Moran and Martinez. However, OCTC wrote it was returning them as it required such payments to be made from Orchon's operating account since his CTA statements showed the funds had not been in the CTA since February 2017. OCTC again requested Orchon's CTA journal, ledgers, and reconciliations.

On April 9, 2018, with Orchon's authorization, his attorney forwarded to OCTC a letter his client had written him. In the letter, Orchon had provided two cashier's checks dated April 9, one payable to Moran and the other to Martinez, each in the amount of $3,833.33 (totaling $7,666.66). He also conceded he had made an accounting mistake that caused his CTA to drop below the

amount he was required to hold for his two clients and he did not have any financial records other than the CTA bank statements.

III. CULPABILITY

A. Counts One & Two—Rule 4-100(A) (Failure to Maintain Client Funds in CTA)

Rule 4-100(A), in relevant part, provides that all funds received or held for the benefit of clients must be deposited in a CTA. Orchon stipulated, and the hearing judge found, he willfully violated the rule in count one by failing to maintain a balance of $3,833.33 in his CTA on behalf of Martinez and in count two by failing to maintain a balance of $3,833.33 in his CTA on behalf of Moran. The judge did not assign disciplinary weight to these violations because the underlying misconduct supported the moral turpitude violations alleged in counts three and four, discussed below. We agree with the judge's culpability finding and that no additional disciplinary weight should be assigned. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) violation when same misconduct addressed by § 6106].)

B. Counts Six & Seven—Rule 4-100(B)(3) (Failure to Maintain Records of Client Property/Render Appropriate Accounts)

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and must render appropriate accounts to the client regarding such property. Orchon stipulated, and the hearing judge found, he willfully violated that rule by failing to maintain a written client ledger, a written account journal for his CTA, and a monthly reconciliation in count six in the Martinez matter

and in count seven in the Moran matter. The evidence establishes Orchon failed to comply with the requirements of rule 4-100(B)(3) for both counts six and seven.[4]

C. Counts Three & Four— Section 6106 (Moral Turpitude—Misappropriation)

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The hearing judge found Orchon culpable of moral turpitude for misappropriating by gross negligence at least $2,758.33 of Martinez's funds in count three and at least $2,758.33 of Moran's funds in count four, for a total misappropriation of $5,516.66.[5] On appeal, Orchon does not dispute that he acted with gross negligence in misappropriating his clients' funds.[6]

We find Orchon is culpable of grossly negligent misappropriation. A finding of gross negligence supports a finding of moral turpitude where an attorney's fiduciary obligations are involved, particularly related to managing a CTA. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) When the balance of a trust account drops below the amount the attorney is required to hold for a client, a presumption of misappropriation arises, and the burden shifts to the attorney to show that misappropriation did not occur. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 37; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.)

---

[4] The State Bar's Handbook on Client Trust Accounting also provides detailed guidance on required recordkeeping. It states attorneys are required to maintain the following records for their CTAs: (1) a written ledger for each client; (2) a written journal for each bank account; (3) all bank statements and canceled checks; and (4) monthly reconciliations for each account. (The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2018) (Handbook), § II, p. 3.) The Handbook is available online at the following website: http://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/CTA-Handbook.pdf.

[5] The $5,516.66 total amount misappropriated is calculated based on the $7,666.66 Orchon was required to maintain in his CTA ($3,833.33 for each client) less the $1,075 balance in his CTA on February 17, 2017, when the misappropriation began.

[6] In its responsive brief, OCTC also does not dispute the hearing judge's finding that the misappropriation occurred through gross negligence.

Orchon stipulated that, after he deposited the Moran and Martinez settlement checks into his CTA, paid each client $3,833.33, and withdrew his fees, he was required to maintain $3,833.33 each in his CTA for Moran and Martinez (totaling $7,666.66). The actual balance of the CTA fell below these required amounts. On February 17, 2017, it was $1,075 and then dropped to as low as $20 on August 1. Orchon admitted at trial he did not have any procedures for regularly reconciling bank records. He also conceded that, if he had been diligent in checking his CTA balance on a weekly or daily basis, he would have been aware that his account had fallen below the required balance at the end of February 2017. Hence, clear and convincing evidence[7] establishes that Orchon's failure to regularly monitor his accounts contributed to the deficiency in his CTA. Orchon also admitted he spent the client money from the CTA, but the hearing judge found he credibly testified that spending the money was not due to "any nefarious motive on his part." The judge also found Orchon credibly testified that he had negligently allowed the CTA deficiency to occur and he took responsibility and showed remorse for his misconduct. In light of the evidence, including Orchon's admissions, we find he misappropriated client funds belonging to Martinez and Moran through his grossly negligent handling of his CTA obligations. (See *Palomo v. State Bar* (1984) 36 Cal.3d 785, 796 [gross negligence in trust accounting supports a moral turpitude finding].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5[8] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Orchon has the same burden to prove mitigation. (Std. 1.6.)

[7] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

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

A. Aggravation

Multiple Acts (Std. 1.5(b))

The hearing judge found significant aggravation under standard 1.5(b) for Orchon's multiple acts of misconduct but did not specify the number of bad acts committed. OCTC requests we affirm the judge's finding, arguing Orchon had multiple improper CTA transactions, although it did not specify the number of bad acts either. Orchon argues aggravation for multiple acts is not warranted because his failure to keep client funds in trust and the misappropriation comprise a single act. Additionally, he asserts that, although two client matters are at issue here, they essentially constitute one case because the client settlement funds were received and the medical bills negotiations were made at the same time.

Upon our review of the record, we conclude that Orchon is culpable of committing multiple acts of misconduct for which we assign limited weight in aggravation. We reject Orchon's arguments and rely on case law that states "multiple acts of misconduct as aggravation are not limited to the counts pleaded. [Citation.]" (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.) While review of his CTA records demonstrates that he withdrew funds on multiple occasions over several months, our case law usually finds full aggravating weight where multiple acts of misconduct occur over a period much longer than in his case. (See *In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 279 [significant aggravation for 65 improper CTA violations involving client harm over three-year period]; see also *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [significant weight in aggravation for 24 counts of misconduct involving harm to multiple clients over four-year period].)

B. Mitigation

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

Under standard 1.6(a), mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. The hearing judge assigned significant mitigation to Orchon's 41-year discipline-free record and neither party challenges that finding. We agree with the judge, not only because of Orchon's lengthy record with no prior misconduct, but also because we find he is not likely to repeat his present misconduct. His misconduct was aberrational and limited to his failure to take all the proper steps to ensure client funds in one matter were adequately protected within the CTA as required under the rules. Therefore, we conclude that Orchon is entitled to substantial weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [substantial mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].)

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

Standard 1.6(e) provides that mitigation may be assigned for cooperation with the State Bar. At trial, Orchon stipulated to facts and culpability on four of the six counts found by the hearing judge. The judge assigned significant mitigation credit for this factor because Orchon's cooperation preserved court time and resources. Neither party challenges this finding. Also on appeal, Orchon does not dispute his culpability for the grossly negligent moral turpitude findings in counts three and four. Therefore, we agree with the judge's finding and assign substantial mitigation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

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

Standard 1.6(f) provides for mitigation if Orchon establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are

aware of the full extent of the misconduct." The hearing judge afforded limited weight for good character because "[Orchon's] character witnesses [were] not sufficient to constitute a wide range of references." Orchon argues that the quality and value of his character witnesses warrant significant weight. OCTC contends that he should only be afforded limited mitigation weight because his character witnesses were all from the general community.

We disagree with the hearing judge and assign greater weight to Orchon's good character evidence. Each witness had a basic understanding of the charges against Orchon. (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].) Six character witnesses submitted declarations on Orchon's behalf, and one also testified at trial. One declarant, a physician who has known Orchon for 15 years, stated Orchon is compassionate and has high integrity. The other witnesses expressed similar sentiments, affirming Orchon is honest with strong moral character, and asserting they would continue to recommend him as an attorney. His character witnesses included a wide range of references from people who had known him for a long time. While Orchon did not meet the standard to qualify for full mitigation because none of his witnesses was from the legal community, we assign moderate mitigating weight because of the quality of the witnesses. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].)

4. No Mitigation for Lack of Harm (Std. 1.6(c))

On appeal, Orchon requests mitigation for lack of harm. Standard 1.6(c) provides for mitigation where there is a lack of harm to clients, the public, or the administration of justice. The hearing judge did not find Orchon was entitled to any mitigation for lack of harm. Orchon argues his entitlement because, despite his mishandling of the CTA funds, the clients would not have been paid earlier and the CTA deficiency had no impact on them. Yet Orchon offered no

evidence to support a finding he did not cause harm. As OCTC points out, the clients were not repaid until 16 months after the case settled and six months after they filed a complaint with the State Bar. Thus, we find that the record does not demonstrate a lack of harm and we decline to assign mitigation for this factor.

V. A 30–DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) In determining an appropriate level of discipline, we also weigh factors in aggravation and mitigation. (Std. 1.7(b), (c).) Finally, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.1(b) is the most severe and specific, providing that actual suspension is the presumed sanction for misappropriation involving gross negligence.[9] Applying standard 2.1(b), the hearing judge recommended discipline including a one-year actual suspension based on application of case law. OCTC asks that we affirm this recommended discipline. Orchon submits that discipline up to 30 days' actual suspension is adequate.

[9] Standard 2.2(b) applies to violations of rules 4-100(A) and 4-100(B)(3), and provides for suspension or reproval.

In recommending a one-year actual suspension, the hearing judge found *Edwards v. State Bar*, *supra*, 52 Cal.3d 28 to be instructive. In *Edwards*, the Supreme Court found a one-year actual suspension appropriate where an attorney had been practicing for 12 years and intentionally misappropriated $3,000 in client funds for his own benefit. Like Orchon, Edwards did not maintain proper CTA records but Edwards's misconduct was far more serious. Not only were Edwards's actions intentional, but he was also found culpable for having a history of commingling personal and client funds. The judge also relied on *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. 119. Sampson's misconduct was notably more severe than Orchon's in a number of ways.[10] In particular, Sampson used for his own purposes over $22,000 in entrusted funds he should have been holding for one lienholder, which he did not repay even after the lienholder sued him and obtained a judgment for recovery. Second, Sampson, unlike Orchon, recklessly, repeatedly, or intentionally failed to perform competently regarding *substantive* legal responsibilities, which resulted in missed depositions, arbitration proceedings, and court dates. Because the misconduct in *Edwards* and *Sampson* was much greater than Orchon's, we do not rely on them in making our discipline recommendation.

In its responsive brief, OCTC relied on the same cases as the hearing judge, but also cited *Sugarman v. State Bar* (1990) 51 Cal.3d 609 as support for a one-year actual suspension. *Sugarman* involved some of the same rule violations and moral turpitude by gross negligence (i.e., misappropriation of over $15,000) but is distinguished because that attorney's discipline was also based on his culpability for entering into a contract against his client's interest. We therefore do not find this case instructive.

[10] In *Sampson*, we issued an 18-month actual suspension for an attorney found culpable of seven counts of moral turpitude for abdicating his responsibility to supervise personal injury cases, disregarding CTA obligations for a year, failing to maintain over $34,000 in trust, and failing to promptly pay entrusted funds in numerous personal injury cases; one count of failure to perform competently; and one count of failure to notify client of settlement receipt.

OCTC also argues that Orchon's delay in repaying Moran and Martinez for months after it had informed him in October 2017 of his clients' concerns increases the severity of his misconduct and justifies the hearing judge's recommendation for a one-year actual suspension. While the judge did conclude that Orchon had not acted with "due diligence" upon receiving OCTC's October 2017 letter, we do not conclude that this inaction under these circumstances justifies making the discipline more severe, as OCTC argues, for two reasons. First, Orchon had testified that he believed OCTC's letter only legitimately raised the problems he had in resolving the chiropractor's medical bills. The judge appears to have accepted Orchon's testimony as she herself concluded Orchon did not realize that his clients' settlement funds had been expended until later and he "made full restitution within one month of discovering the problem." Second, Orchon's lack of diligence in his handling of this issue was never pleaded as misconduct in the NDC or sought as aggravation at trial by OCTC; thus, we do not consider it in establishing our discipline recommendation.

Orchon requests discipline no greater than 30 days and urges us to look at multiple cases imposing discipline ranging from reproval to 60 days' actual suspension. Orchon cited two cases that pre-date the standards and include lesser discipline than the standards currently provide, so we do not find them helpful. We find no reason to depart from the imposition of a period of actual suspension as recommended by standard 2.1(b) and Orchon has not articulated any reason for us to do so. (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [stating clear reasons for departing from standards helpful to Supreme Court and attorney].)

As for the remainder of cases that Orchon cites, we find *Sternlieb v. State Bar* (1990) 52 Cal.3d 317 to be most analogous and instructive. In *Sternlieb*, the attorney was charged with commingling, failure to maintain proper records, failure to properly account, and misappropriation of $2,997 in one client matter. The Supreme Court found that Sternlieb's unauthorized acts in

taking funds from the CTA constituted misappropriation, but her mishandling of the funds was not dishonest or willful. Given Sternlieb's mitigation evidence—an eight-year discipline-free record, good character, pro bono work, cooperation, remorse, and establishing office procedures to avoid further CTA misconduct—the Court concluded that probation coupled with 30 days' actual suspension was appropriate discipline.

Comparing the facts and circumstances here with *Sternlieb*, we find the two cases to be sufficiently analogous because both attorneys' misappropriations are attributed to their mishandling of their CTA responsibilities. Like the attorney in *Sternlieb*, Orchon did not have a dishonest motive, although his gross negligence ultimately led to his CTA dropping below the required balance. Further, we are mindful this is Orchon's first disciplinary proceeding after 41 years of practice, and he established additional mitigation for good character and cooperation, which significantly outweighs his one aggravation finding for multiple acts. Thus, a discipline at the low end of the discipline spectrum is justified. (See std. 1.1 [recommendation at high or low end of standard must be explained].)

In our judgment, while Orchon's inattention to financial matters resulted in serious misconduct, further recurrence of that misconduct is unlikely. During his disciplinary trial, Orchon expressed remorse, testified he has familiarized himself with the rules, and accordingly changed his accounting practices to avoid similar issues in the future. Combined with his extensive years of discipline-free practice, we believe Orchon's misconduct was aberrational. Thus, a discipline recommendation that includes 30 days' actual suspension is sufficient and appropriate discipline in this case.

VI. RECOMMENDATION

We hereby recommend that Edward Stephen Orchon, State Bar No. 67039, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

1. **Actual Suspension.** Orchon must be suspended from the practice of law for the first 30 days of his probation.

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

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Orchon must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Orchon must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Orchon must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Orchon must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Orchon must promptly meet with representatives of the Office of Probation as requested and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries and provide any other information requested.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During his probation period, the State Bar Court retains jurisdiction over Orchon to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his State Bar record address, as provided above.

Subject to the assertion of applicable privileges, Orchon must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

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

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

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

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

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

9. **Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Orchon has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

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

VIII. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

IX. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure of the State Bar, which implements Business and Professions Code

section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules of Procedure of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.