PUBLIC MATTER—DESIGNATED FOR PUBLICATION

Filed March 4, 2021

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	17-O-01810; SBC-19-O-30352
	)	(Consolidated)
MICHAEL PHILIP RUBIN,	)	
	)	OPINION AND ORDER
State Bar No. 86732.	)	[As Modified on April 16, 2021]
	)	

This is Michael Philip Rubin's third discipline case. He was charged with 11 counts of misconduct in three separate matters, including a threat to report immigration status, misappropriation, and improper handling of his client trust account (CTA). The hearing judge found him culpable of eight counts and recommended disbarment.

Rubin appeals, arguing that disbarment is not warranted because the evidence did not show "willfulness, moral turpitude, or culpability." However, he "acknowledges" that he violated several provisions of the Business and Professions Code and the former California Rules of Professional Conduct. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the judge's decision. Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the culpability determinations and the mitigation credit. Although we assign less aggravation, we affirm the discipline recommendation. Rubin committed several acts of serious misconduct and did not prove compelling mitigation. Disbarment is therefore appropriate under our disciplinary standards to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On December 18, 2018, OCTC filed a three-count Notice of Disciplinary Charges (NDC) in case number 17-O-01810. The NDC was amended on April 3, 2019. The case was abated on

May 22, pending the filing of additional charges. On July 19, OCTC filed an eight-count NDC in case number SBC-19-O-30352. The abatement in case number 17-O-01810 was terminated on July 22, and the two disciplinary matters were consolidated.

Trial was held on November 18-19, 21-22, and 25, and December 6, 2019. Posttrial closing briefs followed. The hearing judge issued her decision on March 5, 2020.

II. UVAS MATTER (17-O-01810)

A. Factual Background[1]

Rubin represented Thresiamma Mathew, the employer in a wage-and-hour labor dispute in *Rommel Uvas v. Thresiamma Mathew et al*., Los Angeles County Superior Court, case no. BC639954 (hereafter *Uvas v. Mathew*). Attorney Nina Baumler represented the plaintiff, Rommel Uvas.

In a letter dated October 20, 2016, Rubin wrote to Baumler:

> I am informed that both your client and his brother, Renato Uvas, entered the U.S. on false passports and other false information. For your client to be entitled to any benefits under the California Employee Protection laws, he must prove that he is a U.S. citizen. We therefore need proof of your client's U.S. citizenship. In the U.S., it is well-settled that "reporting an illegal alien to the INS is generally encouraged conduct because it is consistent with the labor and immigration policies established by the IRCA." *Singh v. Jutla & C.D. & R's Oil, Inc.* (N.D. Cal. 2002) 214 F.Supp.2d 1056, 1059.
>
> With that being said, we respectfully instructed our client to decline your request until we see . . . proof of your client's citizenship.

Rubin misstated the holding in *Singh* by omitting the entire quote,[2] which actually states:

> Though reporting an illegal alien to the INS is generally encouraged conduct because it is consistent with the labor and immigration policies established by the IRCA, the court in *Contreras* [*v. Corinthian Vigor Ins. Brokers, Inc.* (N.D. Cal.

[1] The factual background for both disciplinary matters in this opinion is based on trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[2] The hearing judge found that Rubin knowingly misstated the holding in *Singh*.

> 1998) 25 F.Supp.2d 1053] concluded that reporting an illegal alien *with* a retaliatory motive was prohibited conduct under [title 29 United States Code] § 215(a)(3).

(*Singh v. Jutla & C.D. & R's Oil, Inc.*, *supra*, 214 F.Supp.2d at p. 1059.)

Baumler testified that during a March 16, 2017 phone call, Rubin told her, "You know, we're doing everything in our power to get your client and his brother deported."[3] Baumler replied, "Excuse me?" Rubin repeated his statement, adding "Your client's here illegally, isn't he?" Rubin further asserted that Uvas had committed fraud by entering the country and would be deported under the current administration.

On March 27, 2017, Rubin filed a case management statement in superior court, referring to Uvas as an "illegal alien." Rubin stated that Uvas came to the United States on a forged passport and, "[b]ased on policies of the current administration, [it is] unknown whether Plaintiff will be deported, and therefore unable to prosecute this case."

During litigation, Rubin insisted that he take Uvas's deposition in person at his office. In response, Baumler filed a motion for a protective order and requested that Uvas's deposition be taken by web or video conference. On February 20, 2018, the superior court held a hearing on the motion. Rubin did not appear at the hearing; instead, he hired contract attorney S. Martin Keleti to appear. The judge indicated at the hearing that she intended to grant the motion. Keleti immediately notified Rubin of the tentative ruling.

On February 20, 2018, the court granted the motion for a protective order and ordered Rubin and the defendants to pay $2,335 in sanctions, jointly and severally, as requested by Baumler, for costs and expenses in making the motion. On the same date, the court also signed the protective order, which mandated that the sanctions be paid within 10 days. On February 23, Rubin emailed Baumler regarding the February 20 hearing, threatening to make a complaint to

[3] The hearing judge found that Baumler's testimony was credible.

the State Bar because Baumler did not provide him with the name of the court reporter at the hearing.[4]

Keleti received the minute order and emailed it to Rubin on March 6. On April 4, Baumler wrote to Rubin and requested payment of the sanctions. On April 19, Rubin filed a petition for writ of mandate, appealing the protective order and sanctions. The Second District Court of Appeal denied the petition on June 14. (*Mathew v. Superior Court of Los Angeles County*, Second Appellate District, case no. B289495.)

Rubin did not report the sanctions order to the State Bar until November 20, 2018. On November 22, 2019, during the disciplinary trial, Rubin paid Uvas $2,335.

Gary Mastin, an attorney who represented Uvas's brother, Renato, also testified about his interactions with Rubin in a separate wage-and-hour case.[5] Mastin testified that Rubin told him during a phone call that Renato did not have legal immigration status and that Rubin "was going to do something about that." On March 22, 2016, Mastin wrote to the Department of Fair Employment and Housing (DFEH) regarding Rubin's intention to report Renato's immigration status. He attached a letter from Rubin dated January 7, 2016, stating that Renato was not in the United States legally. Mastin believed Rubin made these statements as a threat and to retaliate for Renato's DFEH complaint. Then, in February 2017, in a civil case where Renato was the plaintiff, Rubin requested discovery including Renato's passport. Mastin thought this request was also a threat that Rubin intended to report Renato's immigration status.

[4] On March 1, 2018, Rubin filed a formal complaint with the State Bar, which was deemed unmeritorious.

[5] The hearing judge found that Mastin's testimony was credible.

B. Culpability[6]

1. Count One: Failure to Obey a Court Order (Bus. & Prof. Code, § 6103)[7]

Count one charges that Rubin failed to comply with the February 20, 2018 order to pay sanctions in *Uvas v. Mathew*. Section 6103 provides, in pertinent part, that willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. An attorney acts willfully if he intends to commit the act or to abstain from committing it. (See *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467 [no intent to violate law required]; see also *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186 [willfulness does not require bad faith or knowledge of provision violated].) The hearing judge found culpability as charged since Rubin did not pay the sanctions until November 2019 during the disciplinary trial in this matter.

On review, Rubin argues that he did not violate the order because (1) there was no deadline for payment of the sanctions and (2) the order is not final as the underlying case is currently on appeal. He also argues that the order was never binding on him because it was not properly served, and he had a good faith belief that he did not need to comply due to the defective service. Further, he asserts that the order did not involve an act "in the course of his profession," and it pertained to a discovery dispute.[8]

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[6] All culpability findings in this opinion are established by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)

[7] All further references to sections are to the Business and Professions Code, unless otherwise noted.

[8] At oral argument, Rubin acknowledged that the exception for discovery sanctions under section 6068, subdivision (o)(3), did not apply.

As explained below, Rubin's arguments are without merit. OCTC proved by clear and convincing evidence that: (1) Rubin willfully disobeyed the court's order and (2) the court order required Rubin to do an act in the course of his profession which he ought in good faith to have done. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603 [elements of § 6103 violation]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [frivolous to claim that actions in representing client in civil case not connected with employment].) Rubin was aware on February 20, 2018, that the court intended to impose sanctions on him. By March 6, he had received a copy of the minute order. There is no question that he had actual notice of the order and the requirement that he pay the sanctions; the service argument is unavailing. (See *In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681, 692–693 [attorney with actual notice of sanctions order culpable of § 6103 violation despite argument that he was not served with copy of order].) Rubin failed to pay the sanctions, then challenged the order's validity, and lost. Therefore, the sanctions order was final and binding for disciplinary purposes as Rubin's challenge of the order was exhausted. (*In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 559 ["superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in the courts of record"].) The sanctions order remained in effect, even if the case as a whole was being appealed. There is "no valid reason to go behind the now-final order." (*In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 605.) Rubin's argument that there was no deadline to pay is also without merit. He did not pay the sanctions until over a year and a half after he knew about the obligation, which was unreasonable and constituted a violation of the order. (See *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 457 [failure to pay sanctions for nearly 11 months was not reasonable and established culpability for § 6103]; *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 867–868 [failure

to pay sanctions was § 6103 violation when attorney had over year to pay].) Accordingly, we affirm the hearing judge's culpability determination.

2. Count Two: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

Count two charges that Rubin failed to timely report to the State Bar the superior court's February 20, 2018 order imposing $2,335 in sanctions against him. Section 6068, subdivision (o)(3), requires attorneys to report to the State Bar, in writing, within 30 days of knowledge of "[t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to *make* discovery or monetary sanctions of less than one thousand dollars ($1,000)." (Italics added.) The hearing judge found culpability as charged.

Rubin acknowledges that he "technically" violated section 6068, subdivision (o)(3), but contends that the violation was not "willful" because he "believed, in good faith, that only a sanctions order involving moral turpitude, and not an order in connection with a discovery motion needed to be reported." He argues that the State Bar Court has held that ignorance of the law is not a cause for discipline.

Rubin's arguments are without merit. First, the sanctions were not imposed for failure to *make* discovery, but rather because Rubin was unsuccessful in opposing the protective order.[9] (Code Civ. Proc., § 2025.420, subd. (h).) Second, "[g]ood faith, or even ignorance of the law, is not a defense to section 6068, subdivision (o)(3). [Citation.]" (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 525; see also *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 [inappropriate to reward attorney for ignorance of ethical responsibilities].)

Rubin knew of the sanctions order and failed to report it, even though he had an independent duty to do so. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct.

[9] The judicial sanctions imposed here were not for a failure to *make* discovery. To the contrary, Rubin was the one propounding the discovery.

Rptr. 41, 47–48.) There is no requirement that OCTC must prove bad faith or that Rubin had actual knowledge of violating section 6068, subdivision (o)(3). (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 176.) Rubin's actions constituted a willful violation of section 6068, subdivision (o)(3), and we affirm the hearing judge's culpability determination.

3. Count Three: Threatening to Report Suspected Immigration Status (§ 6103.7)

Count three charges that Rubin threatened to report the suspected immigration status of Rommel Uvas on or about March 16, 2017. Section 6103.7 states, "It is cause for suspension, disbarment, or other discipline for any licensee of the State Bar to . . . threaten to report suspected immigration status of a witness or party to a civil or administrative action . . . to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment . . . ." The hearing judge found that Rubin had made such threats on multiple occasions and was therefore culpable under count three.

Rubin disputes the hearing judge's credibility findings regarding the testimony of Baumler and Mastin and asserts that they were extremely biased against him. We reject these arguments. We adopt the judge's credibility findings as they were specific and reasoned. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility having observed and assessed witnesses' demeanor and veracity firsthand].)

Rubin also challenges the hearing judge's factual findings. He acknowledges that he brought up the opposing parties' immigration status, but he argues that he never made "direct" threats that he would actually report anyone to the authorities. The judge found clear and convincing evidence that Rubin made threats, in violation of section 6103.7. We agree. Rubin threatened Baumler in a phone conversation, declaring that he was doing everything in his power to get Uvas and his brother deported. He made similar threats to Mastin. Rubin also referenced the immigration status of Uvas and his brother in letters to Baumler and Mastin. And he wrote in

a case management statement that Uvas was an illegal alien. We adopt the judge's factual findings as they were supported by the record.[10] (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight].) Based on this evidence, we affirm the hearing judge's culpability finding.

We reject Rubin's assertion that his purported ignorance of section 6103.7 was a "complete defense." Rubin's reliance on *Call v. State Bar* (1955) 45 Cal.2d 104 is misplaced. That case dealt with a charge that an attorney had violated his oath to discharge his duties as an attorney to the best of his knowledge and ability under section 6067. A mistake of law made in good faith may be a defense to a section 6067 charge (*Call v. State Bar*, *supra*, 45 Cal.2d at pp. 110–111) because "attorneys are not infallible and cannot at their peril be expected to know all of the law." (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 793.) However, a section 6103.7 charge is different as it does not pertain to attorney performance and knowledge of the law. (See *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631 [mistake of law is defense to violation of broad attorney duties under §§ 6067 & 6068, subd. (a)].) Instead, section 6103.7 establishes a clear ethical standard for conduct that attorneys must uphold. (See *In the Matter of McKiernan*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 427 [attorney's belief about ethical standard irrelevant].) Violations for other clear-cut professional responsibilities in the Business and Professions Code do not require knowledge of the violated provision. (See, e.g., *In the Matter of Blum*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 176 [ignorance of § 6068, subd. (o)(3), is not defense]; *In the Matter of Maloney and Virsik* (Review Dept.

[10] Rubin argued the hearing judge improperly relied on his letter to Baumler and that when Rubin cited *Singh*, he believed he was citing "good law." There are no grounds for this argument. Rubin also argued that the judge improperly relied on the case management statement because it was a privileged communication under Civil Code section 47. This argument is also rejected because the litigation privilege in Civil Code section 47 does not apply to disciplinary proceedings.

2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [elements of § 6103 violation do not include knowledge of provision].)[11]

The prohibition from threatening immigration status in section 6103.7 is a bright-line rule akin to those found in the Rules of Professional Conduct. Only a willful breach is required to be subject to discipline, not knowledge of the rule or intent to violate it. (See § 6077; *Gassman v. State Bar* (1976) 18 Cal.3d 125, 131 [knowledge of Rules of Professional Conduct not element of offense]; *Abeles v. State Bar* (1973) 9 Cal.3d 603, 610–611 [ignorance of Rules of Professional Conduct does not excuse violation].) Therefore, Rubin's purported ignorance of section 6103.7 is not a defense.

III. RAICEVIC MATTER (SBC-19-O-30352)

A. Factual Background

Rubin signed a retainer agreement with Vanessa Raicevic on April 3, 2018, to represent her in three matters—probate, elder abuse, and attorney fees. Vanessa's domestic partner, Douglas Maas, died in 2017, and she was appointed the trustee of the Douglas Maas Revocable Trust (Maas Trust). The attorney fees matter involved Vanessa's previous attorney, Valerie Horn, who sued both Vanessa and her brother, Rade Raicevic. (*Horn v. Raicevic*, Los Angeles County Superior Court, case no. SC128673.) Vanessa paid Rubin $95,000 for advance fees and costs.

1. Stevenson Refund and CTA Balance

Attorney Todd Stevenson previously represented Vanessa in the probate matter and the elder abuse case.[12] Rubin requested that Stevenson send him the unused portion of the advance

[11] Other Business and Professions Code sections provide clear rules regarding attorney ethical conduct and do not require knowledge of the provision to violate it. (E.g., § 6103.5 [requirement that attorney communicate settlement offer]; § 6104 [attorney cannot appear without authority]; § 6105 [lending name to person who is not attorney]; § 6106.9 [sexual relations between attorney and client].)

[12] Vanessa hired Stevenson in November 2017. In February 2018, Vanessa hired Rubin in place of Stevenson. However, a few days later, she informed Rubin that she had decided to

fees Vanessa had paid. Stevenson sent Rubin a check for $37,617.09 as Vanessa's refund. Rubin deposited the check into his CTA on April 17, 2018. A few days after he received it, Vanessa and Rade asked Rubin for the money so that it could be deposited in the Maas Trust account. They made several verbal requests for the return of the funds over the following three months.

On May 17, 2018, Rade emailed Rubin regarding a meeting scheduled for the next day. Rade told him that Vanessa expected Rubin to return the $37,617.09 at the meeting. Rade informed Rubin that Vanessa wanted to deposit the money in the Maas Trust account pursuant to her duties as the trustee. At the May 18 meeting, Vanessa and Rade again asked for the refund, but Rubin did not provide it.[13] On July 6, Rubin paid Vanessa the $37,617.09.

During the time Rubin was required to hold the $37,617.09 in his CTA, its balance fell below that amount. On May 11, 2018, the CTA balance was $36,018.12. On May 14, it dropped to $33,518.12, which was $4,098.97 less than the required amount. Rubin then deposited personal funds, and, on May 16, the balance of the CTA was $40,018.12.

2. No Informed Written Consent for Representing Both Vanessa and Rade

While representing Vanessa, Rubin also represented Rade in the Horn fees matter. Among other claims, Horn contended that Vanessa breached her contract and was seeking recovery of attorney fees. Alleging that Rade interfered with the contract between her and Vanessa, Horn sought damages against Vanessa and Rade, jointly and individually. Horn's attorney testified that Horn would seek damages from whomever she could get money, Vanessa or Rade, and an indemnification suit might proceed. As Vanessa and Rade were both defendants in the matter, their interests potentially conflicted. Rubin did not inform them of the possible conflict and did not obtain informed written consent to the representation.

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remain with Stevenson. Vanessa subsequently terminated Stevenson in March 2018 and then rehired Rubin.

[13] Rubin testified that Vanessa and Rade told him at the meeting to continue to hold the refund. The hearing judge found Rubin's testimony not credible.

3. Verification Forms

During discovery in *Horn v. Raicevic*, Rubin's office was required to send Rade's responses to interrogatories with attached verifications signed by him. On May 29, 2018, a secretary in Rubin's office, Jaxcel Archiga, emailed Rade asking for permission for Rubin to sign a verification on Rade's behalf. Rade responded that he authorized Rubin to sign documents on his behalf. When the responses were sent to the opposing attorney, a verification form dated May 29, 2018, with Rade's purported signature was attached. Rade testified that he did not sign the document. Archiga testified that Rade came into the office to sign the verification.[14]

4. Billing Statements

Monthly billing statements were sent to Vanessa and Rade and included a description of services performed, costs incurred, payments and adjustments, and the remaining balance and/or credit. Vanessa and Rade terminated Rubin's employment in early August 2018. Rubin's office sent them a billing statement at the end of August.

B. Culpability

1. Count One: Misappropriation (§ 6106)[15]

Count one charges that Rubin misappropriated $4,098.97 of the $37,617.09 held in his CTA on behalf of Vanessa, in violation of section 6106. When a trust account balance drops below the amount the attorney is required to hold for a client, a presumption of misappropriation arises. The burden then shifts to the attorney to show that misappropriation did not occur and that he was entitled to withdraw the funds. (*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.) Moral turpitude can be

[14] Archiga also testified that after she sent the email to Rade seeking authorization to sign on his behalf, Rubin told her that doing so was not allowed. Another secretary, Vanessa Ramirez, testified that it was not office procedure to sign for clients on discovery verifications.

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

found when an "attorney's actions constitute gross carelessness and negligence violating the fiduciary duty to a client." (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude finding proper for gross carelessness in failing to maintain trust account]; see also *In the Matter of Blum*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 410 [§ 6106 violation can be supported by finding of gross negligence in handling trust account duties].)

Rubin admits that the CTA balance fell to $36,018.12 on May 11, 2018, and then to $33,518.12 on May 14. He explained that the drop was due to careless bookkeeping. After realizing the discrepancy, he deposited personal funds and the balance rose to $40,018.12 on May 16. The hearing judge found that Rubin was wrong in not properly maintaining his books, but his misconduct did not rise to the level of misappropriation by gross negligence because it was an isolated, aberrational occurrence and Rubin quickly restored the funds. Therefore, the judge did not find culpability for misappropriation. We affirm the hearing judge's decision and dismiss count one with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)[16]

2. Count Two: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))[17]

Count two charges that Rubin failed to maintain a CTA balance of $37,617.09 for Vanessa, in violation of rule 4-100(A). Rule 4-100(A) provides, in part, that client funds held by an

[16] OCTC did not appeal the hearing judge's culpability decision, but instead attempted to argue misappropriation by gross negligence in its responsive brief. Some facts suggest that Rubin's actions may have been grossly negligent or construed as other misconduct. He testified that he does not keep written journals or client ledgers or perform monthly reconciliations for his CTA. He admitted that his "bookkeeping was rather sloppy" and that he relied on a secretary to handle "a lot" of the CTA work. Also, his explanation of the dip was incomplete. He accounted for only $2,500 of the $4,098.97, attributing the missing funds to an overpayment in another client matter. The hearing judge did not find clear and convincing evidence of misappropriation and OCTC did not appeal that decision. As a result, we find that, in this instance, Rubin did not have an opportunity to fully address the gross negligence issue on review. Accordingly, it would be unfair for us to overturn the judge's finding that Rubin is not culpable of this count.

[17] 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.

attorney must be deposited in a CTA and maintained until the amount owed to the client is settled. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 277–278.)

The hearing judge found that the $4,098.97 dip in Rubin's CTA rendered him culpable under count two for failure to maintain the required balance. We affirm the judge's finding that Rubin violated rule 4-100(A) by failing to maintain $37,617.09 in his CTA on behalf of Vanessa. We reject Rubin's argument that he did not "willfully" violate rule 4-100(A). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 504 [allowing balance in trust account to drop below level owed to client is willful violation of rule 4-100(A)].)

3. Count Three: Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

The NDC alleges that Rubin received $37,617.09 from Stevenson on or about April 17, 2018, on behalf of Vanessa. She was entitled to that amount as a refund of unearned attorney fees. On multiple occasions Vanessa and her brother verbally requested that Rubin return the $37,617.09. Vanessa's brother also sent Rubin an email on May 17, 2018, notifying him that Vanessa wanted to pick up the money the next day. Rubin did not return the funds until July 6, 2018. Count three charges that Rubin violated rule 4-100(B)(4) by failing to promptly return the $37,617.09. Rule 4-100(B)(4) requires attorneys to "[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the member which the client is entitled to receive." The hearing judge found Rubin culpable as charged.

On review, Rubin contends that he offered to return the $37,617.09 at the May 18, 2018 meeting with Vanessa and her brother, but they told him to hold the money in the CTA, and they never made an "unambiguous demand" for return of the money after that date. He asserts that Vanessa and Rade were not credible witnesses and that we should accept his version of events. The hearing judge found that Vanessa and Rade made multiple requests for the repayment of the funds and chose to credit Vanessa's version of the events over Rubin's. As stated above, such a

determination merits great weight, and the record does not justify disturbing it. Vanessa's funds should have been promptly paid when she requested them after Rubin received the funds in April. Despite several requests, Rubin did not disburse the $37,617.09 until July. Accordingly, we find Rubin culpable of violating rule 4-100(B)(4).

4. Count Four: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

The NDC alleges that Vanessa asked for an accounting in August 2018 for the $95,000 she paid Rubin in advance fees. Count four charges that Rubin violated rule 4-100(B)(3) by failing to render an appropriate accounting. Rule 4-100(B)(3) requires an attorney to maintain complete records of all client funds in the attorney's possession and to "render appropriate accounts to the client regarding them." The hearing judge found that Rubin sent monthly statements to Vanessa and there was no clear and convincing evidence that he violated rule 4-100(B)(3). We agree. Rubin provided a statement to Vanessa, after his employment was terminated, that detailed the previous balance, the work that was done, the amount charged, and the remaining balance. Therefore, we dismiss count four with prejudice.[18] (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

5. Count Seven: Representing Clients with Potential Conflict (Rule 3-310(C)(1))

The NDC alleges that Rubin represented both Vanessa and Rade when they were defendants in *Horn v. Raicevic* and had potential conflicts with one another. Count seven charges that Rubin violated rule 3-310(C)(1) by failing to inform Vanessa and Rade of the potential conflicts and failing to obtain their written consent before accepting representation. Rule 3-310(C)(1) provides that an attorney shall not, without informed written consent of each client, "[a]ccept representation of more than one client in a matter in which the interests of the clients potentially conflict." The hearing judge found that as Vanessa and Rade were defendants

[18] OCTC does not challenge the dismissal on review.

in the same lawsuit, they had a potential conflict with one another. Because Rubin did not obtain informed written consent from Vanessa and Rade prior to accepting representation, the judge determined that Rubin was culpable as charged under count seven. We agree. Because Horn sued both Vanessa and Rade, and sought damages against them, possible indemnity issues should have been anticipated.

Rubin acknowledges there was a "technical violation" of rule 3-310(C)(1), but attempts to minimize his misconduct by insisting that no client harm resulted and that he believed there was no conflict at the time of the representation. But Rubin failed to inform Vanessa and Rade about any potential conflicts and failed to obtain their informed written consent to the representation. Therefore, he violated rule 3-310(C)(1).

6. Count Eight: Misrepresentation (§ 6106)

Count eight charged Rubin with making misrepresentations related to interrogatories in *Horn v. Raicevic*, alleging that Rubin knew, or was grossly negligent in not knowing, that Rade had not actually signed the verification forms. Due to conflicting testimony regarding whether Rade signed the verification forms, the hearing judge found a lack of clear and convincing evidence. Therefore, the judge did not find any misrepresentation as charged under count eight. We agree and dismiss count eight with prejudice.[19] (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

IV. CTA COMMINGLING (SBC-19-O-30352)

A. Factual Background

Rubin is a partner with Brian Nomi and Jack Moses in Pullman Properties LLC (PPL), a business entity engaged in real estate development. Neither PPL nor Nomi is Rubin's client in the

[19] OCTC does not challenge the dismissal on review.

present matter.[20] In October 2017, Nomi made a personal loan of $100,000 to Rubin, secured by two of Rubin's shares in PPL. Upon Rubin's instructions, Nomi wired the money directly into Rubin's CTA. On April 18, 2018, Rubin repaid the loan with interest by issuing a $105,000 check payable to Nomi, also from his CTA.

Between April 17 and September 14, 2018, Rubin deposited four checks from PPL into his CTA: (1) $24,171.09, dated April 17, 2018; (2) $15,000, dated June 19, 2018; (3) $2,223.97, dated August 14, 2018; and (4) $5,000, dated September 18, 2018. The total deposited was $46,395.06.

B. Culpability[21]

1. Count Five: Commingling (Rule 4-100(A))

Count five charges that Rubin violated rule 4-100(A) by issuing a check for $105,000 from his CTA for payment of his personal expenses. Rule 4-100(A) prohibits attorneys from commingling personal funds with client funds held in a trust account. The hearing judge found that by repaying a $105,000 personal loan to Nomi with a CTA check, Rubin commingled his personal expenses with client funds, and was culpable under count five. On review, Rubin admits that he erred in repaying the loan from his CTA. He argues that he should not be held culpable for a willful violation, however, because he believed at the time he could make the payment as he did. This argument is without merit. Ignorance of the rules governing client trust accounts is no defense to a commingling charge. (*Silver v. State Bar* (1974) 13 Cal.3d 134, 145.) We affirm the hearing judge's culpability determination.

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[20] Rubin formed and represented PPL in various matters unrelated to those described below.

[21] We reject Rubin's argument that the hearing judge disregarded facts that would mitigate the commingling charges. Rubin asserts that he lost $135,000 for a client, Ralph Hitchcock, when he received fraudulent wire instructions. Therefore, he arranged for the loan and for Nomi to wire $100,000 into his CTA. These facts might explain his need for the $100,000, but they are not a defense for commingling personal funds in his CTA.

2. Count Six: Commingling (Rule 4-100(A))

Count six charges that Rubin commingled funds between April 17 and September 14, 2018, in violation of rule 4-100(A), when he deposited four checks payable to PPL in his CTA. The hearing judge found that Rubin deposited $46,395.06 from his business venture into his CTA and found him culpable as charged.

On review, Rubin attempts to explain why he deposited those funds in his CTA, arguing that he did so because he was unsure how much money belonged to him as a member of PPL and how much belonged to the other members. He said that he had acted as an attorney for PPL and the deposited funds "could have" represented fees or other money belonging to the members of PPL. Rubin argues that no improper reason for his deposit of those funds in his CTA was established at trial. These arguments are without merit. An improper reason is not required to establish culpability for commingling. Rubin commingled non-client funds in his CTA when he deposited the four checks, in violation of rule 4-100(A). Therefore, we affirm culpability under count six.

V. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Rubin to meet the same burden to prove mitigation.

A. Aggravation

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

Rubin has two prior records of discipline. In 1993, the State Bar Court issued a private reproval of Rubin. (State Bar Court No. 92-C-18577.) Rubin stipulated that in 1992, he brought a loaded gun into the Van Nuys Superior Courthouse in his briefcase. Rubin pleaded guilty to a violation of Penal Code section 12025, subdivision (b) (carrying a concealed firearm). He

received mitigation for his lack of a prior record of discipline in 14 years of practice; there were no aggravating circumstances.

On July 16, 1997, Rubin received a one-year actual suspension and three years' probation. (State Bar Court Nos. 92-O-18013; 93-O-18057; 93-O-18854; 93-O-20185; 94-O-14783; 95-C-17226 (Consolidated); Supreme Court No. S061291.) In three client matters, Rubin violated: (1) rule 4-100(B)(4) (failure to promptly pay client funds), two counts; (2) rule 3-110(A) (failure to perform competently), two counts; (3) section 6068, subdivision (b) (failure to maintain respect to the courts); (4) section 6103 (disobedience of a court order); (5) section 6068, subdivision (i) (failure to cooperate in disciplinary investigation); (6) rule 3-700(D)(1) (failure to return file); (7) rule 4-200 (unconscionable fee); and (8) section 6106 (misrepresentation). Rubin was also found to have committed misconduct warranting discipline for his conviction pursuant to his violating Penal Code sections 242 and 243, subdivision (d) (battery on a person with serious bodily injury). Rubin received aggravation for his prior record of discipline, multiple acts of misconduct, uncharged misconduct, and significant harm. No mitigation was found. The hearing judge stated, "The Court is concerned about [Rubin's] inability to fully appreciate the seriousness of his professional obligations and of the conduct befitting an attorney. In truth, [Rubin] did not acknowledge any wrongdoing but adamantly insisted that everything he did was for the good of his clients and that he had no criminal intent as to [the victim of his battery]."

The hearing judge assigned significant aggravation for Rubin's two prior records of discipline. We conclude that they merit substantial aggravating weight.[22] Rubin's second disciplinary matter involved misconduct similar to that in the present matter, including failure to

[22] Rubin argues that his prior records should not be considered as aggravation because a lengthy amount of time has passed since the previous disciplines. We reject this argument; such remoteness does not bar us from considering prior misconduct. We reiterate that the prior record here is especially relevant given the similarity of misconduct in the second discipline to the present case and the fact that his past interactions with the State Bar Court did not rehabilitate Rubin and prevent the current misconduct.

promptly pay client funds and disobedience of a court order. A condition of probation in the second discipline required him to have an accountant certify that he properly maintained client funds records and a CTA. This indicates that his prior disciplines did not rehabilitate him, causing concern about future misconduct. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444.)

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

The hearing judge assigned aggravation for Rubin's multiple acts of misconduct, including failing to pay and report judicial sanctions, threatening to report suspected immigration status, failing to maintain client funds, failing to promptly pay client funds, commingling, and failing to avoid adverse interests. We agree and assign substantial aggravation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

3. Significant Harm to Client, Public, or Administration of Justice (Std. 1.5(j))

The hearing judge found significant harm under standard 1.5(j). Rubin deprived Vanessa of her funds for approximately three months, which burdened her with the fear of not complying with her fiduciary duties for the Maas Trust. We agree that this caused Vanessa significant harm due to her mental suffering. However, Vanessa's worry over the money was for a relatively short period of time and no additional facts suggest a severe monetary injury (no harm to the Maas trust and no loss of use of the money) or that Rubin possessed a wrongful intent in failing to promptly disburse the money. Therefore, we assign only limited weight in aggravation. (Cf. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [aggravation for significant harm when client deprived of funds at time of desperate need].)

The judge also found that Rubin's threats to report suspected immigration status required Baumler to seek a protective order, which wasted judicial time and resources. While Rubin's

misconduct created additional work for the superior court, resulting in sanctions against Rubin, we do not find that his actions significantly harmed the public or the administration of justice. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79–80 [harm to administration of justice where attorney "wasted considerable time" due to attorney's failure to conduct affairs properly and as directed].)

4. Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. The hearing judge found that Rubin was insincere in his "limited expression of remorse." She also found that he "evidences no recognition of the serious consequences of his misbehavior." Instead, she found that Rubin failed to accept responsibility for his actions and attempted to blame others. An attorney who does not accept responsibility for his actions and instead seeks to shift it to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) Accordingly, the judge assigned aggravation under standard 1.5(k).

We agree that Rubin is unable to recognize the wrongfulness of his misconduct. While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) On review and at oral argument, Rubin expressed some remorse and conceded that he had violated ethical duties. However, he continued to describe the violations as technicalities or make other excuses, such as arguing that he did not have to obey a court order when he was not served with it, even though he had actual notice of the order. Particularly troubling is his continued insistence that his actions in the Uvas matter did not amount to threatening to report suspected immigration status. He argues that he never made any "direct" threats and fails to acknowledge the wrongfulness of his conduct without considering the import

of his comments on the phone, in letters, and in court filings. Even though he has exhibited insight as to some of his behavior, his actions continue to display indifference. Therefore, we assign substantial consideration in aggravation. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [ongoing failure to acknowledge wrongdoing instills concern that attorney may commit future misconduct].)[23]

5. Lack of Candor and Cooperation to the State Bar of California (Std. 1.5(l))

The hearing judge found that Rubin was uncooperative during the disciplinary proceedings, requiring the judge's admonishments during trial.[24] She characterized Rubin's conduct as "unrestrained abuse" and "disruptive." In reviewing the record, we note that the judge reprimanded Rubin regarding his volume and tone. However, the judge was able to adequately manage the trial so as to avoid any extreme behavioral issues that would deserve aggravation under standard 1.5(l). The trial was hard-fought and somewhat contentious at times, but we do not find that Rubin's actions rose to a level warranting aggravation. Therefore, we do not find standard 1.5(l) aggravation here.

B. Mitigation

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

Rubin may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge assigned limited weight in mitigation, finding that the witnesses did not constitute a wide range of references. Rubin argues on review that the

[23] In finding indifference, the hearing judge noted Rubin's approach to questioning particular witnesses at trial. We find Rubin's conduct more akin to mounting a vigorous defense. (See *In re Morse* (1995) 11 Cal.4th 184, 209 [attorney has right to defend himself vigorously].) Therefore, we do not include these actions in our indifference finding.

[24] The judge also stated that Rubin's testimony lacked candor. However, she only made specific findings about Rubin's *credibility* in the decision. We do not find that the record supports a lack of candor finding, and therefore, we do not assign aggravation on that basis.

hearing judge improperly disregarded the character witnesses' testimony.[25] He asserts that the witnesses represented a broad range of the community and attested to his honesty. He requests that we give great weight in mitigation under standard 1.6(f).

We agree with the assignment of limited weight, but for a different reason than the hearing judge. Rubin presented character evidence from several clients, including Navdeep Mundi, Ben Alter, Ralph Hitchcock, Thresiamma Mathew,[26] and Candido Gonzalez. They testified that Rubin is trustworthy, competent, honest, and ethical. They also stated that they refer clients to him and would hire him again if they had further legal problems. Alter also testified as Rubin's friend, whom he has known for 25 years.

Three attorneys also testified on Rubin's behalf. Keleti, the contract attorney in the Uvas case, testified that Rubin is a knowledgeable, honest, and ethical attorney. Jared Xu, an attorney who previously worked for Rubin, testified that Rubin was an experienced and honest attorney who enthusiastically advocated for his clients. Xu was hired in 2018, around the time that Rubin took on the Raicevic matters. Xu now works at a different law firm, but views Rubin as a mentor. Lisa Rubin, Rubin's daughter and a third-year associate attorney at a law firm, testified that her father is an honest, knowledgeable, and ethical attorney. Testimony from attorneys is entitled to serious consideration. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].)

[25] In Rubin's opening brief on review, he requests that we find that the hearing judge erred by failing to judicially notice the testimony of Judge William D. Stewart of the Los Angeles County Superior Court. Rubin previously raised this issue in his request filed on October 5, 2020, which we denied by order dated October 23, 2020. We decline to revisit this request as the document is not a part of the record.

[26] Rubin represents Mathew in the Uvas cases discussed in this opinion.

Mercy Cudney, a paralegal who has known Rubin for over 20 years, testified that he is an honest and ethical attorney and that she often refers clients to him. In addition, two of Rubin's past secretaries, Vanessa Ramirez and Jaxcel Archiga, testified that Rubin is an honest person who worked hard for his clients.

This group of character witnesses consisting of former employees, clients, attorneys, a friend, and Rubin's daughter establishes a wide range of references. However, several issues diminish the strength of their testimony. First, besides Rubin's daughter, only two character witnesses have known Rubin for a significant amount of time—Alter and Cudney. And there was no detailed testimony regarding Rubin's daily conduct and mode of living. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 592 [testimony of acquaintances, neighbors, friends, associates, employers, and family members on issue of good character, with reference to their observation of attorney's daily conduct and mode of living, entitled to great weight].) Second, the testimony does not make it clear that the witnesses were aware of the full extent of the misconduct. (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].) This was Rubin's burden to prove and he failed to do so. Third, while three attorneys testified on his behalf, Xu had only known Rubin for a few years, Keleti for only two years, and Lisa is Rubin's daughter. In reviewing the record and weighing the evidence, we find that Rubin is entitled to only limited weight in mitigation under standard 1.6(f).

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

Rubin argues that he should receive mitigation credit for being fully cooperative in the State Bar investigation. His cooperation in communicating with a State Bar investigator does not merit mitigation on its own since attorneys are required to do so. (§ 6068, subd. (i).) He has

failed to show that his actions were spontaneous or otherwise display cooperation. Therefore, we assign no mitigation under standard 1.6(e).

VI. DISBARMENT IS THE APPROPRIATE DISCIPLINE

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

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Considering Rubin's record of two prior disciplinary matters, we look to standard 1.8(b),[27] which states that disbarment is appropriate where an attorney has two or more prior records of discipline if (1) an actual suspension was ordered in any prior disciplinary matter, (2) the prior and current disciplinary matters demonstrate a pattern of misconduct, or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Rubin's case meets two of these criteria. First, he was actually suspended for one year in his second disciplinary matter. Second,

[27] Standards 2.2(a) and (b), 2.5(c), 2.12(a) and (b), and 2.18 are also applicable. Standard 2.2(a) provides for actual suspension of three months for commingling or for failure to promptly pay out entrusted funds; standard 2.2(b) provides for suspension or reproval for other violations involving client funds. Standard 2.5(c) provides for suspension or reproval for conflicts of interest. Standard 2.12(a) provides for disbarment or actual suspension for a violation of a court order; standard 2.12(b) provides for reproval for a violation of section 6068, subdivision (o). Standard 2.18 provides for disbarment or actual suspension for a violation of a provision of Article 6 of the Business and Professions Code not otherwise specified.

we find that the similarity of his misconduct in the second prior discipline and the current matter demonstrates his unwillingness or inability to conform to his ethical responsibilities.

Standard 1.8(b) does not apply if (1) the most compelling mitigating circumstances clearly predominate or (2) the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. These exceptions do not apply here. Rubin has only limited mitigation for good character and it does not clearly predominate over the five serious aggravating circumstances. And the misconduct in the present matter occurred over 20 years after his previous misconduct, and not during the same time period.

We next consider whether any reason exists to depart from the discipline called for by standard 1.8(b). We acknowledge that disbarment is not mandatory in a third disciplinary matter, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506–507 [analysis under former std. 1.7(b)]; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [to fulfill purposes of attorney discipline, "nature and chronology" of prior record must be examined].) Standard 1.8(b) is not applied reflexively, but "with an eye to the nature and extent of the prior record. [Citations.]" (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 292.) Deviating from standard 1.8(b) requires the court to articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Rubin has not identified an adequate reason for us to depart from applying standard 1.8(b), and we cannot discern any. We acknowledge that his past discipline was issued in 1993 and 1997, but of critical concern is the nature of the second prior discipline. Rubin has continued to commit misconduct in the present case that is similar to his past wrongdoing. Therefore, standard 1.8(b) is appropriately applied here. His current misconduct does not overlap with his prior violations,

demonstrating that he failed to adhere to his professional duties after being disciplined twice.[28] Rubin cites to several cases, arguing that other attorneys were not disbarred for similar violations. However, those cases do not deal with a third discipline and do not involve multiple acts of misconduct as is the case here.

For the third time, Rubin is before this court because he has failed to meet his professional obligations. He has committed multiple serious violations in different client matters. He was put on notice in his second discipline of the importance of handling a CTA with care, but then failed to follow CTA rules. His indifference and failure to acknowledge the wrongfulness of his misconduct are troubling. This concern has not changed since Rubin's second discipline where the hearing judge found that Rubin was unable to fully appreciate his professional obligations. He continues to make excuses for "technical" violations rather than accept responsibility for his misconduct. Given the nature and chronology of Rubin's violations, we find no reason to depart from the presumptive discipline of disbarment under standard 1.8(b). We conclude that further probation and suspension would be insufficient to prevent him from committing future misconduct that would endanger the public and the profession. Accordingly, the public, the courts, and the legal profession are best protected if Rubin is disbarred.

VII. RECOMMENDATIONS

It is recommended that Michael Philip Rubin, State Bar Number 86732, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Rubin be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c)

[28] We note that standard 1.8(b) is the controlling standard here and does not consider the remoteness of any prior discipline. Remoteness is only considered under standard 1.8(a) where there is a single prior record of discipline.

of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[29]

COSTS

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

MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions in this matter, as this matter was submitted for decision prior to March 1, 2021, the effective date of amended rule 5.137(H) of the Rules of Procedure of the State Bar, and all the misconduct in this matter occurred prior to April 1, 2020, the effective date of former rule 5.137 of the Rules of Procedure of the State Bar. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [the rules of statutory construction apply when interpreting the Rules of Procedure of the State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent an express retroactivity provision in the statute or clear extrinsic sources of intended retroactive application, a statute

[29] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Rubin is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of a statute is ambiguous, the statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630-631 [the date of the offense controls the issue of retroactivity].)

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Michael Philip Rubin be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective March 8, 2020, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.