PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed January 4, 2021

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-O-30283
	)	
LARRY ALLEN ROTHSTEIN,	)	OPINION AND ORDER
	)	
State Bar No. 82746.	)	
	)	

Larry Allen Rothstein had practiced law for 34 years without discipline when he agreed to represent a client whose interests were adverse to his former clients. The Office of Chief Trial Counsel of the State Bar (OCTC) charged Rothstein with four counts of misconduct. The hearing judge dismissed a charge of breach of confidentiality as duplicative and a charge of moral turpitude as lacking proof. The judge found Rothstein culpable of breaching his duty of loyalty and accepting employment adverse to former clients but concluded that Rothstein made a good faith error interpreting conflict laws. Finding no aggravation and extensive mitigation, the judge imposed a public reproval with conditions.

OCTC appeals, arguing Rothstein is culpable of all four counts. It requests discipline including a six-month actual suspension. Rothstein did not appeal.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings with some modifications, including that we do not dismiss the breach of confidentiality charge as duplicative. We agree with the hearing judge that a public reproval with conditions will serve the goals of the discipline system.

I. PROCEDURAL BACKGROUND

Rothstein was admitted to practice law in California on November 29, 1978. On June 13, 2019, OCTC filed a Notice of Disciplinary Charges (NDC) against him alleging violations of: (1) Business and Professions Code section 6068, subdivision (a) (failure to comply with laws; breach of duty of loyalty);[1] (2) section 6106 (moral turpitude);[2] (3) section 6068, subdivision (e) (failure to maintain confidential information);[3] and (4) former rule 3-310(E) of the Rules of Professional Conduct (representation adverse to former client).[4] Rothstein filed a response.

On October 7, 2019, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). Trial was held on October 17 and 24, 2019. The hearing judge filed his decision on January 21, 2020. Rothstein does not challenge the judge's findings.

II. FACTS

A. Rothstein Is Counsel in the *Jhaveri* 2 Lawsuit

Between August 2005 and August 2008, Rothstein represented Steven and Cherie Teitelbaum (Teitelbaums) in a lawsuit entitled *Indra S. Jhaveri v. Teitelbaum* (*Jhaveri 2*).[5] This was the second time Jhaveri sued the Teitelbaums. Rothstein was not involved in the first case

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[1] Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. All further references to sections are to the Business and Professions Code unless otherwise noted.

[2] Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

[3] Section 6068, subdivision (e), provides, in part, that an attorney has a duty to maintain inviolate the confidence, and at the attorney's every peril to preserve the secrets, of the attorney's client.

[4] Rule 3-310(E) provides that an attorney shall not, without the informed written consent of a client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. 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.

[5] Los Angeles County Superior Court, No. BC325842.

(*Jhaveri 1)*,[6] where Jhaveri accused Steven Teitelbaum of accepting $1 million worth of diamonds on consignment, pawning the diamonds, and illegally keeping the proceeds. In the first case, Jhaveri received a sizeable verdict against the Teitelbaums. In *Jhaveri 2*, Jhaveri accused the Teitelbaums of engaging in a sham divorce and making fraudulent property transfers to hide money and assets so he could not collect on *Jhaveri 1*.

Before the trial in *Jhaveri 2*, Rothstein and Steven Teitelbaum attended a private settlement conference presided over by a superior court judge. During the conference in the judge's chambers, the judge alerted security after she heard Teitelbaum threaten to kill her, Rothstein, and then himself. Teitelbaum was arrested outside the courtroom. Rothstein moved to have the judge disqualified. Soon thereafter, the Teitelbaums dismissed Rothstein as their attorney. In 2009 or 2010, the Teitelbaums sued Rothstein for legal malpractice and civil extortion.[7] The case settled for $60,000 in February 2012.

B. Frances Le Vine Hires Rothstein to Address Grievances Against the Teitelbaums

Shortly after the lawsuit for legal malpractice and civil extortion was settled, Frances Le Vine, an elderly widow, contacted Rothstein to sue the Teitelbaums. Le Vine told Rothstein the Teitelbaums had defrauded her and stolen large sums of money in various transactions between 2009 and 2012. She had conducted her own extensive research on *Jhaveri 1* and *2*, including talking to other alleged victims she encountered at the L.A. Coin Shop where she originally met the Teitelbaums. Le Vine told Rothstein she would provide copies of case documents from the court archives to support her own case.

[6] Los Angeles County Superior Court No. BC24306.

[7] The civil extortion claim alleged that Rothstein stated he would change his statement about what happened during the in-chambers events that led to Steven Teitelbaum's arrest unless he was paid $40,000. Rothstein denied this claim.

Because he had previously represented the Teitelbaums, Rothstein testified that he researched former rule 3-310(E) and section 6068, subdivision (e), before he agreed to assist Le Vine. He concluded that he could represent her because her matter was not related to his prior representation of the Teitelbaums, and that "confidential information" meant information he obtained directly from communications with his former clients. Rothstein believed information that was publicly available or obtained from other parties was not confidential. He explained to Le Vine that he would not reveal any of the Teitelbaums' confidential information he learned from his previous representation of them. Le Vine stated she understood.

Rothstein accepted representation of Le Vine but did not notify the Teitelbaums or obtain a conflict waiver from them.[8] During his representation, Le Vine provided material from her research, though Rothstein was aware of information and details about the Teitelbaums due to his prior representation of them in *Jhaveri 2*.

C. Rothstein Notifies Federal Authorities and Files Lawsuit on Le Vine's Behalf

On May 10, 2013, Rothstein sent a letter for Le Vine to the Federal Bureau of Investigation (FBI) reporting that her life's savings of over $2 million had been "swindled away" through financial frauds the Teitelbaums perpetrated. The letter was on Le Vine's letterhead and included over 100 pages of attachments. On August 7 and 28, 2013, Rothstein sent two more letters to the FBI with additional victim statements—this time on his own letterhead. In his letters and at a later meeting, he encouraged the FBI to investigate and prosecute the Teitelbaums.

On April 3, 2014, Rothstein filed a civil complaint against the Teitelbaums on behalf of Le Vine[9] (Le Vine lawsuit), accusing them of fraudulent acts, including inducing Le Vine to loan

[8] The hearing judge found that Rothstein's and Le Vine's testimony throughout the trial was "extremely credible, honest, forthright, direct, and specific."

[9] Los Angeles Superior Court No. LC101492.

them $950,000. On February 5, 2015, he filed a second amended complaint. When the Teitelbaums discovered Rothstein was representing Le Vine against them, they sought to disqualify him.

D. Rothstein Is Disqualified from Representing Le Vine / Teitelbaums Sue Rothstein

On May 6, 2015, the superior court judge in the Le Vine lawsuit granted the Teitelbaums' Motion to Disqualify Rothstein from representing Le Vine. The superior court found that Rothstein's representation of Le Vine was "substantially related" to his representation of the Teitelbaums, and that his involvement in the *Jhaveri 2* litigation was "too great a conflict to allow him to proceed" in the Le Vine lawsuit.

In October 2016, the Teitelbaums learned about the FBI letters through discovery in the Le Vine lawsuit. On April 28, 2017, they sued Rothstein,[10] alleging breach of fiduciary duty, violation of section 6068, subdivision (e) (maintaining client confidences), negligent infliction of emotional distress, and negligence stemming from Rothstein's letters to the FBI and the Le Vine lawsuit. On July 30, 2018, on summary judgment, the superior court found that Rothstein breached his fiduciary duties to the Teitelbaums and violated section 6068, subdivision (e). The superior court judge also concluded that *Jhaveri 2* and the Le Vine lawsuit were related. The judge reasoned that despite the cases' different postures—*Jhaveri 2* was an attempt to collect after fraud was established and Le Vine was an attempt to establish fraud—both alleged a pattern of fraudulent conduct by the Teitelbaums. Ultimately, the parties settled the lawsuit on October 22, 2018.

III. CULPABILITY

A. Count One: Section 6068, subdivision (a)
Count Three: Section 6068, subdivision (e)

[10] Los Angeles Superior Court No. LC105601.

Count Four: Former Rule 3-310(E)[11]

The hearing judge found that Rothstein was culpable in count one of violating section 6068, subdivision (a), for breaching his fiduciary duty of loyalty to the Teitelbaums by disclosing confidential information in letters to the FBI and in the Le Vine lawsuit. The judge found that the confidential disclosures as alleged in count three (section 6068, subdivision (e)) also violated section 6068, subdivision (a). Thus, the judge dismissed count three as duplicative. The judge also found Rothstein culpable for violating former rule 3-310(E) by accepting Le Vine as a client without obtaining the Teitelbaums' informed written consent as a conflict waiver.

On review, Rothstein concedes he should have obtained the Teitelbaums' informed written consent before he accepted representation of Le Vine. Despite researching his ethical responsibilities under conflict laws, he mistakenly believed he could represent Le Vine if the information he used was not provided to him by his former clients or was otherwise publicly available. The judge's culpability findings in counts one, three, and four are supported by Rothstein's admissions, the record, and case law.[12] (See *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283 [where substantial relationship between subjects of prior and current representations is shown, access to confidential information in first representation is presumed and disqualification of second representation of client is mandatory].)

OCTC argues that the hearing judge erred in dismissing as duplicative the culpability finding of failure to maintain confidences alleged in count three. It asserts the judge should have

[11] These counts are analyzed out of order, as the dismissal of the moral turpitude charge in count two is discussed separately below.

[12] The hearing judge did not rely on the superior court findings that Rothstein breached his fiduciary duty under section 6068 because the findings (1) were not made under the clear and convincing standard of proof and (2) were necessary to a prior final civil judgment on the merits. Notwithstanding the hearing judge's reasoning, we give a strong presumption of validity to the superior court's findings as they were supported by substantial evidence in our record. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.)

maintained the culpability finding and assigned no additional weight in the discipline analysis. Rothstein responds that count three was properly dismissed as duplicative. We agree with OCTC and reverse the hearing judge's dismissal of count three. An attorney should be found culpable for all misconduct committed in order to maintain the highest professional standards and the public's confidence in the legal profession. But because count three is duplicative of count one, we assign it no weight in our discipline analysis. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of duplicative charge but no weight assigned to charge to determine discipline].)

B. Count Two: Section 6106—Moral Turpitude

The hearing judge dismissed the moral turpitude charge for lack of proof. OCTC requests that it be reinstated, and that Rothstein be found culpable because he breached his duty of loyalty and disclosed the Teitelbaums' confidential information. OCTC contends Rothstein was upset with the Teitelbaums' lawsuits against him, so he intentionally engaged in a conflict by representing Le Vine against them. In support, OCTC offers the testimony of Brett Rubin, the Teitelbaums' subsequent attorney. Rubin testified that Rothstein threatened him outside of court, while the malpractice and civil extortion lawsuit was pending, that he would make it his mission to "take down" the Teitelbaums. Rothstein denied the encounter.

The hearing judge generally rejected Rubin's testimony and accepted Rothstein's. We adopt the hearing judge's credibility findings and give them great weight. (*McKnight v. State Bar*, (1991) 53 Cal.3d, 1025, 1032.) After evaluating credibility, the judge found that Rothstein did not commit acts of moral turpitude, either intentionally or by gross negligence. The judge believed that Rothstein researched his ethical responsibilities but incorrectly concluded he could represent Le Vine. Though Rothstein's beliefs as established at trial were clearly unreasonable, the judge found they were honestly held. The judge "was in an appropriate position to assess the

issues of [Rothstein's] intent, state of mind, good faith, and reasonable beliefs and actions—all important issues bearing on whether moral turpitude was involved in this matter . . . . [Thus, we] are obligated to give great weight to the hearing judge's findings and conclusions on this subject." (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.) Our independent review of the record supports the judge's finding that OCTC did not prove Rothstein engaged in acts of moral turpitude. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10–11 & fn. 5 [attorney's honest and sincere, but erroneous and unreasonable, belief in correctness of his actions precludes finding of moral turpitude under § 6106]; *Kapelus v. State Bar* (1987) 44 Cal.3d 179, 200 [all reasonable inferences must be drawn in favor of attorney].)

IV. NO AGGRAVATION AND FOUR MITIGATING FACTORS

Standard 1.5[13] requires OCTC to establish aggravating circumstances by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 2 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Standard 1.6 requires Rothstein to meet the same burden for mitigation.

A. No Aggravation for Multiple Acts

Multiple acts of wrongdoing may be an aggravating factor. (Std. 1.5(b).) The hearing judge did not assign aggravation for multiple acts because he found Rothstein culpable of only two counts of misconduct involving a single client. (*In the Matter of Shalant* (Review Dept. 2005) 4 State Bar Ct. Rptr. 829, 839 [no multiple acts for two counts of misconduct arising from one transaction of modification of fee agreement].) OCTC argues the judge erred because he

[13] 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.

should have counted the number of "acts" of wrongdoing, and not the number of counts for which Rothstein was found culpable. OCTC requests significant weight for the following individual acts of misconduct that Rothstein committed over a two-year period from 2013 to 2015: (1) accepting representation of Le Vine; (2) sending three letters to the FBI on behalf of Le Vine; (3) attending a meeting with the FBI; and (4) disclosing confidential information in the Le Vine lawsuit that he learned while representing the Teitelbaums.

We find that the judge was correct in not assigning aggravation for multiple acts. The standards do not define "multiple acts," and OCTC correctly notes that we have held they are not limited to the counts pleaded. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple acts for 65 improper client trust account withdrawals charged as one count of moral turpitude for misappropriation].) But we have not found aggravation for misconduct when it stemmed from a particular course of conduct, rather than discrete acts of misconduct. (See, e.g., *In the Matter of Shalant*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 839 [no multiple acts where two charges arose out of modification of single contingent fee agreement]; *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 [court did not see case as "strongly presenting aggravation on account of multiple acts of misconduct" in one client matter where attorney misappropriated, failed to pay client funds upon request, and entered into improper business transaction with client; attorney also failed to timely report court-ordered sanctions to State Bar in separate matter].)

In the present case, the three culpability counts flow collectively from Rothstein's improper representation of Le Vine. Further, the misconduct underlying count three is duplicative of that alleged in count one. Also, four acts that OCTC alleges are separate and distinct involved Rothstein's contact with the FBI over a short period of time. Under these circumstances, we do not assign aggravation for multiple acts.

B. Four Factors in Mitigation

1. Lack of Prior Discipline

Mitigation is afforded where there is no prior record of discipline over many years, coupled with present misconduct that is not likely to recur. (Std. 1.6(a)); *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free record most relevant where misconduct is aberrational and unlikely to recur].) The hearing judge assigned "extremely significant mitigation, if not compelling mitigation" for Rothstein's 34 years of discipline-free practice before the present misconduct occurred. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with unblemished record is highly significant mitigation].) The judge further found that Rothstein's lengthy practice "standing alone" is compelling evidence that his misconduct is not likely to recur. OCTC does not challenge the judge's findings, and we affirm them as supported by the record. We assign substantial mitigation for this factor.

2. Candor and Cooperation with State Bar

Spontaneous candor and cooperation with the State Bar may be a mitigating factor. (Std. 1.6(e).) The hearing judge assigned significant mitigation and we agree. Early in the proceedings, Rothstein filed a response to the NDC in which he admitted he represented Le Vine, sent letters to the FBI, and filed a civil complaint against his former clients. Rothstein also entered into a pretrial Stipulation. Throughout the trial, he acknowledged that he seriously erred in representing Le Vine and would never repeat this misconduct—testimony the hearing judge found to be credible.

OCTC argues Rothstein is entitled to only moderate weight for cooperation because the Stipulation did not admit culpability and it contained easily provable facts available in the pleadings from his civil action. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [limited mitigating weight to stipulation containing easily provable facts].)

We reject OCTC's argument. It ignores the other ways, described above, that Rothstein displayed his candor and cooperation, including conceding culpability and admitting wrongdoing. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation for those who admit culpability and facts].) Further, the Stipulation contained detailed facts that, even if easily provable, assisted OCTC and saved judicial resources. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to relevant facts assists prosecution and is mitigating].) We also note that Rothstein does not challenge the hearing judge's findings on review.

3. Extraordinary Good Character

Mitigation credit is afforded for extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct. (Std. 1.6(f).) The hearing judge assigned substantial mitigation for Rothstein's extraordinary good character. OCTC does not dispute this finding and we agree with it.

Rothstein presented character evidence from nine individuals. Three witnesses testified at trial and submitted declarations. Rothstein provided an additional six declarations. The witnesses and declarants included a businessman, a construction consultant and mediator, a general contractor, and six attorneys. Each knew Rothstein for long periods and attested to his high moral character, including his honesty, candor, trustworthiness, and reliability. The construction mediator disclosed that he is in frequent contact with Rothstein, has worked with him on over a dozen occasions, and believes him to be one of the "finest, most professional lawyers" he has known in his 40-year career. Another attorney testified that during a 45-year personal and professional relationship, Rothstein's character has been "beyond reproach," and he is an upstanding attorney, an honest man, and a credit to the community. The hearing judge found that this attorney was an "excellent witness" for Rothstein. Other attorneys testified they

have made client referrals to Rothstein over the years and would continue to do so. We give great weight to the testimony of attorneys because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

The hearing judge found that although the character witnesses were aware of the charges against Rothstein, they maintained their high opinions of his moral character. The judge concluded that all character witnesses were "extremely credible" and were "successful individuals of high repute." We assign substantial weight to Rothstein's persuasive evidence establishing his extraordinary good character. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses, two attorneys, and fire chief, who had long-standing familiarity with attorney and broad knowledge of good character, work habits, and professional skills].)

4. Subsequent Good Conduct

Good conduct that occurs after the misconduct may be considered in mitigation to demonstrate the "aberrational nature of the misconduct." (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.) Though the hearing judge did not address this factor, we assign moderate mitigating weight to Rothstein's seven-year discipline-free post-misconduct period, as confirmed by his testimony and that of character witnesses. OCTC did not dispute this evidence. Rothstein has adhered to acceptable standards of professional behavior for more than 40 years in periods before and after his misconduct occurred. (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 [mitigating that attorney had period of practice after complaint filed with no additional charges of unethical conduct].)

5. No Mitigation for Prompt Objective Steps Demonstrating Remorse

Mitigation may be assigned for prompt objective steps that demonstrate spontaneous remorse and recognition of wrongdoing and timely atonement. (Std. 1.6(g).) The hearing judge afforded mitigation credit under this factor but did not assign a weight or state reasons for his finding. OCTC argues Rothstein is not entitled to credit as he failed to take prompt objective steps. We agree. Though Rothstein acknowledged his wrongdoing during the disciplinary proceeding, he did not take *prompt* steps to demonstrate his remorse or make amends for his misconduct. (See *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 [expressing remorse is "an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline"].)

V. PUBLIC REPROVAL 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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Standard 2.12(a) is applicable because it provides the most severe discipline—actual suspension to disbarment for the most serious of Rothstein's violations, including sections 6068, subdivisions (a) (breach of duty of loyalty) and (e) (failure to maintain confidential client information].) (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].)

The hearing judge relied primarily on the standards because he found that no case law addressed the present facts.[14] He considered standard 2.12(a) and, based on Rothstein's

[14] OCTC agreed with the hearing judge that no published cases encompass facts similar to this case and few published cases deal with disclosure, client conflicts, and client confidences. OCTC also noted that many reported cases involve other violations as well.

mitigation, he also analyzed standard 1.7(c). Standard 1.7(c) provides that a lesser sanction than specified in a standard may be appropriate (after balancing the net effect of the mitigation with the aggravation) where there is minor misconduct; little or no injury to a client, the public, the legal system, or the profession; and the record demonstrates the attorney is willing and able to conform to ethical responsibilities in the future.

The factors in standard 1.7(c) apply here. Rothstein was not found culpable of moral turpitude, he proved extensive mitigation, and has no aggravating factors. The hearing judge found that Rothstein acknowledged his misconduct and assured the court that it would not recur. Under these circumstances, the judge concluded that recommending an actual suspension would be punitive and instead imposed a public reproval with conditions.

OCTC argues that the hearing judge improperly deviated from standard 2.12(a), which calls for an actual suspension at the low range of discipline. We do not agree. The judge articulated proper reasons to depart from this standard. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards must be shown].) As noted, there are no aggravating factors and four factors in mitigation—no prior record, good character, cooperation, and subsequent good conduct. Rothstein has 34 years of discipline-free practice before his misconduct and seven years after his misconduct. He presented impressive good character evidence, fully acknowledged his wrongdoing, and vowed to avoid similar misconduct in the future.[15]

Beyond the standards, we look to comparable case law for guidance in determining the appropriate discipline. (*Snyder v. State Bar* (1990) 49 Cal Cal.3d 1302, 1310–1311.) OCTC

[15] OCTC did not request aggravation based on significant harm to clients nor does the record support such a finding. Standard 2.5(d) provides for actual suspension for violation of former rule 3-310 (no written consent waiver), where the attorney causes significant harm to the client or former client. Accordingly, standard 2.5(d) supports discipline less than an actual suspension for Rothstein's misconduct as alleged in count four.

urges a six-month actual suspension, citing pre- and post-standard cases with varying discipline that involved, in part, conflict issues. OCTC's cases are distinguishable from Rothstein's because they involve varied misconduct, substantial aggravation, dishonesty, acts of moral turpitude, or little mitigation.[16]

One case OCTC cited is comparable: *Gendron v. State Bar* (1983) 35 Cal.3d 409. In *Gendron*, an attorney provided contract public defender services, represented defendants jointly charged with crimes without obtaining a written conflict waiver, and established an office policy of only declaring conflicts where one defendant was going to testify against the other. The Supreme Court imposed a public reproval without conditions based on the attorney's 30 years of discipline-free practice and because he later abandoned the policy as to conflicts of interest.

Like Gendron, Rothstein is an experienced advocate without discipline who has acknowledged his misconduct and had no dishonest motive. He went astray when he did not carefully consider conflict laws or even perform the simple task of obtaining a conflict waiver from the Teitelbaums. His misconduct violated the sacrosanct relationship between an attorney

[16] *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735 (60-day suspension for repeated conflicts of interest for over 12 years); *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41 (90-day suspension for conflicts and seven other acts of misconduct including incompetence); *Galbraith v. State Bar* (1933) 218 Cal. 329 (three-month suspension for direct conflict on identical set of facts where attorney had engaged in similar misconduct); *Sheffield v. State Bar* (1943) 22 Cal.2d 627 (three-month suspension for direct conflict on same subject matter in former representation, aggravated when attorney returned to court on same case on behalf of client after being disqualified); *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179 (six-month suspension for disclosing confidential information and other significant misconduct including forgery of client's name, failure to refund fees, dishonesty and moral turpitude, and discipline record); *Codiga v. State Bar* (1977) 20 Cal.3d 788 (one-year suspension for conflict-of-interest violation plus perjury and moral turpitude violations; multiple acts of deceit); *Lee v. State Bar* (1970) 2 Cal. 3d 927 (one-year suspension for conflict of interest and engaging in fraudulent and dishonest scheme); *Ainsworth v. State Bar* (1988) 46 Cal.3d 1218 (disbarment for violation of § 6068, subd. (e), for forging husband's will, murdering husband, concealing assets, operating illegal pyramid scheme, and other violations); and *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 (disbarment for conflicts and dishonest misappropriation).

and the client and, as OCTC properly contends, the absolute duty of loyalty he owed to the Teitelbaums. But Rothstein's misguided and unreasonable actions were the result of an honest mistake over a long and unblemished career. We agree with the recommended discipline considering the totality of Rothstein's extensive mitigation and lack of aggravation. On independent review, we do not find that Rothstein is a danger to the public, the courts, or the legal profession and the goals of discipline would be served by a public reproval with conditions. (*In re Young* (1989) 49 Cal.3d 257, 266 [court must balance all relevant factors on case-by-case basis to ensure that discipline is consistent with its purpose].)

VI. ORDER

Larry Allan Rothstein is ordered publicly reproved, to be effective 15 days after service of this opinion and order. (See Rules Proc. of State Bar, rule 5.127(A).) He must comply with the specified conditions attached to the public reproval. (Rules Proc. of State Bar, rule 5.128.) Failure to comply with this condition may constitute cause for a separate proceeding for willful breach of rule 8.1.1 of the Rules of Professional Conduct that are currently in effect. Rothstein is ordered to comply with the following conditions attached to this reproval for one year (Reproval Conditions Period) following the effective date of the reproval:

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

2. **Comply with State Bar Act, Rules of Professional Conduct, and Reproval Conditions.** Rothstein must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of this reproval.

3. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the order imposing discipline in this matter, Rothstein 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. Rothstein must report, in writing, any change in the above information to ARCR within 10 days after such change, in the manner required by that office.

4. **Meet and Cooperate with Office of Probation.** Within 30 days after the effective date of the order imposing discipline in this matter, Rothstein must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 45 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 Reproval Conditions Period, Rothstein 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.

5. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During the Reproval Conditions Period, the State Bar Court retains jurisdiction over Rothstein to address issues concerning compliance with reproval conditions. During this period, Rothstein must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

6. **Quarterly and Final Reports.**

a. Deadlines for Reports. Rothstein 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 Reproval Conditions Period. 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 Rothstein must submit a final report no earlier than 10 days before the last day of the Reproval Conditions Period and no later than the last day of the Reproval Conditions Period.

b. Contents of Reports. Rothstein 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 to the Office of Probation by: (1) fax or email; (2) personal delivery; (3) certified mail, return receipt requested (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. Rothstein is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after the Reproval Conditions Period has ended. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

7. **State Bar Ethics School.** Within one year after the effective date of the order imposing discipline in this matter, Rothstein must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Rothstein will not receive MCLE credit for attending this session.

8. **Multistate Professional Responsibility Examination.** Rothstein must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of his public reproval and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period.

VII. COSTS

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.