

FILED December 5, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case Nos. 10-O-07047 (10-O-11096)
)	
JOHN STEVE SARGETIS,)	OPINION
)	
A Member of the State Bar, No. 80630.)	
_____)	

In October 2011, John Steve Sargetis and the Office of the Chief Trial Counsel (State Bar) entered into a stipulation as to facts, conclusions of law, and disposition that recommended a 30-day suspension (Stipulation), which was approved by the hearing department. On June 21, 2012, the Supreme Court issued an order returning the Stipulation “for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silvertown* (2005) 36 Cal.4th 91, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)” (Sargetis on Discipline (June 21, 2012, S198712).) At a hearing on October 1, 2012, the parties presented limited evidence that supplemented, but did not contradict, the Stipulation. The hearing judge concluded that Sargetis’s suspension should be increased to six months.

Sargetis seeks review, requesting a three-month suspension. The State Bar supports the hearing judge’s recommendation. Since the Stipulation established Sargetis’s culpability, the sole issue before us is the level of discipline.

Sargetis committed misconduct in two client matters. In the first matter, he received a \$2,700 advance fee for loan modification services he provided to a Virginia resident on property located in that state. Sargetis is licensed only in California. He concedes that he: (1) committed

the unauthorized practice of law (UPL) in violation of another jurisdiction's professional regulations; (2) charged and collected an illegal fee; (3) committed an act of moral turpitude by failing to disclose to his out-of-state client that he was licensed only in California; and (4) improperly limited his liability to the client in his fee agreement. In the second client matter, Sargetis failed to avoid representation of an adverse interest by receiving \$4,716 in legal fees from his client's daughter without obtaining the client's informed written consent.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge's recommended discipline. Sargetis has a prior record of discipline from 2010. In that case, he was publicly reprimanded for failing to communicate and to perform services in one client matter *and* because he did not comply with the conditions of a 2009 "agreement in lieu of discipline" (ALD). Significantly, Sargetis committed his present misconduct just months after he entered into the ALD, and while being supervised by the State Bar. Given these circumstances, we believe that a six-month suspension is proper progressive discipline.

I. FACTUAL BACKGROUND¹

A. The Hejazi Matter

In October 2009, Sargetis mailed a solicitation letter to a Virginia resident, Farokh Hejazi, that bore the heading "Legal Advisory," and stated that "Federal laws may have been broken during the loan origination process!" Sargetis offered to obtain a loan modification for Hejazi's property in Virginia, and instructed him to contact "one of our attorneys at 1-866-33-AUDIT." Below the phone number was "Reference VA94101323." The letter indicated that the solicitation was a legal advertisement approved by "John Sargetis, Esq., CSBN 80630" and his

¹ Our factual background is based on the Stipulation, the hearing judge's findings, and the trial evidence. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

partner "Stephen J. Foondos, LL.M., 148982," attorneys at law for United Law Center, a professional law corporation.

At the time Hejazi received the solicitation, he was finding it difficult to make his home mortgage payments. Believing Sargetis was licensed to practice law in Virginia, Hejazi hired him to obtain a home mortgage loan modification. In October 2009, he paid Sargetis's firm an advance fee of \$2,700, and signed an "Attorney-Client Contract," which contained a limited liability clause:

"Subject to applicable state or federal law, *Client unconditionally waives any right of action or claim against Attorney* directly or indirectly or proximately believed to arise out of this Contract for any damages of any nature whatsoever that Client may incur by following any recommendation. In the event Client's property is ultimately foreclosed upon by the Lender, Client shall hold harmless Attorney for the loss of the subject property or any deficiency, tax liability or any other incidental and consequential damages or financial loss resulting therefrom." (Italics added.)

For approximately a year, Sargetis and/or his firm performed work on Hejazi's behalf, but were unsuccessful in obtaining the loan modification. According to Hejazi's testimony, Sargetis did not communicate directly with him: "[I]t just seemed like Mr. Sargetis was isolated from the whole process, because he was never mentioned from the get-go, from the beginning." At one point, Hejazi contacted Sargetis and explained he was dissatisfied and planned to contact the State Bar. Sargetis responded in a lengthy letter explaining the work that had been performed. Hejazi filed his complaint. After Sargetis met with the State Bar representative, he returned the \$2,700 fee to Hejazi in September 2011.

At trial, Sargetis testified about his stipulated misconduct. He admitted he did no legal research about practicing law in another jurisdiction before he sent the solicitation. He also stated he was unaware he had violated the Virginia Consumer Protection Act by collecting the \$2,700 from Hejazi as an advance fee. As to the limited liability clause, he stated: "It should have never been in here in the first place. I don't have a specific recollection now of looking at

this contract here when it was done to see. Somehow it got in here.” Sargetis has eliminated the provision from his new fee agreement.

B. The Smith Matter

In September 2009, Joyce Davis Smith retained Sargetis to provide legal services in connection with loan modifications for real property she owned. Smith’s daughter, who was not a client, paid her mother’s legal fees of \$4,716 in six \$786 installments between December 2009 and July 2010. Sargetis did not obtain Smith’s written consent to accept these payments.

At trial, Sargetis explained that he did not personally oversee incoming checks; instead, they went directly to the firm’s administrative assistant for deposit into the trust account. Although no conflicts arose as a result of Smith’s daughter paying his fees, Sargetis conceded he failed to advise Smith of the potential conflict from receiving such payments. He has since instituted new procedures, including obtaining a proper written waiver when needed.

II. LEGAL ANALYSIS

A. Count One: Unauthorized Practice of Law (UPL) in Another Jurisdiction (Rules Prof. Conduct, rule 1-300(B))²

Rule 1-300(B) provides that an attorney may not practice law in a jurisdiction if it would violate the professional regulations in that jurisdiction. Rule 5.5(d)(2)(ii) of the Virginia Rules of Professional Conduct³ prohibits an out-of-state attorney from holding himself out to the public as entitled to practice in Virginia or otherwise representing that he is admitted to practice in Virginia. Virginia rule 5.5(d)(3) requires that a foreign lawyer disclose in writing to clients residing in Virginia: (1) that the lawyer is not admitted in Virginia; (2) the jurisdiction in which the lawyer is licensed to practice; and (3) the lawyer’s office address in the foreign jurisdiction.

² All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

³ All further references to Virginia rules are to the Virginia Rules of Professional Conduct.

Sargetis violated Virginia rules 5.5(d)(2) and 5.5(d)(3) by failing to disclose to Hejazi: (1) that he was not admitted to practice law in Virginia; (2) that he was licensed to practice only in California; and (3) his California office address. By holding himself out as licensed to practice law in Virginia and by accepting Hejazi as a client, Sargetis violated Virginia's professional regulations and therefore willfully violated California's rule 1-300(B).

B. Count Two: Charging an Illegal Fee (Rule 4-200(A))

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. Sargetis willfully violated rule 4-200(A) by entering into the Attorney-Client Contract with Hejazi and charging and collecting a fee for legal services when he was not licensed to practice in Virginia *and* by charging and collecting an advance fee in violation of Virginia Code section 59.1-200.1 (prohibited foreclosure rescue practices).

C. Count Three: Acts of Moral Turpitude (Bus. & Prof. Code, § 6106)⁴

Section 6106 prohibits the commission of any act involving dishonesty, moral turpitude, or corruption. Sargetis violated section 6106 by intentionally failing to inform Hejazi that he was not entitled to practice law in Virginia. Since this fact established culpability in Count One, we assign little or no weight to that count in determining the level of discipline. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little if any purpose served by duplicate misconduct charges].)

D. Count Four: Limiting Liability to a Client (Rule 3-400(A))

Rule 3-400(A) provides that an attorney must not contract with a client to prospectively limit the attorney's liability for professional malpractice. Sargetis's Attorney-Client Contract required that Hejazi unconditionally waive any claim against Sargetis arising out of the contract. The contract required Hejazi to "hold harmless Sargetis for the loss of the subject property or any

⁴ All further references to sections are to the Business and Professions Code.

deficiency, tax liability or any other incidental and consequential damages or financial loss resulting therefrom.” In addition, the contract contained a clause requiring all disputes be settled by arbitration in Placer County. Sargetis stipulated that he violated rule 3-400(A) by entering into a contract with Hejazi that limited his liability for professional malpractice and that contained an unenforceable arbitration provision under Virginia Code section 59.1-200.1 (mandatory arbitration clause in agreement for loan modification services of residential real property is null and void).

E. Count Five: Avoiding Representation of Adverse Interest (Rule 3-310(F))

Rule 3-310(F) provides, inter alia, that an attorney must not accept compensation for representing a client from someone other than the client unless: (1) there is no interference with the attorney’s independence of professional judgment or with the client-lawyer relationship; (2) information relating to the client’s representation is protected under section 6068, subdivision (e); and (3) the attorney obtains the client’s informed written consent.

Sargetis violated rule 3-310(F) by accepting payment from his client’s daughter without obtaining the client’s written consent. This misconduct, however, is attributable to Sargetis’s negligent supervision of his bookkeeper. It did not cause a conflict or harm the client, and Sargetis implemented office procedures to correct the problem. Accordingly, this rule violation is not significant misconduct. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [violation of rule requiring written consent to attorney accepting employment adverse to client considered “relatively minor” where no actual conflict, potential conflict remote, and no harm to client].)

III. AGGRAVATION AND MITIGATION

We determine the appropriate discipline in light of the relevant circumstances, including aggravating and mitigating factors. (See *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The

State Bar must establish aggravation by clear and convincing evidence⁵ (std. 1.2(b)),⁶ while Sargetis has the same burden to prove mitigating circumstances (std. 1.2(e)).

A. Three Factors in Aggravation

1. Prior Record of Discipline (Std. 1.2(b)(i)) (08-O-10934)

Sargetis has one prior record of discipline. In May 2005, he filed a civil complaint and two fee waiver applications on behalf of his client. The superior court denied the fee waivers and the civil complaint was voided in June 2005. Sargetis waited two and one-half years, until December 2007, to inform his client. The client terminated his services, and the State Bar became involved.

In order to resolve the matter, Sargetis entered into an ALD, which became effective in April 2009. It provided that, during a one-year period, he must timely submit quarterly reports and successfully pass the Multistate Professional Responsibility Examination (MPRE). Sargetis failed to do either. He submitted all quarterly reports seven to 15 days late, and did not timely pass the MPRE. Ultimately, in July 2010, Sargetis stipulated to a public reproof for his misconduct in the client matter *and* for failing to keep all agreements under the ALD. Notably, Sargetis committed his present misconduct just months after he entered the ALD and while being supervised by the State Bar. We find Sargetis's recidivist misconduct worrisome and assign significant aggravation to his prior discipline record.

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

We assign moderate weight in aggravation for multiple acts of misconduct in two client matters, including: (1) moral turpitude for failing to inform Hejazi he was not licensed in

⁵ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

⁶ All references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Virginia; (2) limiting liability in the Attorney-Client Contract with Hejazi; and (3) failing to avoid an adverse interest in the Smith matter. As noted, we do not consider Sargetis's culpability for UPL because it is encompassed within the moral turpitude charge.

3. Harm to Client/Administration of Justice (Std. 1.2(b)(iv))

Sargetis stipulated that he harmed: (1) his client and (2) the administration of justice. The State Bar proved that Sargetis caused Hejazi financial harm by failing to repay him the \$2,700 for nearly two years. During this period, Hejazi was experiencing financial difficulties, as evidenced by the affidavit he mailed to Sargetis as part of the loan modification packet. In that document, Hejazi stated that he had lost or reduced income, a change in household finances, increased expenses, decreased cash reserves, excessive monthly debt, and overextended credit. We assign moderate aggravating weight to this financial harm.

As to the administration of justice, the State Bar did not present evidence to establish how Sargetis caused significant, cognizable harm. Therefore, we assign little, if any, aggravating weight.

Finally, the record failed to establish harm to the public (i.e., other residents in Virginia), as the State Bar urged and the hearing judge found. The State Bar argued that the solicitation letter sent to Hejazi was "a small part of a much larger operation," but did not clearly and convincingly prove it was sent to anyone other than Hejazi. Thus, we assign no additional aggravation for harm to the public.

B. Three Factors in Mitigation

1. Candor/Cooperation (Std. 1.2(e)(v))

Sargetis displayed candor to and cooperation with the State Bar during the disciplinary investigation and these proceedings. His stipulation greatly facilitated this matter because the State Bar did not have to file a Notice of Disciplinary Charges (NDC) to establish culpability.

He is entitled to significant weight for his cooperation. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [mitigation for those who admit culpability as well as facts].)

2. Good Character (Std. 1.2(e)(vi) / Pro Bono Work and Community Service

Sargetis presented testimony of one character witness, an attorney who has known him for 30 years. This evidence does not merit mitigation credit because it fails to establish an extraordinary demonstration of good character from a broad range of references from the legal and general communities, as standard 1.2(e)(6) requires. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167 [one witness insufficient].)

However, we assign considerable credit to Sargetis's extensive pro bono and community service during his 30-year career, which was corroborated by his character witness. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service and pro bono activities are mitigating factors that may be entitled to considerable weight].) In particular, Sargetis contributed his time and money helping underprivileged children in Greece, performed pro bono and other services for the Greek community, and spent years serving as a pro tem judge in the 1990s and 2000s.

3. Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii))

Sargetis testified that he repaid Hejazi and regrets his misconduct. He stated he now realizes it was wrong to offer services to or accept a fee from a Virginia resident. Sargetis has made changes to his practice, such as revising his fee agreement to remove any limit on liability and adopting new office procedures to avoid conflicts when accepting fees from non-clients. We give some weight to these changes and credit Sargetis for making restitution to Hejazi, but only a nominal amount since he did so after the State Bar interceded. (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 496 [restitution made under pressure of disciplinary proceeding given little weight].)

IV. DISCIPLINE DISCUSSION

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) To determine the proper discipline, the Supreme Court instructs us to follow the standards “whenever possible.” (*Id.* at p. 267, fn. 11.)

The most applicable standards are 2.3 and 1.7(a). (Std. 1.6(a) [standard with most severe sanction applies].) Standard 2.3 provides that culpability for an act of moral turpitude must result in actual suspension or disbarment depending on the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member’s practice of law. Standard 1.7(a) calls for progressively more severe discipline when, as here, the attorney has a prior record, unless the previous discipline is remote in time and the offense is minimal. Sargetis’s 2010 discipline is not remote. Nor was his past wrongdoing minimal because it involved failing to communicate with his client and violating his ALD. Thus, standard 1.7(a) suggests we recommend greater discipline in this proceeding than the public reproof Sargetis received in 2010.

The hearing judge relied on *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, in recommending a six-month suspension. But *Wells* is not wholly applicable because the attorney engaged in more serious and widespread UPL. (See *id.* at pp. 902-904.) Clearly, Sargetis’s misconduct was less serious. Even so, we find his case is aggravated because he committed the present misconduct during his ALD and while under the supervision of the State Bar. (See *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438 [aggravation given greater weight because attorney committed current misconduct while on

probation in prior disciplinary proceeding].) These circumstances weigh in favor of recommending a substantial increase in progressive discipline.

An attorney with a prior discipline case who faces a second proceeding has not conformed his conduct to the ethical demands of the profession. The purpose of progressive discipline under standard 1.7(a) is to deter future misconduct by addressing a recidivist's current wrongdoing with *appropriate* discipline that is greater than in the previous case. To illustrate, in *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 371, we recommended a six-month suspension as progressive discipline for an attorney's failure to perform competently in a probate matter where a 30-day suspension had been imposed for past similar misconduct. We justified imposing "significantly greater discipline" there because the attorney did not appreciate his misconduct, which presented a concern for future wrongdoing. (*Id.* at pp. 380-381.) The same principle applies here.

Sargetis's present misconduct is troubling because it is central to the practice of law—it resulted from his failure to research the law, carefully review a fee agreement, and properly supervise his office staff. And he committed it after he became involved in the discipline system. Since Sargetis failed to comply with the more lenient sanction the ALD afforded him for his past misconduct, we do not believe a further lenient discipline in this case would deter future wrongdoing. Finally, we believe that his cooperation, pro bono works, and remorse do not outweigh the aggravating factors of his recent prior record of discipline, harm to his client, and multiple acts of wrongdoing. Accordingly, the totality of the circumstances warrants a six-month suspension as the appropriate progressive discipline that will protect the public, the courts, and the legal profession.⁷

⁷ Our dissenting colleague cites case law to support a three-month suspension. However, those cases are not particularly helpful because none of the respondents committed misconduct while being actively supervised by the State Bar under an ALD, as was Schwartz, or while on

V. RECOMMENDATION

For the foregoing reasons, we recommend that John Steve Sargetis be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years, with the following conditions:

1. He must be suspended from the practice of law for the first six months of the period of his probation.
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from

probation. In our view, this circumstance aggravates Schwartz's prior discipline case, and demonstrates the need for considerably greater progressive discipline to ensure the public's protection.

any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Sargetis be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

RULE 9.20

We further recommend that Sargetis be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

I CONCUR:

REMKE, P. J.

EPSTEIN, J.

I respectfully dissent.

I conclude that the six-month suspension recommended by the majority is excessive in light of the extent of Sargetis's misconduct and the relevant decisional law.

The clear and convincing evidence establishes that in one client matter, Sargetis's UPL occurred as the result of a single solicitation letter that offered loan modification services to a Virginia resident and that also contained a proscribed provision limiting Sargetis's liability. Sargetis received a fee of \$2,700, which was illegal due to his UPL. Although Sargetis waited two years to return the fee to the out-of-state client, it is stipulated that Sargetis performed the agreed-upon services during that two-year period, and the client ultimately withdrew his State Bar complaint. In the second client matter, Sargetis's lack of oversight of his bookkeeper resulted in the acceptance of payment from a client's daughter without the client's permission. There is no evidence of harm to the client or of any actual or potential conflict as the result of the daughter's payment of her mother's legal fees.

Previously, the State Bar stipulated to a 30-day suspension in this matter, which the Hearing Department approved. Upon remand of this case by the Supreme Court for further consideration of the discipline imposed, the State Bar was given an opportunity to explain or supplement the misconduct to which it had previously stipulated, yet it offered little, if any, additional evidence of consequence.

The applicable standards allow a wide range of discipline, and therefore we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) The majority relies on two cases in support of a six-month suspension: *In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. 896, and *In the Matter of Layton, supra*, 2 Cal. State Bar Ct. Rptr. 366, both of which are inapposite. The majority acknowledges that the *Wells* decision "is not wholly applicable"

because the totality of the misconduct in that case was more serious than in the instant matter. Indeed, Wells committed widespread UPL in a foreign state with two clients and charged those clients fees of \$11,000 and \$6,500, respectively, which we found were illegal *and* unconscionable. (*Wells*, at pp. 900-911.) She refused to refund the fees to either client, failed to deposit client funds in her trust account, and committed acts of moral turpitude because she lied to a State Bar investigator as well as to an investigator from the foreign state. (*Ibid.*)

In aggravation, Wells had a prior discipline, a private reproof, for commingling personal funds in a client trust account and, in a second matter, representing a client without a retainer agreement and trust account violations. (*Wells, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 899, 913.) She also showed little or no remorse or recognition of her ongoing professional shortcomings. (See *id.* at p. 913.) But the most significant factor prompting our six-month recommendation was our reliance on standard 2.7⁸ due to her collection of two unconscionable fees (see *id.* at pp. 916-917), which does not apply to this case because Sargetis did not charge or collect an unconscionable fee.

The majority focuses on Sargetis's prior discipline, which was a public reproof, in support of a six-month suspension, citing *In the Matter of Layton, supra*, 2 Cal. State Bar Ct. Rptr. 366. However, *Layton* did not involve UPL or an illegal fee. And most importantly, our rationale for imposition of a progressive discipline of six months in that case has little, if any, bearing on our concerns in the instant matter. *Layton* previously had been suspended for 30 days for reckless failure to competently perform legal services over a five-year period, misconduct which we found to be "egregious." (*Id.* at p. 380.) In *Layton's* second disciplinary matter, he was again found culpable of recklessly failing to perform legal services. (*Id.* at p. 378.) In total, he committed the same misconduct over a 10-year period, causing significant client harm. (See

⁸ Standard 2.7 provides: "[C]ollecting an unconscionable fee for legal services shall result in at least a six month actual suspension . . . irrespective of mitigating circumstance."

id. at pp. 379-380.) We found that Layton’s “failure to understand or appreciate his present misconduct causes concern regarding his handling of future cases, and in our view, is the primary justification for imposing significantly greater discipline than imposed in the prior matter.” (*Id.* at pp. 380-381). We also noted there were no mitigating factors. (*Id.* at p. 381.)

In contrast, Sargetis’s prior misconduct cannot reasonably be characterized as “egregious,” it is unrelated to his present misconduct, and it did not occur over a prolonged period of time. Most significantly, the State Bar has stipulated that Sargetis has demonstrated remorse and recognition of wrongdoing, which was supplemented by evidence adduced at the hearing after remand. Sargetis demonstrated he now recognizes he was wrong to offer services to or accept a fee from out-of-state residents. In addition, he has remedied the office procedures that resulted in his acceptance of a fee from someone other than a client, and he has revised his fee agreement to remove any limitation on liability. Most importantly, Sargetis entered into a comprehensive stipulation including his culpability, and this cooperation enabled the State Bar to prosecute this matter without the filing a Notice of Disciplinary Charges.

I find our decision in *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 to be more relevant than the above-cited cases relied upon by the majority. In *Mason*, we rejected the State Bar’s request for a six-month suspension. (*Id.* at p. 641.) Instead, we recommended a 90-day suspension after Mason committed multiple acts of UPL. (See *ibid.*) In addition, Mason misled a superior court and opposing counsel about his status. (*Ibid.*) We found his misconduct to be at least reckless, if not intentional, and as such, it constituted moral turpitude. (See *id.* at p. 642.) Mason’s prior misconduct was more serious than in the instant matter, involving commingling, the failure to promptly pay client funds, to provide an accounting, and to cooperate with the State Bar’s investigation, for which he was suspended for

75 days. (*Id.* at pp. 641-642.) In aggravation, we found harm to the administration of justice, and mitigation due to Layton's pro bono services. (*Id.* at pp. 642-643.)

Progressive discipline clearly is warranted here, but in looking at this matter holistically, I conclude that Sargetis's 30 years of practice before he was disciplined in 2010, his remorse and recognition, his candor and cooperation, and his lengthy and ongoing involvement with his community, his church, and those in need justify a 90-day suspension, which is adequate to protect the public, the courts, and the profession, and is consistent with our own decisional law.