PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED JUNE 19, 2012

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 08-O-13227; 09-O-12258
	)	
MARGARET ALICE SELTZER,	)	OPINION
	)	[As Modified June 19, 2012]
A Member of the State Bar, No. 87707.	)	
	)	

This case illustrates the problems that can arise when office management practices are inadequate to ensure timely payment of State Bar membership fees. Margaret Alice Seltzer practiced law for 28 years without discipline. Yet she was suspended from practice from July 1 through July 18, 2009, for non-payment of her annual fees. The State Bar sent four notices to her membership address warning of her delinquency and impending suspension, but Seltzer claims she did not see these notices. Upon discovering that her suspension had been in effect for two weeks, Seltzer immediately paid her fees and re-activated her license. During this two-week period, however, Seltzer performed legal services for two clients. One of those clients paid over $10,000 in fees for these services, which Seltzer refused to refund. Seltzer also failed to forward litigation files and records the client requested, and she did not timely respond to a State Bar investigator's written inquiries about these circumstances.

The Office of the Chief Trial Counsel of the State Bar charged Seltzer with nine counts of misconduct including: engaging in the unauthorized practice of law (UPL) constituting moral turpitude; failing to cooperate in a State Bar investigation; failing to inform a client of her suspension; failing to promptly release a client file; charging an illegal fee; and moral turpitude

for knowingly sending a client a bill for work performed while she was suspended. The hearing judge found Seltzer culpable of all counts except the two counts of moral turpitude arising from the UPL and recommended a 60-day actual suspension, two years' probation and restitution.

Seltzer and the State Bar seek review. Seltzer claims the State Bar presented insufficient evidence to establish culpability. The State Bar asks that we find Seltzer culpable of all charges, find additional aggravation of significant client harm, and increase the recommended discipline to a one-year actual suspension.

After independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, except we dismiss one duplicative count of moral turpitude, and we assign additional aggravating weight due to client harm. Comparable case law supports the hearing judge's recommended discipline. Although we find Seltzer's failure to understand the nature and consequences of her misconduct to be very troubling, we nevertheless give substantial weight to her lengthy discipline-free practice. Imposing a two-year probationary period, conditioned on a 60-day actual suspension and until Seltzer repays the fee that she improperly charged her client, plus interest, will adequately protect the public, the courts and the legal profession.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Seltzer's Suspension for Failure to Pay Membership Fees

In November 2007, the State Bar's billing department (Billing Department) sent Seltzer a notice that her membership fees were due on February 1, 2008 and followed up in January 2008 with an email reminder. Seltzer did not pay by the February 1 deadline, so the Billing Department sent her a delinquency notice on March 15, 2008, warning of a suspension if she failed to pay her dues. On June 18, 2008, the Billing Department informed her in writing that the Supreme Court had entered an order suspending her for delinquent Bar fees, effective July 1,

2008. The notice included a certificate of mailing and advised that Seltzer could avoid suspension if she paid her fees by June 30, 2008. Seltzer did not do so and she was suspended on July 1, 2008.

All of the State Bar notices were mailed to Seltzer's office, which was listed as her official membership address, and none were returned as undeliverable. Seltzer shared subleased office space with other lawyers and regularly received mail at this address. However, she testified she never saw any of the notices nor did she know if they had been delivered to her office. Seltzer's secretary was responsible for receiving her mail after it had been sorted by others in the office and the secretary would routinely forward all invoices, including membership fee statements, to the bookkeeper for payment without notifying Seltzer. Seltzer testified that she first learned about her suspension on July 16 or 17, 2008. She then promptly paid her fees on July 17, 2008, and her suspension was terminated on that date.

B. Seltzer's Representation of Two Clients While Suspended

1. The Shoe Palace Matter (Case No. 08-O-13227)

In Case No. 08-O-13227, Seltzer represented the Shoe Palace Corporation in two separate civil suits involving a construction dispute (Shoe Palace litigation). On July 3, 2008, while on suspension, Seltzer appeared by telephone at a case management conference in one of the cases, and at a pre-arbitration conference call about discovery matters in the other case.

2. The Ratcliff Matter (Case No. 09-O-12258)

In Case No. 09-O-12258, Seltzer represented The Ratcliff Architects (Ratcliff) in a civil matter (Ratcliff litigation). While on suspension, Seltzer performed legal services, including: researching and drafting a brief, various motions and other documents; appearing at a hearing on a stay application; attending interoffice conferences discussing procedural issues in a debtor's exam; and reviewing trial and hearing transcripts. After she learned of her suspension, Seltzer

sent Ratcliff a bill for July for $35,328.21, of which $10,918 was for legal services she performed while she was suspended. She did not advise Ratcliff of this fact, and Ratcliff paid the full amount of the invoice.

Ratcliff subsequently retained attorney Elliott Bien to appeal the judgment in the civil suit. On December 12, 2008, Bien notified Seltzer that he would need the "complete litigation file from . . . [the] original complaint through the post-trial proceedings." Over the next two months, Bien sent several letters and emails reminding Seltzer to send the files.

During the same period, Christopher Ratcliff, Ratcliff's President, also wrote to Seltzer, requesting that she "immediately ship all the original litigation files and all associated case material in your possession to our offices." When Seltzer did not respond, he sent another email emphasizing the urgent need for the files because "the lack of file transfer has been holding up [the] appeal." He instructed Seltzer: "please do not undertake any further work on the case without our prior approval."

On February 12, 2009, George Buffington, corporate counsel for Ratcliff, sent a letter to Seltzer terminating her services on behalf of Ratcliff and advising her of her obligation to "promptly release to your client all client papers and property," citing rule 3-700(D) of the California Rules of Professional Conduct.[1] Seltzer responded the same day. She explained that she was in trial, asked Bien to identify the specific files he needed on an "emergency basis," and stated she would send the remaining files at her "first available opportunity."

A month passed and Seltzer still had not forwarded the litigation files. Ratcliff then hired attorney Mark Abelson, whose single task was to obtain Ratcliff's file from Seltzer. Bien then filed a motion to compel transfer of the files in the Court of Appeal on March 16, 2009. Seltzer advised Abelson in a March 20, 2009 letter that she was "shocked to find that an attorney would

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

file such a document." She informed Abelson that she was obligated under rule 3-700(D) to return only papers and property "without which the client would be prejudiced in the proceeding," and she justified her refusal to turn over the files because "[t]here is no showing of . . . prejudice . . . ." She also maintained that Ratcliff's request for "all written and electronic files in [Seltzer's] possession pertaining to Ratcliff" was too "vague" to require her compliance with rule 3-700(D). Seltzer began returning Ratcliff's files on March 20, 2009, but it took her until March 30, 2009, three and a half months after the initial request, for Seltzer to provide the entire file consisting of more than 40 boxes. Ratcliff withdrew its motion in the Court of Appeal, but by that time, it had expended about $13,000 in attorney fees to retrieve its files.

While trying to obtain Ratcliff's files, Abelson discovered that Seltzer had improperly billed Ratcliff $10,918 for her services while she was suspended. He made three written demands for a refund. Seltzer declined, stating there was no "legal or factual basis for [Ratcliff's] refund claim." She also claimed that she had "almost $10,000 in unbilled time and costs," which she had incurred in responding to Ratcliff's "unwarranted assertions and arguments" about returning its files and also for "document storage and handling." Seltzer applied the $10,918 to offset these additional unbilled fees and expenses without Ratcliff's consent.

C. The State Bar's Investigation of Two Complaints about Seltzer

A State Bar investigator sent letters to Seltzer on September 15 and October 31, 2008, requesting written responses to misconduct allegations involving her possible UPL. Seltzer did not respond until a year and a half later, in March 2010, after she received a third letter from the State Bar notifying her that it intended to file disciplinary charges against her. Seltzer testified that she never saw the first two letters sent to her in 2008, although they were mailed to her official membership address and not returned as undeliverable. On June 2, 2011, the State Bar

filed a Notice of Disciplinary Charges (NDC) alleging nine counts of misconduct including UPL involving moral turpitude.

II. DISCUSSION

A. Seltzer's Claims of Due Process Violations and Procedural Error

Seltzer challenges each of the hearing judge's culpability findings, asserting constitutional, procedural and evidentiary errors. We have considered her arguments and reject as meritless those claims not specifically addressed herein.

First, Seltzer claims the NDC provided insufficient notice of the factual and legal bases for the misconduct charges, in violation of her due process rights. We disagree. The NDC set forth facts and identified the legal bases of the charged misconduct with sufficient specificity to reasonably apprise Seltzer of the nature of the charges prior to commencement of trial. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929.) It is clear from the myriad pleadings Seltzer filed both before and during the trial below that she was apprised of and fully understood the nature and scope of the charges, such that she was fully able to prepare her defense. We thus find no cognizable harm and no due process violation. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 396; *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 649.)

Next, Seltzer asserts that the hearing judge adopted the wrong evidentiary standard in finding culpability for UPL. She argues that the proper standard of proof is "beyond a reasonable doubt" since a violation of Business and Professions Code section 6126[2] is defined as a misdemeanor. Seltzer relies on *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896 to support her position. But *Wells* is not on point. The attorney in *Wells* was culpable of violating rule 1-300(B) because she practiced law without a license in South Carolina, which

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

was a felony rather than a disciplinary offense in that state. For that reason, we applied the criminal evidentiary standard of beyond a reasonable doubt.

"[S]ections 6125 and 6126 together . . . make the unlawful practice of law a crime *and* . . . create a standard which can form the basis of professional discipline when coupled with a section 6068(a)[sic] charge." (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236, italics added.) Disciplinary proceedings are neither criminal nor civil, but rather sui generis. (*Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.) Here, Seltzer has been charged with disciplinary offenses.[3] As such, the standard of proof is the "clear and convincing" showing. (Rules Proc. of State Bar, rule 5.103.) This evidentiary showing requires there be no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) We accordingly review the record using this standard of proof.

B. Culpability

Counts One (A) and Two (A): UPL (§§ 6068, subd. (a), 6125, 6126)

The hearing judge found Seltzer culpable of two counts of UPL and holding herself out as entitled to practice law in willful violation of sections 6125 and 6126 and section 6068, subdivision (a), in the Shoe Palace litigation and the Ratcliff litigation.[4]

Seltzer argues that since the State Bar failed to prove actual knowledge of her suspension, it did not establish the requisite "mens rea" or "scienter" to find her culpable of UPL. Seltzer is

[3] Indeed, the State Bar is not authorized to seek criminal penalties (Rules Proc. of the State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4, hereafter stds.) because the purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession. (Std. 1.3.)

[4] A violation of section 6068, subdivision (a), is predicated on violations of sections 6125 and 6126. (*In the Matter of Trousil, supra,* 1 Cal. State Bar Ct. Rptr. at pp. 236-237.) Section 6125 provides: "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), prohibits holding oneself out as entitled to practice law while on suspension.

mistaken as to the proof of her mental state required to establish culpability in a disciplinary proceeding. While the prosecution in most criminal proceedings must prove "some form of guilty intent, knowledge, or criminal negligence" (*In re Jorge M.* (2000) 23 Cal. 4th 866, 872), in disciplinary proceedings, the State Bar must only prove that the conduct was "willful." (§ 6077; rule 1-100(A).) The State Bar need not show that an attorney "intended the *consequences* of his acts or omissions, it simply requires proof that he intended the act or omission itself." (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309, italics added.) Moreover, proving willfulness "is thus not necessarily dependent upon knowledge of the provision which is violated. [Citations.]" (*Hamilton v. State Bar* (1979) 23 Cal.3d 868, 874.)[5]

The State Bar did not have to establish that Seltzer knew she was suspended or even intended to violate a rule of professional conduct; it needed only prove that Seltzer intended to perform an act resulting in a violation of the rules of professional conduct. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181, 183.) The State Bar satisfied this evidentiary showing by proving that Seltzer intended to practice law on behalf of her clients in the Shoe Palace and Ratcliff litigations, and she did so while she was suspended. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319 [violations of §§ 6125, 6126 and § 6068, subd. (a), established for single court appearance by attorney who did not know of his involuntary inactive enrollment].)

Seltzer also incorrectly asserts that most of the services she provided while suspended did not constitute the practice of law. The practice of law includes a wide range of activities undertaken on behalf of a client. In addition to formally appearing on behalf of her clients in both the Shoe Palace and Ratcliff matters, Seltzer provided legal advice and counsel (*In the*

[5] We note that there is no constitutional impediment to establishing culpability for a disciplinary offense in the absence of a mens rea or scienter. (*People v. Simon* (1995) 9 Cal.4th 493, 519 [no due process violation when regulatory or public welfare offense does not require any mens rea, scienter or wrongful intent].

Matter of Taylor (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 576), prepared legal documents (*In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, 80), and filed pleadings or permitted them to be filed in court. (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 493.) These acts constitute UPL.

Finally, Seltzer argues that most of the activities she performed on behalf of Shoe Palace Corporation and Ratcliff were permissible under rule 1-311(C). But rule 1-311(C) is inapposite here since it merely provides guidance to active members who employ suspended attorneys for the limited purpose of providing clerical assistance. There is no evidence that Seltzer was employed by an active attorney to perform clerical services while on suspension. We thus adopt the hearing judge's finding that Seltzer willfully violated sections 6125, 6126 and section 6068, subdivision (a), because she intentionally practiced law on behalf of the Shoe Palace and Ratcliff while she was suspended.

Counts One (B) and Two (B): Moral Turpitude (§ 6106)[6]

The State Bar asserts that the hearing judge erred in dismissing Counts One (B) and Two (B), which charged Seltzer with acts of moral turpitude arising from UPL in the Shoe Palace and Ratcliff matters. Not all UPL necessarily involves moral turpitude. (See, *In the Matter of Wells, supra,* 4 Cal. State Bar Ct. Rptr. at p. 905; *In the Matter of Trousil, supra,* 1 Cal. State Bar Ct. Rptr. at p. 239; *In the Matter of Rodriguez, supra,* 2 Cal. State Bar Ct. Rptr. at pp. 494-495.)

The State Bar did not prove Seltzer acted with malice or dishonesty by practicing while suspended or in not paying her dues. And the State Bar neither proved, nor did the hearing judge find, that Seltzer had *actual* notice of her suspension. However, the State Bar's notices about Seltzer's non-payment and consequent suspension proved they were presumptively *delivered* to Seltzer's office. (Evid. Code, § 641 [letter correctly addressed and properly mailed presumed to

[6] Section 6106 prohibits "[t]he commission of any act involving moral turpitude, dishonesty or corruption . . . ."

be received in ordinary course of mail]; *Johnson & Johnson v. Superior Court* (1985) 38 Cal.3d 243, 255 [certificate of mailing sufficient to show actual delivery occurred in ordinary course of mail].) Seltzer offered no evidence to rebut the evidentiary presumption of delivery.

Seltzer explained that her office procedures included a chain of custody among various staff members and that her secretary directed the State Bar notices to the bookkeeper rather than to her personally. In her brief, Seltzer states that "she had no idea what happened to [the notices] and there was no way to determine." Seltzer's mail procedures were clearly deficient and it was because of her negligence in managing her law practice that she did not see the State Bar's notices.

But, we do not find Seltzer's lax office procedures constitute moral turpitude. After all, those procedures had sufficed for over 30 years, since Seltzer had no other delinquent fee payments or disciplinable misconduct. And Seltzer paid the overdue fees promptly upon discovering that she had been suspended because of her delinquency. Her conduct thus does not establish the type or degree of carelessness that would warrant a finding of gross negligence amounting to moral turpitude. (See, e.g., *Sanchez v. State Bar* (1976) 18 Cal.3d 280, 283-285 [attorney culpable of moral turpitude for gross negligence due to lax office procedures resulting in non-attorney employee signing legal documents and matters being dismissed]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857 [attorney culpable of moral turpitude for gross negligence in maintaining office practice that allowed non-attorney employee to file false declaration without attorney's knowledge].)

We thus adopt the hearing judge's dismissal with prejudice of the moral turpitude charges alleged in Counts One (B) and Two (B).

Count One (C): Failure to Cooperate in State Bar Investigation (§ 6068, subd. (i))[7]

The hearing judge correctly concluded that Seltzer failed to cooperate in the disciplinary investigation. Seltzer did not respond to the State Bar investigator's letters, dated September 15 and October 31, 2008, in violation of section 6068, subdivision (i). She maintains she could not cooperate since she did not know about the investigation.

The State Bar investigator sent two letters to Seltzer's official membership address that were not returned as undeliverable and are presumed to have been delivered. (Evid. Code, § 641.) The two letters were official communications, not invoices. At the time the investigator's letters were delivered, Seltzer was already on notice that her office mail-handling procedures were inadequate and had resulted in her delinquent fees and suspension. Under these circumstance, we find her "ignorance of the facts is no excuse, for it resulted from [her] own dereliction of duty." (*Coppock v. State* Bar (1988) 44 Cal.3d 665, 682.) An attorney simply may not adopt "ostrich-like behavior" to avoid his or her professional responsibilities. (*In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388 [attorney culpable of misconduct for repeatedly ignoring official mail].) Seltzer's belated cooperation 18 months later only minimally mitigates her culpability because the investigation was essentially completed when she finally contacted the State Bar, and she responded only after she learned that disciplinary charges would be filed against her.

We conclude that Seltzer willfully failed to cooperate in her disciplinary investigation. (*Bach v. State Bar* (1991) 52 Cal.3d 1201, 1208 [respondent's failure to reply to two successive investigator's letters that were not returned established violation of § 6068, subd. (i)]; *Barnum v.*

[7] Under section 6068, subdivision (i), an attorney has the duty to "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself."

State Bar (1990) 52 Cal.3d 104, 109-111 [respondent culpable of violating § 6068, subd. (i) for failing to respond to two letters from State Bar investigator].)

Count Two (C): Failure to Keep Client Reasonably Informed (§ 6068, subd. (m))[8]

The hearing judge found Seltzer failed to keep Ratcliff reasonably informed of a significant development, i.e., that she was not permitted to practice law from July 1, 2008 through July 17, 2008. Seltzer maintains that she did not tell Ratcliff about her suspension because she did not know about it. However, once she became aware that she provided legal services while suspended, she had an obligation to inform Ratcliff of her suspension. Yet she withheld this information and Ratcliff paid for those legal services. Had she kept Ratcliff apprised of this significant development, it rightfully could have refused to pay for those services. (*In the Matter of Taylor, supra,* 1 Cal. State Bar Ct. Rptr. at p. 575 [respondent's failure to inform client of suspension violated § 6068, subd. (m), because it was significant development].) Seltzer therefore violated section 6068, subdivision (m).

Count Two (D): Charging an Illegal Fee (Rule 4-200(A))[9]

Seltzer is culpable of violating rule 4-200(A) because she charged and collected $10,918 from Ratcliff for her services while she was suspended. She was not legally "entitled to charge or collect her fees for those services that constituted UPL. [Citation.]" (*In the Matter of Wells, supra,* 4 Cal. State Bar Ct. Rptr. at p. 904, fn. omitted.) Seltzer refused to return the fee even though Ratcliff repeatedly asked for a refund; instead, she applied it to subsequent services. She was not entitled to unilaterally retain the $10,918 as reimbursement for other services. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1037.)

---

[8] An attorney must "respond promptly to reasonable status inquiries of clients and . . . keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." (§ 6068, subd. (m).)

[9] "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." (Rule 4-200(A).)

Count Two (E): Moral Turpitude (§ 6106)

The State Bar charged Seltzer with an act of moral turpitude in Count Two (E) because she knowingly sent a billing statement to Ratcliff that contained charges for work performed while she was suspended. Although we do not condone this conduct, we find Counts Two (C) and Two (D) fully address the misconduct alleged in this count, which is based on the same essential facts. The appropriate resolution of this case does not depend on how many rules of professional conduct or statutes proscribe the same conduct, and little, if any, purpose is served by duplicative charges of misconduct in disciplinary proceedings. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.) We therefore dismiss Count Two (E) as duplicative.

Count Two (F): Failure to Release Client File (Rule 3-700(D)(1))[10]

Seltzer violated rule 3-700(D)(1) by failing to promptly return Ratcliff's files. Ratcliff and its attorneys repeatedly requested the "complete litigation file" and advised Seltzer that "time was of the essence" because the appeal was "moving into high gear." Seltzer waited an unreasonable amount of time – nearly three months – to return 40 boxes of files because she was in trial on another matter. Inconvenience does not excuse Seltzer's delay. It was not for her to decide if and when her client had need of its files. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 244 [respondent had duty to give file to successor attorney even if client had copies of documents in file].)

III. AGGRAVATION AND MITIGATION

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

[10] Rule 3-700(D)(1) requires that an attorney who has been terminated shall promptly release all papers and property to the client upon request of the client.

A. Aggravation

We agree with the hearing judge, who found the following factors in aggravation: multiple acts of misconduct and lack of insight. (Stds. 1.2(b) (ii) & (v).) While we do not give significant weight to the multiplicity of her acts of misconduct, we do ascribe substantial weight to Seltzer's lack of insight. She states that "there was never any argument by any person that somehow I committed some great wrong." Indeed, Seltzer is unwilling to even consider that she was not permitted to charge for her services while she was suspended, and she continues to believe that she had no obligation to return Ratcliff's files since, in her view, Ratcliff neither properly identified the files nor demonstrated its need for them. Seltzer's obstinacy "reflects a seeming unwillingness even to consider the appropriateness of [her misconduct] or to acknowledge that at some point [her] position was meritless or even wrong to any extent." (*In re Morse* (1995) 11 Cal.4th 184, 209.)

Seltzer also caused significant harm to Ratcliff, which the State Bar correctly points out is additional aggravation. (Std. 1.2(iv).) Ratcliff had at the time of trial yet to receive a refund of nearly $11,000 in legal fees that Seltzer improperly charged. Ratcliff also incurred additional legal fees of $13,000 to obtain its files.

B. Mitigation

We agree with the hearing judge's finding that Seltzer established one factor in mitigation: her discipline-free practice prior to her misconduct, which warrants a finding of significant mitigation. (Std. 1.2(e)(i).) Although troubled by her behavior and her indifference to its consequences, we cannot ignore that her misconduct in two client matters was fairly isolated, given her 28 years of practice.

IV. LEVEL OF DISCIPLINE

In determining the appropriate level of discipline, we look to the standards[11] as guidelines. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) They are entitled to great weight because they promote consistent and uniform discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Several standards are applicable to the facts of this case. Standards 2.6(a) and (d) provide for disbarment or suspension for failure to cooperate in an investigation, failure to keep a client reasonably informed about significant developments, and engaging in UPL. Standard 2.10 provides for reproval or suspension for charging or collecting an illegal fee and failing to return a client's file.

Given the range of discipline recommended by these standards, we look to the decisional law for guidance. Seltzer's UPL activities provided the underpinning to much of the misconduct that followed, including the illegal fees and failure to cooperate in the State Bar's investigation. Our review of prior cases discloses that misconduct involving UPL has resulted in discipline from suspension to disbarment, depending on the circumstances of the misconduct, including the gravity of any ancillary charges and the existence and extent of prior discipline.

We find little guidance from those cases where the attorney's UPL is accompanied by wide-ranging misconduct and a prior disciplinary record. (See, e.g., *Farnham v. State Bar* (1976) 17 Cal.3d 605, 612 [six-month suspension for attorney culpable of UPL and "serious pattern of misconduct" in deceiving clients, failing to communicate and abandoning their cases, aggravated by lack of insight and previous 90-day suspension for client abandonment in four matters]; *Chasteen v. State Bar* (1985) 40 Cal.3d 586 [two-month suspension for misconduct in several client matters over six year period involving UPL, failing to act competently, failing to

[11] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. Unless otherwise noted, all further references to "standard[s]" are to this source.

respond to client inquiries, misleading clients about status of cases, commingling funds, and breach of fiduciary duties and misappropriation constituting moral turpitude, aggravated by prior probation without suspension for commingling and writing NSF checks, and mitigated by marital problems and rehabilitation from alcoholism]); *In the Matter of Wells, supra,* 4 Cal. State Bar Ct. Rptr. 896 [six-month suspension for attorney with prior private reproval, culpable of holding out and UPL, failing to return unearned fees, trust account violations, moral turpitude for misrepresentations to investigator, and charging unconscionable fees].)

We consider *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 to be instructive. In *Johnston,* we imposed a 60-day suspension for an attorney who held himself out as entitled to practice law in a single instance while suspended for non-payment of membership fees. In addition, the attorney repeatedly failed to communicate with a client and lied to her about the services he had performed on her behalf and the status of her case, which had been dismissed due to his failure to timely serve the complaint. When the State Bar commenced its investigation, the attorney did not respond to the investigator's two letters. We found as an aggravating factor significant harm to the client, who lost her cause of action due to the attorney's reckless incompetence. We also found additional aggravation because the attorney did not appear at his disciplinary proceeding, resulting in his default. But we considered the attorney's 12 years without prior discipline to be an "important" mitigating factor. (*Id*. at p. 589.)

In adopting the hearing judge's recommended discipline, we have given consideration to the facts peculiar to this case. In the face of Seltzer's 28 years of discipline-free practice, our primary concern remains her lack of insight into the harm her UPL has caused and most specifically, her failure to reimburse Ratcliff for the fees she charged for her services while she was committing UPL. We believe that a two-year probationary period and 60 days' actual

suspension, when coupled with the obligation to repay the fees plus interest, will be sufficient to protect the public, the courts and the profession.

V. DISCIPLINE RECOMMENDATION

We recommend that Margaret Alice Seltzer be suspended from the practice of law for one year, execution stayed, and that she be placed on probation for two years on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first 60 days of her probation and until she pays restitution to Ratcliff Architects in the amount of $10,918 plus 10% interest per annum from September 16, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Ratcliff Architects, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her 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 her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. She 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, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period. 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.

5. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

6. Within one year after the effective date of the discipline herein, she 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 any Minimum Continuing Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending Ethics School.

7. 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 she has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Seltzer 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 discipline in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b)(2).)

VII. RULE 9.20

If Seltzer remains suspended for 90 days or more, we further recommend that she 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 120 and 130 days, respectively, after the effective date of the Supreme Court order in this proceeding.

VIII. 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 Business and Professions Code section 6140.7 and as a money judgment.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.