

Filed October 17, 2023

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-22-O-30033
)	
ELANA THIBAUT,)	OPINION
)	
State Bar No. 302572.)	
_____)	

This case underscores the need for attorneys to understand the broad scope of our conflicts of interest rules, which require the avoidance of adverse interests, and it demonstrates the perils that can result when an attorney is not careful in following the requirements of these rules. In her first disciplinary matter, Elana Thibault is charged with four counts of misconduct stemming from her agreement to represent a client in a litigation matter whose interests were adverse to a prior client of Thibault’s former employer. The hearing judge found Thibault culpable on three of the four charges and recommended a 30-day actual suspension. Thibault appeals the judge’s recommendation, maintaining that the evidence is not sufficient to support the culpability findings made by the judge. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we uphold the judge’s recommendation. Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the judge’s culpability findings, the aggravating and mitigating circumstances, and the discipline recommendation.

I. RELEVANT PROCEDURAL BACKGROUND

On February 2, 2022, OCTC filed a four-count Notice of Disciplinary Charges (NDC) charging Thibault with (1) failing to obey a court order under section 6103 of the Business and Profession Code;¹ (2) accepting employment adverse to another individual who was previously represented by respondent's employer without informed written consent under former rule 3-310(E) of the Rules of Professional Conduct;² (3) failing to maintain client confidences under section 6068, subdivision (e)(1); and (4) failing to timely report a judicial sanctions order to the State Bar under section 6068, subdivision (o)(3). Thibault filed a response on February 22.

On April 6, 2022, the hearing judge granted a motion for abatement filed by Thibault based on her having filed a writ of mandate regarding the judicial sanctions order. On May 23, the judge terminated the abatement as the writ had been summarily denied by the Court of Appeal. Thibault subsequently filed a second motion to abate and a motion to dismiss counts one, two, and three. Both motions were denied on June 27. Thibault filed a petition for interlocutory review regarding the second motion to abate, which was denied on July 14. Trial was held on July 21 and 22. The judge issued a decision on October 17, 2022, finding culpability on all counts except count three.

On October 31, 2022, Thibault filed a motion for reconsideration and a request to disqualify the hearing judge, which were denied on November 8 and November 16, respectively. On November 18, Thibault filed a second petition for interlocutory review regarding the denial of her motion to disqualify the judge, and it was denied on November 23. Thibault filed her

¹ All further references to sections are to the Business and Professions Code unless otherwise noted.

² All further references to rules are to the former Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

request for review on December 13. Oral arguments were heard on July 20, 2023, and the matter was submitted that day.

II. FACTUAL BACKGROUND

Thibault was admitted to the practice of law on February 17, 2015, and has no prior discipline. She is currently a solo practitioner and focuses her practice on family and immigration law. Prior to starting her solo practice, Thibault was employed by Anu Peshawaria between August 2015 and March 2018. Peshawaria has never been licensed to practice law in California, but she operated a law office in Fremont where she advertised as specializing in a wide array of legal matters throughout the United States and India.³

A. Peshawaria Consulted with Rattan and Obtained Client Confidences

In June 2008, well before the misconduct alleged in this matter, Komal Rattan consulted with Peshawaria regarding an on-going marital dissolution matter that involved domestic violence with her then-husband Abhijit Prasad. Rattan's divorce proceeding was filed on November 14, 2007, entitled *Rattan v. Prasad* (Alameda County Superior Court, No. VF07356209). The consultation between Rattan and Peshawaria occurred prior to Thibault's employment by Peshawaria.

During the disciplinary trial, Rattan testified she believed that Peshawaria was a licensed attorney in both India and California at the time of their initial consultation in June 2008. Rattan testified that their consultation occurred at Peshawaria's office in Fremont, California, and they discussed all aspects of the divorce proceeding, including child custody and marital property.

³ The hearing judge's decision mistakenly states that Peshawaria became licensed to practice law in California in February 2015; however, she has never been licensed to practice law in California. As indicated *ante*, Thibault became licensed in California in February 2015. At some point, Peshawaria became licensed to practice law in India, and she obtained her law license in the state of Washington in November 2011.

Rattan stated that, during their meeting, they discussed her pending martial dissolution petition filed by her prior attorney, and Peshawaria requested a copy of it. Rattan also testified that she signed a retainer agreement during the meeting and paid Peshawaria \$5,000 to retain her for her services. The retainer check was dated June 25, 2008, and written out to “Anu Peshawaria/IBS.”⁴ Rattan stated she prepared a written narrative for Peshawaria, which discussed the issues related to her marriage and her domestic violence claims against Prasad. Rattan stated that she believed she was retaining Peshawaria to represent her in the *Rattan v. Prasad* divorce proceeding.

Rattan’s prior attorney filed a substitution of attorney on June 24, 2008. On June 26, proceeding in pro per, Rattan filed a Domestic Violence Temporary Restraining Order based on domestic abuse allegations. Rattan ultimately severed her relationship with Peshawaria and hired new counsel who substituted into Rattan’s case on September 26. Rattan had never spoken to or met Thibault until years later in May 2018.

B. Prasad Retained Peshawaria’s Office and Thibault Was Assigned His Case but Withdrew

In 2016, Prasad retained Peshawaria’s office to represent him in *Rattan v. Prasad*. Thibault was employed by Peshawaria at the time and Prasad’s matter was assigned to her. The pending issues in the case were related to child custody, child and spousal support, and the division of marital property. On July 8, 2016, Rattan’s attorney, Jason Elter, sent Thibault a

⁴ During the disciplinary trial, Thibault testified Peshawaria was working as an immigration consultant under the business name “Immigration Business Services (IBS)” and Peshawaria informed her that Rattan’s consultation in 2008 related only to a domestic violence case in India. The hearing judge rejected Thibault’s assertions, finding that Thibault had no direct knowledge of the meeting between Rattan and Peshawaria. The judge concluded Rattan’s testimony, that she was a naturalized U.S. citizen and had no property interest in India when she consulted with Peshawaria in 2008, was unrefuted and supported Rattan’s claim that she contracted with Peshawaria concerning her marriage dissolution matter in California.

letter notifying her that a conflict of interest existed since Peshawaria had previously represented Rattan in the same marital dissolution matter in 2008. Enclosed with the letter, Elter included a copy of the \$5,000 retainer check that Rattan paid to Peshawaria. During the disciplinary trial, Thibault testified that Elter's claimed conflict "didn't sound right." She discussed the issue with Peshawaria, who instructed her to withdraw from the case. A few days later, Thibault reluctantly withdrew.

C. Thibault, as a Solo Practitioner, Agreed to Represent Prasad in May 2018

On March 9, 2018, Thibault ended her employment with Peshawaria and began her solo practice; however, she and Peshawaria continued to share office space.⁵ In May 2018, Prasad approached Thibault seeking legal assistance in *Rattan v. Prasad*, the same marital dissolution matter from which Thibault had previously withdrawn in July 2016.

During the disciplinary trial, Thibault testified that Prasad specifically sought her services regarding a writ of possession related to the marital property, which was a house located in Tracy, California. She stated that, "because there was a previous conflict of interest," she contacted the State Bar Ethics Hotline for guidance on whether she could proceed with the representation. Thibault testified that the State Bar Ethics hotline referred her to *Ochoa v. Fordel, Inc.* (2007) 146 Cal.App.4th 898, and she determined that she did not have a conflict of interest and could represent Prasad. Thibault did not seek Rattan's consent before accepting Prasad's representation.

On May 17, 2018, Thibault filed a substitution of attorney to proceed as Prasad's attorney in the marital dissolution matter. The superior court held a hearing on May 21, and Thibault

⁵ Thibault testified that, although she and Peshawaria ended their employer-employee relationship, a few matters remained assigned to Thibault and she continued to work on them until they concluded.

appeared on behalf of Prasad. During the hearing, Elter objected to Thibault's representation and asserted that she had a conflict of interest. The superior court did not accept Thibault's substitution as Prasad's attorney and continued the matter to July 13, allowing time for Elter to file a formal motion for disqualification and for Thibault to respond to the motion. Three days later, Thibault filed an amended substitution of attorney, a declaration regarding Elter's claimed conflict of interest, and an ex parte motion seeking temporary emergency orders for Prasad's possession of the marital residence. Elter moved to disqualify Thibault as counsel for Prasad and to strike her pleadings. He also requested \$6,000 in sanctions.

D. Thibault Is Disqualified from Representing Prasad and the Superior Court Sanctioned Her \$5,000

The superior court held its disqualification hearings on July 13 and 19, 2018. During the July 19 hearing, Thibault attempted to introduce two documents into evidence while cross-examining Rattan, which she had retrieved from Peshawaria's database: a written narrative that Rattan had prepared for Peshawaria in connection with the 2008 representation and the purported retainer agreement between Rattan and Peshawaria. At one point during the hearing, Superior Court Judge Gregory Syren asked, "I'm asking you a question very directly, Ms. Thibault. You're offering to show [Rattan] documentation regarding [her] consultation with Ms. Peshawaria . . . back in 2008?" Thibault replied, "That's correct." Judge Syren then stated, "Alright. This examination is done. I'm not going to hear any further testimony at this point from Ms. Rattan." The judge further stated, "Ms. Thibault, the fact that you brought to court today a document . . . from a database which purports to be the, quote, unquote, story which Ms. Rattan provided to Ms. Peshawaria in 2008[,] I don't think I need to hear anything else at this point."

Judge Syren made several findings at the end of the July 19, 2018 hearing, including that (1) in 2008, Rattan retained Peshawaria to assist her in the marital dissolution matter; (2) the retention was based on Rattan's belief that Peshawaria was an attorney licensed in California; (3) Rattan paid Peshawaria \$5,000 for her services and met with her a couple of times providing personal information about her case; (4) in 2016, as Peshawaria's employee, Thibault substituted into the marital dissolution matter on Prasad's behalf but substituted out due to a conflict; (5) in 2018, Thibault substituted again into the case on behalf of Prasad and filed pleadings with the superior court, despite the court having told Thibault three days earlier that a substitution would not be allowed at that time; and (6) at no time did Thibault ask Rattan to waive any conflicts. He concluded that the matter before him was the same marital dissolution case for which Rattan had retained Peshawaria in 2008 and that Thibault had access to Rattan's confidential information, which Thibault was prepared to present in court. Based on these findings, Judge Syren ordered Thibault disqualified from representing Prasad and sanctioned her \$5,000⁶ under California Code of Civil Procedure sections 128.5 and 128.7, finding that her ex parte motion and response to the disqualification motion were frivolous. Thibault was ordered to pay the sanctions to Elter within 60 days.

Thibault appealed the disqualification ruling and sanctions order. On September 24, 2020, the Court of Appeal affirmed Thibault's disqualification and dismissed her appeal of the sanctions order. The Court of Appeal found the sanctions order was not appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12), because the sanctions did not exceed \$5,000. Thibault filed a petition for rehearing, which was denied. She appealed to the Supreme Court, which denied review on December 30, 2020.

⁶ The superior court's minute order mistakenly listed the sanctions amount as \$6,000; however, the correct amount was \$5,000, as verbally ordered during the July 19, 2018 hearing.

Elter sent Thibault several email reminders inquiring about the sanctions payment following the July 2018 hearing. Thibault did not pay the sanctions until August 18, 2021, after an OCTC investigator inquired about the status of the payment in 2019. Subsequently, Thibault filed a writ of mandate regarding the sanctions order, which was summarily denied on April 12, 2022. She reported the sanctions order to the State Bar on June 22, but previously, on June 9, Thibault filed a motion in the superior court to set aside the sanctions order pursuant to Code of Civil Procedure section 473, subsection (d). In her opening brief on review, Thibault claims that the motion to set aside the sanctions order is still pending.

III. CULPABILITY⁷

A. **Count Two: Former Rule 3-310(E)—Representation Adverse to Former Client**

The NDC charged Thibault with willfully violating former rule 3-310(E) by agreeing to represent Prasad in *Rattan v. Prasad*, without the informed written consent of Rattan, when Thibault's former employer Peshawaria had represented Rattan in the same matter and Thibault had obtained confidential information material to the case. Former rule 3-310(E) provides that an attorney shall not, without the informed written consent of a client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. Thibault argues that OCTC did not sustain its burden in proving the elements on

⁷ Count one is discussed after count two as it is similar to count four because the allegations in each relate to the superior court's sanctions order. OCTC does not challenge the hearing judge's dismissal of count three, a violation of section 6068, subdivision (e)(1) (failure to maintain client confidences). We find the record supports dismissal and thus we adopt and affirm the hearing judge's dismissal with prejudice of count three. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

this charge. Specifically, she argues that (1) no attorney-client relationship existed between Peshawaria and Rattan;⁸ (2) the information Thibault gained was not “‘by reason’ of her representation of Rattan;” and (3) the information was not material to her representation of Prasad. Upon our independent review, we reject Thibault’s arguments and find the record supports Thibault’s culpability under count two by clear and convincing evidence.⁹

Regarding Thibault’s first argument, the hearing judge relied on the findings of the superior court, discussed *ante*, to determine that Rattan believed she formed an attorney-client relationship with Peshawaria when she consulted with her regarding her marriage dissolution matter in 2008. We agree with the judge’s reliance on the superior court’s findings and the Court of Appeal’s opinion on this point:¹⁰

Thibault’s more substantive argument that no vicarious conflict of interest could arise from Peshawaria’s representation of Rattan because Peshawaria was not an attorney in 2018 is also meritless. Whether or not she was duly licensed to practice law, Peshawaria held herself out as an attorney and Rattan reasonably believed her to be so.¹¹

Additionally, the record clearly establishes that Peshawaria and Rattan had an implied attorney-client relationship in 2008. (See *Lister v. State Bar* (1990) 51 Cal.3d 1117, 1126

⁸ Thibault also states it is “undisputed” that she never represented Rattan and that Rattan met her for the first time in May 2018. Her statement misses the more relevant point, which is she learned Rattan’s confidential information from her employment with Peshawaria, who had an attorney-client relationship with Rattan, discussed *post*.

⁹ 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.)

¹⁰ We generally give a strong presumption of validity to the superior court’s findings if supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) Similarly, the Court of Appeal’s findings are also entitled to a strong presumption of validity. (*In the Matter of Burke, supra*, 5 Cal. State Bar Ct. Rptr. at p. 459.)

¹¹ The Court of Appeal’s opinion is in accord with Evidence Code section 950, which defines a “lawyer” as “a person authorized, or *reasonably believed* by the client to be authorized, to practice law in any state or nation.” (Italics added.)

[attorney-client relationship can arise by inference from conduct of parties].) After their initial consultation, Rattan testified that Peshawaria presented her with a retainer agreement, and she paid the retainer fee.¹² Also, both the documentary evidence and Rattan’s testimony reveal Peshawaria held herself out as a California attorney by advertising herself as “Founder and Attorney” of “Anu Attorney Law Group” in Fremont, California, and stating that her firm specialized in immigration, family, and business law. The hearing judge determined Rattan testified credibly that she relied on Peshawaria’s advertisement when seeking to secure her attorney services to represent her in the marriage dissolution matter. We affirm the judge’s conclusions regarding Rattan’s credibility. (See rule 5.155(A) [great weight given to hearing judge’s factual findings]; see *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions “because [that judge] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand”].)

The record demonstrates Peshawaria held herself out as entitled to practice law through her various actions, as discussed in detail *ante*. As a result of Peshawaria’s actions, Rattan sought her legal services. In fact, Rattan testified that Peshawaria advertised herself as an attorney in magazines such as “India Currents” and stated that she believed Peshawaria was “licensed in India as well as in America.” After retaining Peshawaria, Rattan reasonably believed Peshawaria was her attorney and she acted on that belief by providing a confidential written narrative to Peshawaria, which contained specific details concerning her marriage with Prasad. Rattan even stated that Peshawaria requested a copy of the court filings in the pending

¹² In her brief of review, Thibault argues payment of an attorney fee does not necessarily establish an attorney-client relationship, in reliance on *Zenith Ins. Co. v. O’Connor* (2007) 148 Cal.App.4th 998, 1010. We agree, and our analysis is not limited to the fee payment but, instead, based on the totality of the circumstances surrounding Rattan’s belief that she was hiring Peshawaria as her attorney when she retained her services.

marital dissolution matter in addition to all paperwork related to the divorce, custody, and marital property. As we have demonstrated, California law clearly extends the definition of “lawyer” to encompass those who another person reasonably believes to be authorized to practice law.¹³ Therefore, we reject any contention that Peshawaria did not have an implied attorney-client relationship with Rattan.¹⁴

Thibault’s main argument against Peshawaria having had an attorney-client relationship with Rattan is that Peshawaria was not licensed as an attorney in California, which she argues is a necessary precondition to finding culpability under rule 3-310(E). She argues two cases support her assertion: *O’Gara Coach Company, LLC v. Joseph Ra* (2019) 30 Cal.App.5th 1115 and *Allen v. Academic Games Leagues of America, Inc.* (C.D. Cal. 1993) 831 F. Supp. 785. We reject Thibault’s argument that these cases apply here and note that, although *O’Gara* and *Allen* discussed former rule 3-310(E), neither is an attorney discipline case, and the central point of both cases pertained to a motion for disqualification due to conflicts of interests. A motion for disqualification was at issue for Thibault in the superior court; however, our analysis under

¹³ Furthermore, courts in other jurisdictions have recognized that when a client reasonably believes his or her confidential communication and information is being shared with a licensed attorney, this meets the “lawyer” definition and attorney-client privilege applies. (See, e.g., *United States v. Boffa* (D. Del. 1981) 513 F.Supp. 517, 523; *United States v. Mullen & Co.* (D. Mass. 1991) 776 F.Supp. 620, 621.)

¹⁴ Also, through implication, our case law involving misconduct for the unauthorized practice of law (UPL) supports the conclusion that Peshawaria’s false impression regarding her professional status led to Rattan’s reasonable belief that Peshawaria was her attorney. UPL case law suggests that an individual improperly creates the false impression that he or she is entitled to practice law by acting with the general intent to present himself or herself as a currently licensed attorney in the State Bar of California. (See *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes merely holding out as entitled to practice].) Further, our UPL cases have found culpability when an attorney, not entitled to practice law in California, represents clients. (See *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 975 [communications by attorney while suspended from practice of law attempting to settle two client matters constituted UPL].)

former rule 3-310(E) is broader in scope. Also, *O’Gara* and *Allen* are factually different—both involved individuals who eventually became licensed attorneys in California prior to the litigation of the underlying disqualification motions in those cases. Accordingly, we do not find either *O’Gara* or *Allen* as limiting our analysis and therefore, we find that an attorney-client relationship existed between Peshawaria and Rattan.

The hearing judge determined Thibault accessed confidential information that was given by Rattan to Peshawaria when Rattan consulted with Peshawaria in 2008. The judge also concluded that the confidential information included issues of child custody and property division and that Thibault obtained this information from Peshawaria’s database. Thibault does not appear to dispute these findings and we agree with them. However, she attempts to avoid the judge’s findings by arguing that her actions did not fall under the requirements of former rule 3-310(E), because she did not learn any information “‘by reason’ of her representation of Rattan,” and that the information was not material. We disagree with her arguments, as explained below.

While Thibault never represented Rattan, case law extends former rule 3-310(E) beyond a limited class of attorneys who may have represented a former client to all attorneys who are in a law firm. OCTC persuasively cites *National Grange of the Order of Patrons of Husbandry v. California Guild* (2019) 38 Cal.App.5th 706 to argue that, when Thibault had access to Rattan’s confidential information because of her employment relationship with Peshawaria, the obligation to protect that information and to not use it adversely against Rattan was extended from Peshawaria to Thibault. (See *id.*, at pp. 714–715 [where attorney is disqualified because attorney formerly represented client and, therefore, possesses confidential information regarding adverse

party in current litigation, vicarious disqualification automatically applies to entire firm in same litigation.].)¹⁵

While it is true that an attorney in *National Grange* learned confidential information while representing a client at one law firm and subsequently caused the vicarious disqualification of all attorneys at that attorney's next law firm that was representing an adverse party in the same litigation, we see no reason to not extend the case's holding to the circumstances here. At the July 2018 hearing, Thibault attempted to cross-examine Rattan with confidential information provided to Peshawaria in 2008, information that Thibault only gained because Peshawaria had later employed her. As previously discussed, Thibault withdrew from representing Prasad once in 2016 while she was still working for Peshawaria. In 2016, Prasad attempted to hire Peshawaria's firm, but opposing counsel for Rattan notified Thibault of an existing conflict given Peshawaria and Rattan's prior attorney-client relationship. As the attorney assigned to Prasad's matter, Thibault accessed Rattan's case file to determine if she believed a conflict existed. Thibault also discussed the potential conflict with Peshawaria, who informed Thibault to withdraw from the case. Given these circumstances, it was unreasonable for Thibault to agree to represent Prasad in 2018, even as a solo practitioner. Although no longer working for Peshawaria but sharing office space with her, she accessed Rattan's case file and attempted to

¹⁵ Also, it is well established that, even when information is not proprietary, an attorney may not "use against [her] former client knowledge or information acquired by virtue of the previous relationship." (*Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564, 573–574.) This rule is broadly applied to bar the use of a former client's information for an attorney's personal benefit as Thibault attempted to do when preparing for the hearing on the disqualification motion. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 822–823 ["[T]he duties of loyalty and confidentiality bar an attorney not only from using a former client's confidential information in the course of 'making decisions when representing another client,' but also from 'taking the information significantly into account in framing a course of action'"].)

use Rattan’s written narrative and an unsigned retainer agreement adversely to oppose Elter’s motion to disqualify her from the matter.

Thibault’s final argument states that OCTC failed to establish that the information she obtained from Rattan’s file was material to her representation of Prasad in 2018, which she categorizes as “post judgment” related since the marriage was terminated by that point. Nothing in the record suggests that the *Rattan v. Prasad* matter was compartmentalized as Thibault asserts. The docket reflects the same case number, and the record reveals the same marital dissolution proceeding was at issue in 2018, specifically the marital home located in Tracy. Thibault cites to *Farris v. Fireman’s Fund Ins. Co.* (2004) 119 Cal.App.4th 671, stating that information is material for purposes of former rule 3-310(E) when it is “directly in issue or of critical importance” to the second representation.” (*Id.*, at p. 680.) Using *Farris*, the documents obtained from Peshawaria’s database were clearly material, as Thibault intended to use them to Prasad’s advantage when she attempted to cross-examine Rattan.

The final element that OCTC needs to prove is that Thibault did not obtain the informed written consent from Rattan. As the hearing judge noted, Thibault admits this. Therefore, we conclude that all of Thibault’s arguments on this issue lack merit, and OCTC has proven by clear and convincing evidence that the necessary elements of former rule 3-310(E) have been proven. We affirm the hearing judge’s finding of culpability on this count.

B. Count One: Section 6103—Failure to Obey a Court Order

In count one, the NDC alleged that Thibault willfully violated section 6103 by failing to comply with the sanctions order in *Rattan v. Prasad*, which ordered Thibault to pay Elter \$5,000 within 60 days of July 19, 2018. The hearing judge rejected Thibault’s good faith arguments and found her culpable as charged since Thibault waited over eight months after the sanctions order became final before paying Elter.

Section 6103 prohibits an attorney from willful disobedience or violation of a court order that requires the attorney to do or forbear an act. An attorney willfully violates section 6103 when she is aware of a final, binding court order and intends her acts or omissions in violating that order. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) To prove Thibault violated section 6103, OCTC must establish that Thibault (1) willfully disobeyed a court's order and (2) the order required her to do or forbear an act in connection with or in the course of her profession that she ought in good faith to have done or not done. (*In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681, 692.)

On review, Thibault argues that she did not violate the court's order because it is not final and binding for the purposes of discipline. She further claims she held a good faith belief that the sanctions order was invalid and therefore she was not required to pay the imposed sanctions. Finally, Thibault argues she was denied due process and her payment of the sanctions order was reasonable under the circumstances. As explained below, Thibault's arguments are without merit, and we find her culpable of willfully violating section 6103.

The record establishes that Thibault had actual notice of the sanctions order and the requirement that she was to pay the sanctions within 60 days of the judge ordering them. She was aware on July 19, 2018, that the superior court intended to impose sanctions on her as she was present in court for the hearing when Judge Syren ordered her to pay \$5,000 to Elter within 60 days of July 19. Shortly after the sanctions were ordered, Thibault challenged the order by appealing it. On September 24, 2020, the Court of Appeal dismissed her appeal and held that the sanctions order was not appealable under Code of Civil Procedure section 904.1, subdivision

(a)(12), and subsequently denied her request to rehear the matter.¹⁶ The California Supreme Court denied her request for review on December 30. Thibault delayed payment to Elter for an additional eight months and only after OCTC began its investigation. Contrary to Thibault's argument stating otherwise, the sanctions order became final no later than December 30, 2020, and is thus binding for the purposes of discipline. (See *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 559–560 [court orders are final for disciplinary purposes once review is waived or exhausted].)¹⁷

We also reject Thibault's assertion that she should not be held culpable for violating section 6103 because she acted in good faith. Thibault knew about the sanctions, ignored reminders from Elter, refused to pay the sanctions even after being contacted by an OCTC investigator in 2019, and unsuccessfully challenged the sanctions order in the California appellate courts. Her actions were not reasonable, and Thibault's failure to take any action for eight months after the order became final and binding does not demonstrate good faith. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47 [good faith belief under § 6103 is not established where attorney has affirmative duty to respond to court's order but does not].)

¹⁶ Code of Civil Procedure section 904.1, subdivision (a)(12), provides that an order directing payment of monetary sanctions that exceeds \$5,000 is appealable; however, as the Court of Appeal explained, the superior court sanctioned Thibault to pay \$5,000, which was therefore not appealable.

¹⁷ As noted *ante*, Thibault has again attempted to challenge the sanctions order by filing a motion to set aside the sanctions order as void under Code of Civil Procedure section 473, subdivision (d), which she states is still pending in the superior court. Her argument, that the filing of her June 2022 motion means that the sanctions order is not final based on *Collins*, ignores the basic fact that she completed her appeals of the sanctions order when the Supreme Court denied her request for review. The June 2022 motion does not alter our view that *Collins* applies here.

Thibault argues that she was denied due process because the superior court acted in contravention of certain procedural requirements such that the sanctions order is “legally and factually deficient.” This claim is meritless because any due process issues must be raised in the superior court and not here. (See *In the Matter of Collins*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 560 [“remedy lies in the ‘courts of record,’” when attorney seeks to challenge superior court’s sanctions order].) Considering the Court of Appeal’s opinion from September 2020, which explained that the sanctions order was not appealable, and the fact that Thibault has exhausted the appellate review process, her actions are not objectively reasonable. Further, the timing of her current motion in superior court to set aside the sanctions order as void—after the NDC was filed and shortly before the disciplinary trial started—does not support her claim of good faith. To the contrary, it appears she filed the motion in an attempt to delay and frustrate these disciplinary proceedings, which was unsuccessful. Thibault did not have a good faith reason for failing to comply with the superior court’s sanctions order, which is final and binding. (See *Maltaman v. State Bar*, *supra*, 43 Cal.3d 924, 951–952 [technical arguments regarding validity of civil court orders waived when orders became final; “no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid”].)

Thibault did not pay the sanctions until over three years after she knew about the obligation and eight months after her appeals were exhausted. Contrary to her claim, her actions were not reasonable and constituted a violation of the superior court’s order. (See *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 458 [failure to pay sanctions for nearly 11 months was not reasonable and established culpability for § 6103]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867–868 [failure to pay sanctions was § 6103 violation when attorney had over year to pay].) Accordingly, we affirm the hearing judge’s culpability finding under count one.

C. Count Four: Section 6068(o)(3)—Failure to Report Sanctions to the State Bar

Section 6068, subdivision (o)(3), provides that, within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more that were not imposed for failure to make discovery. OCTC charged Thibault with willfully violating section 6068, subdivision (o)(3), because she failed to timely report to the State Bar the sanctions order issued on July 19, 2018, that directed her to pay \$5,000 to Elter. The hearing judge found Thibault culpable under count four because she did not report the sanctions until nearly four years after the court imposed them.

On review, Thibault expresses some acknowledgment of her culpability by stating her failure to report the sanctions order within 30 days “wasn’t the right thing to do.” Nonetheless, she asserts count four should be dismissed based on her lack of knowledge that the sanctions order is final and binding, relying on *In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. 774. OCTC points out that Thibault’s reliance on *In the Matter of Maloney and Virsik* is misplaced because, unlike the attorneys in that case, Thibault had actual knowledge of the court order. We agree. Thibault also claims that her untimely reporting of the sanctions order to the State Bar was an “honest mistake.” We reject her defense on this point as irrelevant to avoiding culpability under section 6103. (See *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 867-868 [when attorney clearly has knowledge of relevant court order, only issue regarding charged violation of section 6103 was whether attorney had reasonable time to comply with the order].) We conclude that Thibault is culpable under count four as charged because she knew about the \$5,000 sanctions order when the superior court imposed it on July 19, 2018, and she did not notify the State Bar in writing until June 22, 2022. (See *id.*, at p.

867 [failure to report sanctions three months after attorney learned of order is violation of § 6068, subd. (o)(3), and bad faith is not required].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5¹⁸ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Thibault to meet the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts (Std. 1.5(b))

The hearing judge assigned limited weight in aggravation for Thibault's three acts of misconduct: failing to timely pay sanctions in violation of the superior court order, failing to timely report sanctions to the State Bar, and engaging in a representation adverse to a former client. OCTC does not contest this determination. Thibault argues that the acts themselves were not established. We agree with the judge and affirm limited weight for this circumstance. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

2. Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. The hearing judge found that Thibault's attitude during the disciplinary proceeding revealed a lack of insight and understanding of her ethical responsibilities, and the judge assigned moderate weight.

Thibault has displayed an attitude that demonstrates she lacks “a full understanding of the seriousness of [her] misconduct.” (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68.) While the law does not require false penitence, it does require that an attorney

¹⁸ Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

accept responsibility for wrongful acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) On review, Thibault expressed some remorse by conceding that she should have reported the judicial sanctions sooner than she did, but then maintained that her purported good faith belief that the order was invalid justified her failure to timely pay Elter even after the sanctions order became final and binding. Particularly troubling is her continued insistence that her representation of Prasad in the *Rattan v. Prasad* matter was justified, even amidst substantial contrary evidence. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 647 [use of unsupported arguments to evade culpability revealed lack of appreciation for misconduct and obligations as attorney].)¹⁹

An attorney has a right to defend herself vigorously. (See *In re Morse* (1995) 11 Cal.4th 184, 209.) However, we find Thibault’s conduct more akin to a continuing failure to recognize her misdeeds. Accordingly, we affirm the indifference finding and the moderate weight assigned by the hearing judge. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [ongoing failure to acknowledge wrongdoing instills concern that attorney may commit future misconduct].)

B. Mitigation

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

Thibault may obtain mitigation for “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” (Std. 1.6(f).) The hearing judge declined to assign mitigation for good character,

¹⁹ In finding indifference, the hearing judge emphasized Thibault’s misconduct in the superior court when opposing the disqualification motion. However, since we are considering those facts to support culpability under count two, we do not consider the same facts again as an aggravating circumstance. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [inappropriate to use same misconduct used to support culpability as additional aggravation].)

finding that Thibault’s four declarants did not demonstrate awareness of the disciplinary charges and did not constitute a wide range of references. Thibault argues on review that the hearing judge improperly disregarded her good character evidence. OCTC supports the judge’s findings and asserts if any mitigation is afforded, it should be no more than limited in weight.

We find that Thibault’s good character evidence, four declarations from former clients, merits mitigating credit, but only nominal weight. Because Thibault’s four witnesses do not constitute a “wide range of references in the legal and general communities” and were not aware of the charges alleged in this disciplinary matter, more than nominal weight is not supported. (See *In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 50 [testimony of four character witnesses afforded diminished weight in mitigation due to absence of wide range of references].)

2. Pro Bono and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned nominal weight under this circumstance since Thibault’s evidence of pro bono work was limited to her own testimony and lacked corroboration and specificity. On review, Thibault asserts that she represented a pro bono client in an immigration removal proceeding that lasted from 2010 through 2021. She testified that this immigration case was her first case while working as a licensed attorney in California, and she was able to assist her client in getting a visa and a green card.²⁰ While we acknowledge that 11 years is a substantial amount of time, her pro bono work only extended to one client. (See *Amante v. State Bar* (1990) 50 Cal.3d 247, 256 [representing only one pro bono client not considered in mitigation].) Further, Thibault has offered no corroborating evidence of her pro

²⁰ As noted *ante*, Thibault obtained her license to practice law in California in 2015; however, she testified that she has been a licensed attorney in Florida since 2010.

bono work. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony]; see also *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little mitigation for minimal testimony regarding pro bono activities].) We affirm nominal weight in mitigation.

3. No Mitigation for Good Faith (Std. 1.6(b))

Thibault seeks mitigation credit based on her good faith belief that a conflict of interest did not exist. The hearing judge declined to afford mitigation for good faith, and OCTC asks us to affirm this finding.

To establish good faith in mitigation, “an attorney must prove that his or her beliefs were both honestly held and reasonable.” (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653; std. 1.6(b).) We find that Thibault does not deserve mitigating credit for good faith. Even if Thibault honestly believed she acted in good faith in accepting Prasad's case where Peshawaria was not a California licensed attorney when she represented Rattan, it was not objectively reasonable for Thibault to withdraw from representing Prasad in 2016 given the known conflict and then agree to represent him in 2018 without Rattan's written consent. Also, Thibault's decision to not obey the court's sanctions order for over eight months after it became final does not evidence good faith. Lastly, Thibault's good faith argument is belied by her indifference, as discussed above. These circumstances preclude any finding of good faith.

V. A 30-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them

great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the misconduct at-issue. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.12(a) is most applicable because it directly addresses disobedience of a court order and contains the most severe discipline—disbarment or actual suspension.²¹ The hearing judge applied standard 2.12(a) and relied on *In the Matter of Collins* to support her 30-day actual suspension recommendation. In *Collins*, the attorney violated five orders that sanctioned him, and he had not paid any sanctions by the time of his disciplinary trial. This court assigned moderate aggravation for multiple acts and determined that Collins established significant mitigation for 22 years of discipline-free practice and cooperation with OCTC by stipulating to facts and culpability. Despite the mitigation Collins established, we determined it did not justify a downward departure from the actual suspension required under standard 2.12(a).

OCTC requests that we affirm the hearing judge’s 30-day actual suspension recommendation. Thibault, without articulating any justifiable reason, argues that the discipline imposed in *Collins* is not applicable to her case. We note that the judge’s discipline recommendation is at the low end of the range of discipline under standard 2.12(a). (Std. 1.2(c)(1) [“Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years”].) Moreover, section 6103 itself

²¹ Standard 2.12(b), which is applicable to a violation of section 6068, subdivision (o)(3) (failure to report judicial sanctions), calls for only a reproof. Standard 2.5(b), which applies to conflicts of interests not covered in other provisions of the standards, states that suspension or reproof is the presumed sanction.

calls for the minimum level of discipline to be a suspension, as the statute provides that violations of court orders “constitute causes for disbarment or suspension.” We also consider the Supreme Court’s admonition that violations of court orders are serious misconduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 [“Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney” than violation of court order].)

Here, Thibault’s misconduct includes her violation of the superior court’s sanctions order, her failure to timely report the sanctions to the State Bar, and her decision to maintain an adverse representation. She also still fails to fully understand the wrongfulness of actions and her ethical obligations as an attorney in avoiding conflicts of interest. We are mindful that Thibault conferred with the State Bar’s Ethics Hotline for guidance before deciding to accept Prasad’s representation, which we commend. Nevertheless, while it is one thing to explore the parameters of an ethical obligation before deciding to represent a potential client, we view Thibault’s misconduct as unreasonable and without careful consideration or regard to what should have been an obvious conflict of interest. When considering her serious misconduct, along with her aggravating circumstances that outweigh her mitigating ones, we find that the net effect does not justify a departure from standard 2.12(a). In light of the guidance from the case law and the standards, we cannot articulate a legitimate reason to deviate from the 30-day actual suspension based upon the record before us. (See standard 1.1 [“Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure”].)

The hearing judge’s recommendation is within the range provided in standard 2.12(a) and section 6103, and OCTC does not seek increased discipline. For these reasons, and because a 30-day actual suspension serves to protect the public, the courts, and the legal profession, we affirm the judge’s recommended discipline.

VI. RECOMMENDATIONS

We recommend that Elana Thibault, State Bar Number 302572, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year with the following conditions:

- 1. Actual Suspension.** Thibault must be suspended from the practice of law for the first 30 days of the period of her probation.
- 2. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Thibault must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 3. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to her compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Thibault's first quarterly report.
- 4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Thibault must provide a declaration, under penalty of perjury, attesting to Thibault's compliance with this requirement, to the Office of Probation no later than the deadline for Thibault's next quarterly report due immediately after course completion.
- 5. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Thibault must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
- 6. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must schedule a meeting with her assigned Probation Case Coordinator to discuss the terms and conditions of her discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Thibault may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Thibault must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully,

promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

- 7. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Thibault's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, Thibault must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Thibault must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- 8. Quarterly and Final Reports.**

 - a. Deadlines for Reports.** Thibault must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Thibault must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
 - b. Contents of Reports.** Thibault must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
 - c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
 - d. Proof of Compliance.** Thibault is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Thibault is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- 9. State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing

Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Thibault will nonetheless receive credit for such evidence toward her duty to comply with this condition.

10. Commencement of Probation/Compliance with Probation Conditions. 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 probation period, if Thibault has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

11. Proof of Compliance with Rule 9.20 Obligation. Thibault is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that she comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Thibault sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by her with the State Bar Court. She is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Elana Thibault be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Thibault provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Elana Thibault be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.²² (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].) Failure to do so may result in disbarment or suspension.

IX. MONETARY SANCTIONS

The hearing judge recommended that Thibault pay \$2,500 in monetary sanctions. OCTC asks that we affirm the judge's recommendation. On review, Thibault argues that monetary sanctions should not be imposed. Rule 5.137(E)(1) provides, in part, that this court shall make recommendations to the Supreme Court regarding monetary sanctions in any disciplinary proceeding resulting in an actual suspension. The guidelines recommend a sanction of up to \$2,500 for discipline including an actual suspension, depending upon the facts and circumstances of the particular case. (Rules Proc. of State Bar, rule 5.137(E)(2).)

The nature of Thibault's misconduct—which involves violating a court order by failing to timely pay sanctions, failing to report sanctions to the State Bar, and engaging in a representation adverse to a former client—along with her indifference—does not demonstrate that a downward

²² Thibault is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

departure from the guidelines is appropriate in this case. We also note that Thibault has not proffered any evidence to suggest financial hardship or an inability to pay sanctions.

Accordingly, we recommend that Elana Thibault be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.

No. SBC-22-O-30033

In the Matter of
ELANA THIBAUT

Hearing Judge
Hon. Phong Wang

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