PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed July 24, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 15-O-12314
	)	
FRANK PATRICK SPROULS,	)	OPINION
	)	
A Member of the State Bar, No. 166019.	)	
	)	

This is Frank Patrick Sprouls's second disciplinary matter. In 2011, in a case that arose from two separate disciplinary matters involving multiple acts of misconduct in over 50 immigration proceedings, he received a 90-day actual suspension after being found culpable of several charges, including 51 acts of misconduct (*Sprouls I*).

Like his previous matter, Sprouls's present case involves his failure to perform competently in immigration proceedings. A hearing judge found him culpable of one count of failing to perform competently and two counts of grossly negligent misrepresentation constituting moral turpitude. The judge found aggravation for Sprouls's prior record of discipline, multiple acts of misconduct, significant client harm, and the clients' high level of vulnerability, as well as mitigation for his cooperation, good character, and remorse and recognition of wrongdoing. Weighing all the circumstances and applying the relevant disciplinary standards and case law, the judge recommended a six-month actual suspension.

Sprouls appeals. He challenges culpability and argues that the hearing judge erred in finding aggravating factors. Further, he seeks no "actual punishment" and contends that the public would be harmed by his actual suspension since it "would be deprived of a zealous,

intrepid and highly effective immigration litigator." The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we affirm the discipline recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings of fact and law, with minor modifications. We also agree with the judge that a six-month actual suspension is appropriate progressive discipline.

I. PROCEDURAL BACKGROUND

Sprouls was admitted to the practice of law in California on November 24, 1993. On November 14, 2016, OCTC filed a four-count Notice of Disciplinary Charges (NDC), charging Sprouls with failing to perform with competence, seeking to mislead a judge, and two counts of moral turpitude through misrepresentation. The parties filed a Stipulation of Undisputed Facts on June 13, 2017. Trial was held on June 13, 14, and 15, 2017, and posttrial briefing followed. On September 11, 2017, the hearing judge issued her decision.

II. FACTUAL BACKGROUND

The facts are based on the parties' written stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight (Rules Proc. of State Bar, rule 5.155(A)) and are largely undisputed by the parties on review. We adopt the judge's findings with minor changes, as summarized below.

A. The Barahona-Flores Matter

In August 2010, Catalina Pilar Barahona-Flores, a citizen of El Salvador living in the United States, employed Sprouls to renew her Application for Temporary Protected Status. Sprouls's fee to file the application was $1,000.

In June 2011, Barahona-Flores was the victim of a crime which made her eligible to apply for U nonimmigrant status (U visa) for herself and derivative status for her children under

21 years of age. On April 6, 2012, Sprouls agreed to file these applications. His fee to file the five applications was $4,500.

On June 12, 2012, Sprouls's office filed a U visa application for Barahona-Flores and derivative beneficiary applications for her four children. Since Barahona-Flores entered the United States without inspection by an immigration office, she was required to file an Application for Advance Permission to Enter as a Nonimmigrant (I-192 form) with her U visa application. The application Sprouls filed for Barahona-Flores did not include the required I-192 form. Sprouls's office also did not have Barahona-Flores sign the derivative beneficiary applications for two of her children, as required. Alejandrina Mejia, a longtime paralegal at Sprouls's firm, testified that she made the mistakes with the application signatures. She attributed her errors to the high volume of workload and noted that the firm has approximately 1,000 cases and she handles 15 to 20 applications each week.

On August 23, 2013, the United States Citizenship and Immigration Services (USCIS) issued a "Request for Evidence" (RFE), in which it sought: (1) Barahona-Flores's signature on two of her children's applications; and (2) an I-192 form for each applicant. The RFE gave Sprouls until November 18, 2013 (about 87 days) to submit the required documentation to remedy the deficiencies.

On October 17, 2013, Mejia replied to the RFE by supplying updated signature pages, but she failed to provide the I-192 form for each applicant. Mejia testified that she did not follow the office practice of consulting with Sprouls or any other attorney in the firm when an RFE is received.[1] Sprouls similarly testified that Mejia "unilaterally misread it" and failed to bring the RFE to his or another attorney's attention. He testified that it was Mejia's fault, although he

[1] Mejia further testified that the office protocols were not written down, nor was there an employee manual, and a nonattorney office manager told her of the procedures when she first started working at Sprouls's firm in 2002.

takes responsibility for it. While he testified, "Everything that happens in my office I have to take responsibility for," he also admitted that he does not "review every single application at the initial phase, for the simple reason of the volume, and, number two, if it's incompletely filled out, we will get it returned."

On April 29, 2014, USCIS denied the five applications for failure to file the required I-192 forms. The applications were considered abandoned per 8 Code of Federal Regulations part 103.2(b)(13). An applicant may move to reopen a decision within 30 days of its issuance. However, to reopen an application denied due to abandonment, the motion must be filed with evidence that the denial was in error. (8 C.F.R. § 103.5(a).)

Sprouls did not meet with Barahona-Flores and her children until June 9, 2014—after the 30-day deadline to reopen had expired. When they did meet, he advised them to refile their applications. By this time, two of the children were over 21 years old and no longer eligible for a derivative U visa (i.e., aged-out children).

Nevertheless, Sprouls refiled the U visa and derivative beneficiary applications. At that time, the aged-out children were statutorily ineligible for the relief they were seeking.[2] Further, Sprouls's office once again failed to include the necessary I-192 forms.

On July 15, 2014, Sprouls filed a motion with the Board of Immigration Appeals (BIA) to continue the hearing date of the two minor children. In the motion, Sprouls stated:

> These two minor children are derivatives on their mother's compelling U visa. [¶] In the spirit of full disclosure, the U was previously denied based on an (alleged) failure to respond to a Request for Evidence. [¶] Our office swears that we did not receive the request for evidence however, we have learned, from bitter experience, that it is considerably more efficacious to file a new application than to argue with [USCIS] over a lack of delivery for an RFE.

[2] Sprouls maintains that in filing the new U visa applications for the aged-out children, he could have argued that the initial filing was a constructive filing.

This statement was false. Sprouls's office not only received the RFE, but responded to it, albeit inadequately.

B. State Bar Complaint and Investigation

Barahona-Flores and her children eventually retained new counsel, who filed a State Bar complaint against Sprouls on April 16, 2015. A State Bar investigator then sent a letter to Sprouls asking him to explain his conduct in the Barahona-Flores matter.

In late May 2015, Sprouls replied to the investigator by letter in which he admitted that his office received and responded to the RFE. He also declared: "In my twenty three [*sic*] years of practicing law, I have never misled or misinformed the Court or Government counsel and there has never been such an allegation made against me." Contrary to his statement, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) had issued a memorandum disposition on October 31, 2007, in *Granados v. Keisler*, Case No. 04-76322 (*Granados*) in which it found that Sprouls filed a motion that "included false statements of fact."[3]

III. CULPABILITY

A. Count One: Failure to Perform Legal Services with Competence (Rules Prof. Conduct, rule 3-110(A))[4]

OCTC charged Sprouls with "intentionally, recklessly, and repeatedly" failing to perform with competence and identified four alleged failures. We agree with the hearing judge that Sprouls was culpable of violating rule 3-110(A) as three of the four alleged failures constituted a failure to perform competently.

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[3] Sprouls's conduct in the *Granados* matter resulted in OCTC filing an NDC against him on September 16, 2008, in *Sprouls I*, alleging, among other things, that he sought to mislead a judge and submitted a forged signature and false facts. Sprouls was ultimately not found culpable of either of those allegations in *Sprouls I*.

[4] All further references to rules are to the Rules of Professional Conduct unless otherwise noted. Under rule 3-110(A), "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

Specifically, Sprouls violated rule 3-110(A) by: (1) failing to file I-192 forms with the U visa and derivative beneficiary applications for Barahona-Flores and her four children; (2) failing to have Barahona-Flores sign the derivative beneficiary applications, as required; and (3) failing to adequately and appropriately respond to USCIS's RFE. These failures resulted in the denial of Barahona-Flores's U visa and her children's derivative beneficiary applications,[5] and clearly establish his culpability for violation of rule 3-110(A). (*McMorris v. State Bar* (1981) 29 Cal.3d 96, 99 [repeated inattention to client's needs has long been grounds for discipline].)

Sprouls raises several arguments that the hearing judge abused her discretion by finding culpability for count one. He contends that the failures were due to "a unilateral, lone, anomalous, ministerial error by a paralegal that did not flow from a lack of management or the firm taking on an unwieldly volume of cases." He claims that the paralegal "negligently and unilaterally, without the knowledge or involvement of either of the attorneys, incompletely responded to the [RFE] . . . ." Sprouls also asserts that if the government had "followed the usual protocol," the initial filing would have been returned, his firm would have remedied the deficiency, and the clients would not have suffered harm or prejudice. Nonetheless, he maintains that he "accepted *Respondent* [*sic*] *Superior* responsibility however, the Trial Judge did not place the lone, anomalous error in context."

We find Sprouls's arguments unavailing.[6] The misconduct as found above need not involve deliberate wrongdoing. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932.) Further, rule 3-110(A) includes the duty to supervise the work of the attorney's staff. (*In the Matter of*

[5] Like the judge, we do not find that Sprouls's failure to file a request to reopen matters within 30 days after denial constituted a failure to perform with competence. We adopt the judge's unchallenged finding that, as Sprouls contends, he could not file such a motion because it did not meet one of the three requirements for filing a motion to reopen based on error. (See 8 C.F.R. § 103.3.)

[6] We have independently reviewed each of Sprouls's arguments on review. Those not specifically addressed herein have been considered as lacking in factual and/or legal support.

Malek-Yonan (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 634.) An attorney has a fiduciary duty to his clients to maintain adequate law office management, train his staff on procedures, and supervise them to ensure the procedures are being followed. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522.) Sprouls's firm did not have written office practices or any employee manual, and relied on a nonattorney to inform staff of various procedures. We find that Sprouls failed to fulfill his duty to properly manage his office. His repeated and reckless failures to meet his ethical obligations demonstrate clearly and convincingly[7] that he failed to perform with competence.

B. Count Two: Seeking to Mislead a Judge (Bus. & Prof. Code, § 6068, subd. (d))[8] Count Three: Moral Turpitude (Misrepresentation) (§ 6106)[9]

OCTC charged Sprouls with violating section 6106 by stating in his July 15, 2014 motion for Barahona-Flores's two minor children that his office did not receive USCIS's RFE, when he knew, or was grossly negligent in not knowing, that his statement was false (count three). OCTC also charged Sprouls with violating section 6068, subdivision (d), based on the same facts (count two). The hearing judge found no clear and convincing evidence that Sprouls knew his statement was false when he made it, but concluded his false statement constituted a grossly negligent error. The judge found that his misrepresentation through gross negligence was a violation of section 6106, but dismissed the section 6068, subdivision (d), charge because

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

[8] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6068, subdivision (d), provides that an attorney has a duty "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[9] Section 6106 states in relevant part: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

Sprouls did not act with the requisite intent. As detailed below, we agree with and affirm the judge's findings regarding counts two and three.

It is clear that section 6106 applies to an attorney's false or misleading statements to a court or tribunal. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 519.) "The actual intent to deceive is not necessary; a finding of gross negligence in creating a false impression is sufficient for violation of section 6106. [Citations.]" (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786; accord, *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90–91.) Moreover, moral turpitude by gross negligence may be found when a misstatement to a tribunal is made by staff on an attorney's behalf and the attorney takes no steps to correct the record, thereby ratifying the misrepresentation. (*In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 519.)

The evidence proves that Sprouls misrepresented in his motion to the BIA that his office did not receive USCIS's RFE, a fact we find to be material. Sprouls acknowledges that the statement was inaccurate, but characterizes it as an error. On review, he asserts that "he 'misremembered' that the denial for abandonment was not based on non-delivery by the Government . . . but an incomplete response by [his office]," and contends "there was no gross negligence where the false statement is an innocent error . . . ." He concedes his negligence, but argues that "it simply does not rise to the level of gross negligence that then is transmogrified into moral turpitude." In addition, he downplays the importance of the motion and its misstatement by asserting that a motion to continue or to close "is simply a matter of administrative and judicial convenience," and "[t]he likelihood of success on the Motion was precisely 100 percent because a pending U visa with a Law Enforcement certification is considered prima facie eligibility and a continuance or even closure is **compelled**." (Emphasis in original.)

We are not persuaded by Sprouls's arguments. When he filed the motion, he had a duty to advise the BIA of the true state of affairs. (See *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 56 ["Attorneys have the duty to be forthright and honest with the court"].) But Sprouls failed to do so. And even if, as he contends, the misstatement was an unintentional error, we agree with the hearing judge that Sprouls made this misstatement as a basis for the requested continuance, when he should have known by minimal diligence that it was false. As such, we find that Sprouls's misrepresentation constitutes an act of moral turpitude by gross negligence in violation of section 6106. (*In the Matter of Wyrick*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 90–91.)

We are unpersuaded by Sprouls's assertions that neither the clients nor the court was harmed. He used a misrepresentation to obtain a continuance. A factual misrepresentation to a court for the purpose of obtaining a continuance has been found to be "a deliberate deceit" and "an intentional violation" of an attorney's duties, including a violation of section 6068, subdivision (d). (*Vaughn v. Municipal Court* (1967) 252 Cal.App.2d 348, 358.) And willful deceit violates section 6106. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174–175.)

We also affirm the hearing judge's unchallenged finding that there is no clear and convincing evidence that Sprouls intended to mislead the BIA. Thus, we dismiss count two (seeking to mislead a judge) with prejudice. (*In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [attorney must act with intent to deceive to violate § 6068, subd. (d)].)

C. Count Four: Moral Turpitude (Misrepresentation to State Bar) (§ 6106)

OCTC also charged Sprouls with violating section 6106 by stating in a May 2015 letter to the State Bar that he has "never mislead or misinformed the Court or Government counsel and there has never been such an allegation made against [him]." He knew, or was grossly negligent

in not knowing, that his claim was false because the Ninth Circuit found in 2007 that Sprouls made false statements of facts and filed misleading pleadings. The hearing judge found that Sprouls should have known his statement was false, and concluded it resulted from gross negligence. We agree and affirm the judge's finding that Sprouls's misrepresentation constituted a violation of section 6106 through gross negligence.

Sprouls contends that the hearing judge's moral turpitude finding is not supported by the facts. We reject as unavailing the myriad other arguments Sprouls raises, including that: (1) no client was harmed by the "one sentence" in his letter to the State Bar; (2) "by every other objective fact," he cooperated fully with the State Bar's requests for explanations and documents; (3) the judge "mischaracterized" his position as claiming that the statement to the State Bar was an "error," as Sprouls "did not claim that this was solely an error but . . . maintained that his statement was subjectively truthful;" and (4) the judge's statements about the Ninth Circuit's findings relating to Sprouls's prior discipline are "not remotely congruent with the facts."

Section 6106 applies to misrepresentations and concealment of material facts. (See *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154–155.) The evidence at trial included: (1) Sprouls's letter to the State Bar containing the relevant misstatement; (2) the Ninth Circuit's memorandum disposition in the *Granados* matter, finding that Sprouls filed a motion that "included false statements of fact"; and (3) the resulting NDC filed in Sprouls's prior disciplinary case alleging that he sought to mislead a judge, submitted a declaration with a forged signature and false facts, and filed a motion with false information. This evidence clearly and convincingly demonstrates that Sprouls's statement that he has "never mislead or misinformed the Court or Government counsel *and there has never been such an allegation made against [him]*" (italics added), was false and material given the subject matter of the State Bar's investigation.

Nonetheless, we conclude that Sprouls's statement was not intentional, but the result of gross negligence. To begin, he had little reason to try to conceal the Ninth Circuit's findings as the State Bar would likely have already been aware of the issues underlying Sprouls's prior disciplinary matter. Also, Sprouls relied on the fact that he was not found culpable of moral turpitude or misleading a judge in *Sprouls I* (even though this does not negate the fact that the Ninth Circuit previously found that he *had* submitted false facts in the *Granados* matter), which OCTC alleged as well. In addition, Sprouls's contentions that the statement occurred in a 17-page letter with over 100 pages of responsive documents and in the context of his "credibly claiming that there was no intent to mislead" carry some weight, particularly since the misrepresentation was on the 15th page of the letter. In light of these facts, we find that Sprouls violated section 6106, but did so through gross negligence. (See *In the Matter of Wyrick*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 90–91.)

IV. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[10] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Sprouls has the same burden to prove mitigation. (Std. 1.6.)

A. Aggravation

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

Standard 1.5(a) provides that a prior record of discipline may be an aggravating factor. The hearing judge found that Sprouls's prior discipline record was an aggravating factor, but did not assign a specific weight. We agree that his prior record is aggravating, and as detailed below, conclude that it warrants substantial weight.

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

On March 30, 2011, the Supreme Court ordered Sprouls suspended for one year, stayed, with two years' probation with conditions, including a 90-day actual suspension.[11] This matter consisted of two separate disciplinary cases.

The first case derived from a 2005 discipline order issued by the Ninth Circuit against Sprouls for misconduct in about 50 immigration proceedings (*In re: Frank P. Sprouls, Esq.*, Admitted to the Bar of the Ninth Circuit, February 9, 1995, Case No. 05-80025). He was found culpable of 51 acts of misconduct: 48 violations of rule 3-110(A) (failing to perform legal services with competence); two violations of section 6068, subdivision (c) (maintaining an unjust action); and one violation of rule 3-200(B) (presenting an unwarranted claim). The second case involved the *Granados* matter, which was not included in the Ninth Circuit's 2005 discipline order, in which Sprouls was again found to have failed to perform competently, in violation of rule 3-110(A).

In aggravation, Sprouls committed multiple acts that the judge found constituted a pattern of misconduct and significantly harmed the Ninth Circuit's administration of justice. In mitigation, Sprouls presented extensive evidence of his good character and pro bono service; he acknowledged his wrongdoing and showed remorse, including taking steps to rectify the consequences of his actions; and he had no prior record of discipline. He was also given mitigation credit because his misconduct occurred while the immigration court was running a pilot program that resulted in an unprecedented influx of cases in his office.

We consider Sprouls's past misconduct to be a serious aggravating circumstance as it is similar to some of his present wrongdoing. Both involve failures to perform with competence and both caused significant harm. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render previous

[11] Supreme Court Case No. S186848; State Bar Court Case Nos. 06-J-15200; 07-O-12614 (consolidated).

discipline more serious, as they indicate prior discipline did not rehabilitate].) These common threads render Sprouls's prior record particularly deserving of substantial weight in aggravation.

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

The hearing judge correctly found that Sprouls's multiple acts of misconduct constitute an aggravating factor (std. 1.5(b)), and she properly assigned moderate weight. (*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 (Std. 1.5(j))

The hearing judge found that Sprouls's misconduct resulted in significant harm to his clients, warranting substantial consideration in aggravation. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) Sprouls argues that the alleged harm to clients is purely speculative, and asserts that they would not have been harmed if they continued representation with his law firm. He raises multiple challenges to the judge's finding of significant client harm, which we have considered and found unavailing.

We agree with the hearing judge that Sprouls caused significant client harm that warrants substantial consideration in aggravation. His client's children "aged-out" during Sprouls's delays, rendering them ineligible for the relief they sought. In addition, Barahona-Flores was required to retain another attorney at additional cost to her. At the time of trial, she was still paying her new counsel. (See *In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 646 [significant aggravation where attorney failed to pursue client's case, resulting in its dismissal and client's inability to obtain damages]; *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm where client hired new attorney, incurred fees, and suffered for three years due to attorney's misconduct].)

4. High Level of Victim Vulnerability (Std. 1.5(n))

The hearing judge found that Barahona-Flores and her children were highly vulnerable clients, warranting significant consideration in aggravation. They were poor, undocumented immigrants who were unsophisticated in immigration laws and procedures. Barahona-Flores worked at a restaurant, and relied on Sprouls to secure permission for her to remain in this country. She and her children depended on him to guide them and to protect their interests since they could not do so on their own. We affirm the judge's finding that Barahona-Flores and her children were highly vulnerable, and agree that this factor warrants substantial consideration in aggravation.

B. Mitigation

1. Cooperation with State Bar (Std. 1.6(e))

We agree with the hearing judge that Sprouls is entitled to some mitigation credit for his cooperation with the State Bar. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar is mitigating].) He entered into a fairly extensive factual stipulation, which preserved court time and resources. (*In the Matter of Gadda*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 443 [factual stipulation merits some mitigation].)

2. Good Character (Std. 1.6(f))

Sprouls is entitled to mitigation if he establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of [his] misconduct." (Std. 1.6(f).) The hearing judge found that his good character evidence warrants moderate weight in mitigation. We agree.

Eleven witnesses—ten attorneys and one superior court judge—testified to Sprouls's good character. The witnesses demonstrated a general understanding of his alleged misconduct and attested to his honesty, good character, and hard work. Notably, the judge voiced admiration

for Sprouls's high integrity and honesty, as well as his devotion to his clients. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [significant consideration given to testimony of attorneys and judges due to their "strong interest in maintaining the honest administration of justice"].)

However, all the character witnesses were affiliated with the legal community. Like the hearing judge, we find that the mitigating weight afforded to Sprouls's good character evidence is diminished somewhat since the witnesses do not represent a wide range of references from the legal *and* general communities. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476–477 [character evidence entitled to limited weight where it was not from wide range of references].) Nonetheless, given that Sprouls presented an impressive collection of witnesses whose endorsements were equally impressive, we assign Sprouls's good character evidence moderate mitigating weight.

3. Pro Bono and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Unlike the hearing judge, we assign modest weight in mitigation for Sprouls's service to the legal community, about which multiple witnesses testified. That service included his providing valued advice and counsel to fellow attorneys on an ongoing basis, as well as his recent offering of briefs and guidance to a law school legal clinic. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

4. No Mitigation for Remorse and Recognition of Wrongdoing (Std. 1.6(g))

Although the hearing judge accorded Sprouls's remorse and recognition of wrongdoing some consideration in mitigation, she noted that "the weight of that mitigation is tempered by the fact that the present case represents the second time [he] has been disciplined for misconduct

involving inadequate supervision of his non-attorney staff." We also find insufficient evidence that he timely showed remorse or recognition of wrongdoing because he did not do so in some cases until years after the misconduct. He did not take "*prompt* objective steps, demonstrating *spontaneous* remorse and recognition of the wrongdoing and timely atonement," as standard 1.6(g) requires. (Italics added.) We therefore find no mitigation under this standard.

V. DISCIPLINE[12]

Our disciplinary analysis begins with the standards which, although not binding, are guiding and entitled to great weight. (Std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law to determine the proper discipline. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Here, multiple standards apply, and standard 2.11 is the most severe. It addresses an act of moral turpitude or intentional or grossly negligent misrepresentation, and provides that disbarment or actual suspension is the presumed sanction.[13]

Given Sprouls's disciplinary history, we also look to standard 1.8(a), which states that: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." The specified exception to standard 1.8(a) does not apply since Sprouls's previous discipline was not remote in time (the Supreme Court issued its order in March 2011) and his prior misconduct

[12] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.)

[13] Also applicable is standard 2.7(c), which provides that suspension or reproval is the presumed sanction for "performance, communication, or withdrawal violations, which are limited in scope or time," with the degree of sanction depending on the misconduct and the extent of harm to clients.

was serious (he was found culpable of 51 acts of misconduct). Imposing greater discipline would not be manifestly unjust here.

The hearing judge recommended discipline including a six-month actual suspension. At trial, Sprouls asserted that either an admonition or dismissal was appropriate. On review, he contends that the public would be harmed by his actual suspension because it would be deprived of the services he could provide. At trial, OCTC sought a one-year actual suspension. On review, OCTC requests that we affirm the judge's six-month recommendation.

Like the hearing judge, we find guidance in *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490 (*Farrell*). Farrell, an attorney with a prior 90-day actual suspension, received progressive discipline that included a six-month actual suspension for falsely telling a municipal court judge that he had subpoenaed a witness and for failing to cooperate with a disciplinary investigation. Farrell's false statement caused a court delay and resulted in the judge later questioning the witness about whether he had disobeyed the subpoena. (*Farrell*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 496.) Farrell was found in civil contempt and fined. (*Ibid.*) In mitigation, this court considered Farrell's belief that his staff had prepared the subpoena and sent it out for service, but noted that he had no basis for believing the subpoena had actually been served.

Sprouls's present case shares common factors with *Farrell*. Both Sprouls and Farrell were found culpable of misconduct involving misrepresentation, and both had a prior record of discipline including a 90-day actual suspension. In addition, *Sprouls I* and the present matter reflect other aspects in common. In both cases, Sprouls was culpable of failing to perform and causing harm: to the Ninth Circuit in *Sprouls I* and to highly vulnerable clients in this case.

An appropriate sanction should fall within the range the applicable standard provides unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater

or lesser sanction is needed to fulfill the primary purposes of discipline. (Std. 1.7.) We find Sprouls's request for no "actual punishment" to be unsupported. Although we have considered his mitigation evidence, we see no reason to deviate from the standards. The totality of the circumstances warrants progressive discipline, as directed by standard 1.8(a). We thus affirm the hearing judge's recommended six-month actual suspension to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Frank Patrick Sprouls 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 three years on the following conditions:

1. He must be suspended from the practice of law for the first six months 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 case specialist to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation case specialist either in person or by telephone. During the period of probation, he must promptly meet with the probation case specialist 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 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.)

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.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Sprouls 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).)

VIII. RULE 9.20

We further recommend that Sprouls 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.

IX. 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.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.