

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of ) SBC-21-C-30086  
ERIC ADRIAN JIMENEZ, ) OPINION  
State Bar No. 249468. )  
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On April 19, 2010, Eric Adrian Jimenez pleaded guilty in Los Angeles Superior Court to a misdemeanor violation of Penal Code section 502, subdivision (c)(5) (knowingly and without permission disrupting computer services to an authorized user of a computer system or network). After his conviction was transmitted to us, we referred the case to the Hearing Department to determine if the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

The hearing judge determined that the facts and circumstances surrounding Jimenez’s conviction involved moral turpitude and recommended discipline to include a six-month actual suspension. Jimenez appeals. He argues that the facts and circumstances surrounding his crime did not involve moral turpitude and that the judge improperly relied on hearsay statements contained in a police report that was admitted into evidence. Jimenez also requests we reverse the judge’s aggravation findings that he lacked candor and insight into his misconduct and argues he is entitled to more mitigation. He contends a one-year stayed suspension would be sufficient in this case. The Office of Chief Trial Counsel of the State Bar (OCTC) requests we affirm the judge’s findings and suspension recommendation.

Upon our independent review (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that the facts and circumstances surrounding Jimenez's conviction involves moral turpitude and reject Jimenez's arguments. While we do not rely on certain hearsay statements, we reach the same conclusions as the judge and affirm most of the aggravation and mitigation findings. We see no reason to disturb the judge's credibility findings pertaining to Jimenez's testimony and, like the judge, we have grave concerns about the dishonest statements he made to law enforcement, the courts, and in this disciplinary proceeding. Given the overall record, we conclude that six months' actual suspension is necessary to protect the public and the courts, to maintain high professional standards, and to impress upon Jimenez the seriousness of his actions.

## **I. FACTUAL BACKGROUND<sup>1</sup>**

### **A. Jimenez Works as a Network Consultant for Allied Construction Management Group, Inc.**

Jimenez was admitted to practice law in California on June 4, 2007, and has one prior disciplinary record. From June 2007 to August 2008, Jimenez was self-employed and worked as a consultant within the information technology (IT) field. During this time, he was hired by a construction company, Allied Construction Management Group, Inc. (Allied) to work as a network administrator and desktop support consultant. As a network consultant, Jimenez was responsible for setting up remote access for Allied's computer network, backing up data, and updating the system as needed. Due to the nature of his work, Jimenez had access to Allied's confidential network password.

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<sup>1</sup> All findings in this opinion are established by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and sufficiently strong to command unhesitating assent of every reasonable mind].) The facts are based on the parties' pretrial 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).)

Jimenez billed Allied for the work he performed on an hourly basis and submitted monthly invoices to the company. In 2008, Allied had not paid Jimenez for two months of consulting services and owed him at least \$1,500. Jimenez submitted multiple requests for payment, but the invoices remained unpaid. Between August 26 and August 27, 2008, Jimenez remotely accessed Allied's computer network and changed the password without permission. He also moved accounting files so that the owners would be unable to locate them. On August 27, Jimenez received a call from Allied's Chief Executive Officer, Joseph Casey, who was very upset about not being able to access the system. When Casey asked Jimenez to change the password back or provide the new password, Jimenez refused.

The next day, Casey hired another consultant, Terry Crouch, and paid him \$1,500 to have the password reset in order to regain access to Allied's computer network. On August 29, 2008, Casey filed a complaint with the Los Angeles Police Department (LAPD), stating there had been unauthorized access to Allied's network. Detective Janice Louie from LAPD's Computer Crimes Unit was assigned to investigate the case.

At the disciplinary trial, Jimenez testified that Allied's President, A.J. Foley, requested the password to Allied's computer network be changed and the accounting files copied to an external hard drive. Jimenez claimed Foley was concerned that Casey was defrauding clients and not paying on accounts owed, including Jimenez's account. Jimenez also claimed he called Foley after receiving the phone call from Casey and informed him that Casey was requesting the password be changed back. According to Jimenez, Foley asked him not to take any further action and not change or give Casey the password.<sup>2</sup> OCTC proffered Detective Louie's police

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<sup>2</sup> The hearing judge found Jimenez's claim that he acted with Foley's permission as unsupported by the record and determined that his "self-serving testimony went beyond incredible to lacking in candor." Jimenez challenges the judge's credibility findings on review, which are discussed in our moral turpitude section, *post*.

report, which contained details involving the incident and notes from her interviews with multiple parties.<sup>3</sup> Jimenez's attorney objected to the admission of the report, which the hearing judge overruled.

**B. LAPD's Investigation of Jimenez's Criminal Conduct**

After Casey filed the complaint, Detective Louie and another detective interviewed him regarding the complaint. According to Detective Louie's police report, Casey believed that Jimenez disrupted the system because Allied had not paid Jimenez's invoices. Detective Louie also interviewed Crouch and noted in her police report that Crouch believed the intruder had prior knowledge of the system based on how the files were hidden and deleted. The police report also indicated that Crouch provided the Internet Protocol (IP) addresses associated with the network intrusion, which Detective Louie used to identify the subscriber information and obtain a search warrant of Jimenez's residence and other locations.

Early in the morning on March 12, 2009, the LAPD executed a search on Jimenez's residence pursuant to a warrant. The detectives interviewed Jimenez and he admitted that he remotely accessed Allied's network, changed the password, and moved the accounting files to an unknown location on the hard drive. Jimenez also admitted that he did not have authorization to take those actions. He also stated that he believed Allied was sheltering money in another construction business. According to Jimenez, in 2008 five businesses owed him money, and four of those businesses could not pay him because they were struggling financially. Jimenez explained that he moved Allied's accounting files to another location so that Casey would need

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<sup>3</sup> Detective Louie's report contained statements from her interviews with Casey, Foley, Crouch, Jimenez, Marina Jimenez (Jimenez's wife), and other Allied employees. Of these people, only Jimenez and Detective Louie testified at the disciplinary trial. Jimenez's counsel objected to certain questions asked of Detective Louie, arguing that it elicited improper hearsay statements. We address Jimenez's hearsay arguments in our evidentiary challenges discussion, *post*.

him to retrieve it and to get the password from him. Jimenez also stated that he did this to help his friends who were also not being paid by Casey.

Approximately five hours after his interview with Detective Louie, Jimenez telephoned her with additional details, stating that he, in fact, did have permission from Foley to remotely log in to Allied's network. Jimenez stated that after speaking with his wife, he decided not to "tak[e] the fall for the intrusion crime." At the disciplinary trial when questioned about his discussion with the detectives during the search warrant, Jimenez testified that the police "started talking about [Foley] funneling money to . . . other businesses, and what I knew about that . . . . I didn't want to talk about [Foley]. I admittedly didn't bring him into the conversation at all." He testified that he called Detective Louie and provided additional information not given to her earlier because he "didn't know if [Foley] had implicated me in some other bigger scheme." Foley never corroborated Jimenez's statements.<sup>4</sup>

### **C. Jimenez Pleaded Guilty to Unpermitted Disruption of Allied's Computer System**

On March 4, 2010, the Los Angeles County District Attorney's Office filed a two-count complaint against Jimenez charging him with one felony count for violating Penal Code section 502, subdivision (c)(4) (knowingly accessing and without permission adding, altering, damaging, deleting or destroying any data, computer software or computer programs which reside or exist internal or external to a computer, computer system, or computer network), and one felony count for violating Penal Code section 502, subdivision (c)(5) (knowingly and without permission disrupting or causing the disruption of computer services or denying or causing the denial of computer services to an authorized user of a computer, computer system or computer network).

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<sup>4</sup> According to the police report, Detective Louie interviewed Foley on April 2, 2009, and Foley's statements are discussed as part of Jimenez's evidentiary challenges, *post*.

On April 19, 2010, Jimenez pleaded guilty to the Penal Code section 502, subdivision (c)(5) violation (count two). On February 16, 2012, the superior court ordered that count two be deemed a misdemeanor and placed Jimenez on two years' summary probation. He was also ordered to perform community service and pay \$2,000 in restitution, among other probation conditions. Jimenez completed his probation, complying with all its terms.

On January 15, 2019, Jimenez sent a letter to the Bureau of Criminal Information and Analysis (BCIA) seeking to correct his criminal record, which inaccurately reflected a felony conviction rather than a misdemeanor. In the letter, Jimenez stated that he was "falsely accused by persons who were defrauding others on construction contracts." On March 12, Jimenez filed a petition with the superior court to seal his criminal record. To support this filing, he submitted an Interest of Justice Statement, which he executed under penalty of perjury. Jimenez stated the following:

A dispute arose between the two officers of [Allied] regarding accounting inaccuracies. A.J. Foley approached me and asked me to change the password to the [s]erver and [d]esktops in an effort to limit Joseph Casey's access, due to his belief [that] Casey was "up to no good" and defrauding their clients. I accessed the [n]etwork remotely and changed the passwords as instructed and moved the accounting files to an external hard drive that Foley was supposed to confiscate.

The day after this was accomplished, I received a call [from] Casey and was asked to reverse the process. I explained that Foley had informed me that Casey was defrauding clients and not paying all accounts, including my own, and that Casey needed to resolve these issues before I would reverse the steps taken by me at Foley's direction.

[¶] . . . [¶] I attempted to defend myself in this case by pointing out the correlation between the lawsuits against Allied CMD and Casey, and Casey's need to validate his excuse of destruction of computer files by prosecuting me as a scape goat [sic].

During the disciplinary proceeding, Jimenez maintained that his actions were taken "under the authority of Foley and pursuant to Foley's instructions." In his Answer to the Notice of Hearing on Conviction, Jimenez stated,

Later that morning of 26-Aug-2008, I received a call [from] a very upset Casey and was asked to reverse the process. I called Foley to inform him that I was going to change the password once again, and Foley informed me that Casey was defrauding clients and not paying employees or accounts payable, and there were hundreds of thousands of dollars unaccounted for in their business accounts. Foley asked me not to take any further action and not to change or give Casey the password. I confirmed with the [in-house] accountant (Doris Robertson) and with one of the sub-contractors (Pierro Longi), and they both indeed confirmed that many checks issued by Allied had come back “Insufficient Funds.” I informed Casey of the allegations by Foley and that I felt more comfortable taking no further action on the issue that needed to be resolved between Casey and Foley.

## **II. STATE BAR COURT PROCEEDINGS**

On February 11, 2021, OCTC transmitted evidence to us of Jimenez’s conviction, and, on April 8, OCTC transmitted evidence that his conviction was final. On April 30, we referred this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

On May 4, 2021, the Hearing Department filed and served on Jimenez a Notice of Hearing on Conviction. Jimenez filed an Answer on May 27. The parties filed a Stipulation of Undisputed Facts and Admission of Documents (Stipulation) on August 26, 2021. Trial was held on August 31 and September 1. After the filing of posttrial briefs, the hearing judge issued a decision on December 14.

Jimenez requested review on December 28, 2021. After briefing was completed, we heard the parties’ oral arguments on August 17, 2022.

### III. JIMENEZ'S EVIDENTIARY CHALLENGES<sup>5</sup>

#### A. Admissibility of the Police Report and Hearsay Statements

As indicated above, Jimenez's attorney objected to the admissibility of Detective Louie's police report at trial, arguing that it contained inadmissible hearsay.<sup>6</sup> The hearing judge overruled the hearsay objection and concluded that the statements in the report were admissible hearsay under our rules of procedure because they supplemented or explained other evidence in the record. Jimenez contends here that, since Detective Louie was the only third-party witness to testify during the disciplinary trial, the judge erred in considering the statements of Casey, Foley, Crouch, and Marina Jimenez when made during their respective police interviews. Specifically, Jimenez claims error in the admission of the following statements:<sup>7</sup>

- (1) Foley stating that, in response to his request for Jimenez's help with accessing the network, Jimenez said, "When you pay me, I'll fix it;"
- (2) Foley stating that he believed Jimenez was angry because the invoice had not been paid;
- (3) Casey's statements regarding his belief that Jimenez disrupted the system because Allied had not paid Jimenez's invoices and that it cost over \$1,500 for Crouch to repair the system;

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<sup>5</sup> Jimenez argues certain factual challenges that are not relevant or outcome-determinative to this disciplinary proceeding (e.g., facts pertaining to charges on which he was not convicted and are thus not at issue). Having independently reviewed all arguments set forth by Jimenez, those not specifically addressed have been considered and rejected as without merit. Any challenges not raised on review are waived. (See *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 857 [where no objection to admission of evidence, well settled that any objection on that point is waived].)

<sup>6</sup> We note that in his reply brief on review, Jimenez makes clear that he does not dispute the general admissibility of the police report but disputes the third-party witness statements contained within the report. As discussed in detail in this section, we find that certain statements from the police report are admissible as administrative hearsay.

<sup>7</sup> The police report also contains statements by Jimenez that he admitted to remotely accessing Allied's network in early September 2008 and that Jimenez did so to help his friends who were not getting paid by Casey. We note that such statements by Jimenez are admissible as party admissions, an exception to the hearsay rule. (Evid. Code, § 1220.)



- (4) Casey's statement that it would have cost him approximately \$250,000 in damages if Crouch was unable to recover files;
- (5) Crouch's statements that the intruder had prior knowledge of the system and that Crouch provided the IP addresses associated with the network intrusion to Detective Louie; and
- (6) Marina Jimenez's statements that Jimenez had several clients who had not paid him and that the couple had experienced financial hardship in 2008.<sup>8</sup>

In our independent review, we conclude that some of the statements in the police report reflect inadmissible hearsay under our rules of procedure. Rule 5.104(C) of the Rules of Procedure of the State Bar<sup>9</sup> provides, in pertinent part, that "Any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." Therefore, only hearsay evidence that is relevant and reliable may be considered for admission. We do not agree with OCTC's position regarding the admissibility of Detective Louie's police report as a business record. (See *People v. McVey* (2018) 24 Cal.App.5th 405, 415-416, citing *People v. Sanchez* (2016) 63 Cal.4th 665, 695 [police reports are not considered business records as an exception to the hearsay rules]; *MacLean v. City & County of San Francisco* (1957) 151 Cal.App.2d 133, 143 [third-party narrators in police reports have no business duty to report to police].) Additionally, hearsay may only be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rule 5.104(D).)

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<sup>8</sup> During the execution of the search warrant on March 12, 2009, Detective Louie and another detective interviewed Jimenez's wife, Marina Jimenez. The police report documented Marina Jimenez's hearsay statements describing her knowledge that Jimenez had several clients who were not paying him consistently.

<sup>9</sup> All further references to rules are to this source.

As to Foley's statement that Jimenez said, "When you pay me, I'll fix it," this is inadmissible multi-layered hearsay. (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 288 [multi-layered hearsay not the sort of evidence on which responsible persons usually rely].) Given Jimenez's objection, Foley's out-of-court statement cannot be used to supplement or explain Jimenez's testimony because it is insufficient to support a finding on its own, in light of the evidence within the record.<sup>10</sup> Foley's statement that he believed Jimenez was angry because the invoice had not been paid was also inadmissible hearsay for the same reason. We do not find this statement relevant because Jimenez's state of mind is not an element of our analysis—his conviction alone is conclusive evidence that he committed the crime. (Bus. & Prof. Code, § 6101, subd.(a).) Foley's speculation as to Jimenez's state of mind was not only inadmissible but also irrelevant. Accordingly, we do not consider any of Foley's statements from the police report in our findings on review.

Next, we consider Casey's statements in the police report that it cost over \$1,500 to hire Crouch to reconfigure the network and that Jimenez disrupted the system because Allied had not paid Jimenez's invoices. As to Casey's statement regarding his payment to Crouch, Jimenez stipulated that Casey "had to hire and pay another IT consultant over \$1,500 to have the passwords reset and regain access to Allied's network." Stipulated facts are binding on the parties. (Rule 5.54(B).) Therefore, this statement is admissible because it supplements the stipulation. Similarly, Casey's statement regarding his belief that Jimenez disrupted the system also supplements a stipulated fact, Jimenez's admissions, and the elements established by his guilty plea. The portion of Casey's statement regarding his belief that Jimenez unlawfully accessed the network due to unpaid invoices is admissible hearsay, which can be used to explain

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<sup>10</sup> Outside of the record and during oral argument, Jimenez made rebuttal arguments in place of his attorney of record and stated he told Casey that he would not "fix [the network password] unless [Casey] pays the money."

Jimenez's statements in the police report indicating that when he called Casey for money owed, he was met with negative responses. However, Casey's statement regarding Crouch's estimate of \$250,000 in potential damages is inadmissible. This statement is not relevant and does not supplement the record—actual damages were \$1,500, as stipulated.

We also find Crouch's statements contained within the police report to be inadmissible hearsay. The parties' Stipulation and Jimenez's guilty plea establish only that he unlawfully accessed Allied's network. Crouch's hearsay statements regarding his suspicions about the intruder's prior knowledge of the network system and the IP addresses he provided to Detective Louie does not supplement other evidence in the record.

Lastly, we find that Marina Jimenez's statement to Detective Louie that Jimenez had been unable to collect outstanding payments from several clients is admissible hearsay. This statement supplements and explains Jimenez's own admissions to Detective Louie that his clients, including Allied, owed him money during the time that he disrupted Allied's system. We determine that the remainder of Marina Jimenez's statements in the report, including when she stated she and Jimenez had experienced financial hardship in 2008, are inadmissible hearsay because those portions alone are insufficient to support other evidence in the record.

In sum, some of the third-party statements in the police report are not admissible because they do not fall under rule 5.104 as corroborative evidence; nonetheless, this does not otherwise affect our view that the facts and circumstances demonstrate moral turpitude, discussed *post*.

#### **B. The Hearing Judge Properly Excluded Irrelevant Documents**

Jimenez next argues the hearing judge erred by denying the admission of several civil lawsuits pending against Allied, as well as Allied's bankruptcy filings. Specifically, the judge denied the admission of documents from six separate lawsuits, in which Allied was the defendant, as well as Allied's 2009 bankruptcy petition. Jimenez asserts that the judge's refusal

to admit this evidence was prejudicial to him in terms of “weighing his credibility.” He also argues these documents show Allied’s financial distress at the time and establish Casey and Foley’s motives in “lying about the alleged facts that files were deleted” and the assertion that Jimenez’s actions could have potentially caused \$250,000 in damages. Jimenez’s arguments have no merit.

A hearing judge has broad discretion to determine the admissibility and relevance of evidence. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499.) The standard of review we generally apply to the review of evidentiary rulings is abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695; see *H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 [“appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered”].) To prevail on a claim of error, abuse of discretion and actual prejudice resulting from the ruling must be established. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [absent actual prejudice, party not entitled to relief from hearing judge’s evidentiary ruling].)

Despite Jimenez’s arguments to the contrary, the hearing judge did not need to rely on the financial status of Allied in making credibility determinations. As discussed in detail in the section *post*, the judge made adverse credibility findings against Jimenez based on his dishonesty, which was revealed through several inconsistencies between his testimony and the documentary evidence. We agree with the judge’s determination that the civil lawsuits against Allied and evidence of its bankruptcy were irrelevant because it held no bearing on circumstances pertaining to Jimenez’s conviction. To be clear, Allied’s financial status was not at issue in this case. Likewise, Jimenez’s argument pertaining to “deleted files” underlying the dismissed criminal charge (Pen. Code, § 502, subd. (c)(4)) is irrelevant to this proceeding

because Jimenez was not convicted under that count. Because we determined that Crouch's hearsay statement regarding potential damages of \$250,000 was inadmissible hearsay, it was not considered in the facts and circumstances surrounding Jimenez's crime.

Additionally, as OCTC points out on review, Allied's bankruptcy proceeding was filed in December 2009 and the misconduct underlying Jimenez's conviction occurred in August 2008. Thus, the documents concerning Allied's perceived financial distress would not mitigate or excuse Jimenez's misconduct as the bankruptcy documents came into existence after his misconduct occurred. Finally, Jimenez failed to identify the specific additional facts or arguments he would have offered had the evidence been admitted or that he suffered any actual prejudice. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469 [attorney must show specific prejudicial effect].) Accordingly, we find that the hearing judge did not abuse her discretion in denying the admission of Allied's civil lawsuits and bankruptcy filing.

#### **IV. THE FACTS AND CIRCUMSTANCES SURROUNDING JIMENEZ'S CONVICTION INVOLVE MORAL TURPITUDE**

As we noted, *ante*, for the purposes of attorney discipline, Jimenez's conviction is conclusive proof of the elements of his crime. (See Bus. & Prof. Code, § 6101, subs. (a) & (e).) Thus, his guilty plea and misdemeanor conviction establish that he knowingly and without permission disrupted Allied's computer network. (Pen. Code, § 502, subd. (c)(5).) The issue before us is whether the facts and circumstances surrounding his criminal conviction, which was not committed in the practice of law, demonstrate moral turpitude. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935 [moral turpitude analysis not restricted to examining elements of crime but must look at whole course of misconduct].) Additionally, the court may not reach conclusions inconsistent with the conclusive effect of the attorney's

conviction. (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

We are guided here by the Supreme Court’s definition of moral turpitude, which includes, “a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) The hearing judge found that Jimenez’s misconduct involved moral turpitude because (1) he breached his fiduciary duty to his employer and (2) Jimenez made false and deceitful statements to the LAPD, the BCIA, and the superior court to cover up and minimize his criminal conduct. Like the judge, we also find that the facts and circumstances surrounding Jimenez’s conviction involve moral turpitude for the reasons discussed *post*.

Jimenez was entrusted with a confidential network password and access to the network system while working for Allied. Because of his access to Allied’s network, there can be no question that Jimenez assumed a fiduciary role in this situation based on his job responsibilities as Allied’s network consultant.<sup>11</sup> ““An attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal profession whether or not he acts in his capacity of an attorney.”” (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 373, quoting *Worth v. State Bar* (1976) 17 Cal.3d 337, 341.) Jimenez breached his duty when he knowingly and without permission used his position of trust to restrict authorized users’

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<sup>11</sup> Jimenez’s point during oral argument that his employment status (employee compared to independent contractor) should affect our conclusion regarding his culpability for moral turpitude is irrelevant as the proper focus of our analysis is the fiduciary aspects of his work for Allied, which included access to Allied’s computer system and its financial records.

access to the computer system. (See *Stokes v. Dole Nut Co.* (1995) 41 Cal.App.4th 285, 295 [duty of loyalty breached when “employee takes action which is inimical to the best interests of the employer”].)

We reject Jimenez’s argument that his misconduct does not amount to moral turpitude because the “owners Casey and Foley were only prevented from accessing Allied’s network and files for a brief 24-hour period,” and because he paid restitution to Casey. The duration of time that Allied’s network was inaccessible to authorized users does not negate Jimenez’s criminal behavior. Nor does his restitution payment made years later minimize the significance of his misconduct. Jimenez intentionally disrupted Allied’s network, without permission, to restrict Casey and Foley from using it. The nature of Jimenez’s actions was further revealed when he refused to reset the passwords so that the users could regain access once confronted, which forced Casey to hire another IT consultant to remedy the issue. By taking actions against the interests of his employer, Jimenez abused his position of trust and dishonored his fiduciary duties.<sup>12</sup> We find that Jimenez’s actions demonstrate deficiencies in his character including a lack of trustworthiness and fidelity to fiduciary duties, which is evidence of moral turpitude. (*In re Lesansky, supra*, 25 Cal.4th at p. 16.)

Jimenez’s attempt to limit his wrongdoing, by arguing that he acted on Foley’s direction in changing the password, which disrupted Allied’s network, similarly lacks merit. Jimenez’s self-serving claims are contrary to his guilty plea, and we do not consider claims that would negate the elements of the crime to which he pled guilty—that Jimenez knowingly and without permission, disrupted Allied’s computer system or caused the denial of computer services to an

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<sup>12</sup> Separately, we reject Jimenez’s attempt to distinguish crimes found to involve moral turpitude from an impeachment standpoint where the hallmark measure is “readiness to do evil.” (See *In re Grant* (2014) 58 Cal.4th 469, 476 [treatment of prior conviction for purposes of impeachment has “limited relevance in attorney discipline proceedings”].)

authorized user of that computer or computer network. (Pen. Code, § 502, subd. (c)(5); see *In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. at p. 588.) Also, Jimenez’s testimony on this point was inconsistent, confusing, and contradicts other evidence in the record, including his own admissions as detailed in the hearing judge’s decision. The judge rejected Jimenez’s testimony that he acted with Foley’s permission as unsupported by the record. Specifically, she concluded that his testimony was “self-serving” and “went from incredible to lacking in candor.” She also noted that when testifying Jimenez was “unable to keep his new story straight.” A judge’s credibility findings are accorded great weight because the judge presided over the trial and heard the testimony. (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 [she] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand”].) We affirm her conclusions regarding Jimenez’s credibility.

Upon our independent review of the record, we find no reason to discredit the hearing judge’s remaining findings, including her finding that Jimenez’s statements to Detective Louie, the superior court, and the BCIA were false and done with the intent to cover up and minimize his criminal conduct. When Jimenez was first interviewed by Detective Louie, during the execution of the search warrant at his home in 2009, Jimenez admitted to intentionally disrupting Allied’s system and changing the network password. He also mentioned that he took these actions because he wanted to help his friends, who were owed by Allied, to get paid. This fact was corroborated by Detective Louie’s testimony. During the initial interview with Detective Louie, Jimenez did not mention his purported claim that Foley directed him to disrupt the system in order to keep Casey from accessing it. It was not until hours later that Jimenez called Detective Louie and recast his self-serving story.



At the disciplinary trial, when questioned by OCTC about the incident, Jimenez claimed he did not mention Foley in his initial interview because he wanted to protect Foley since the police “started talking about [Foley] funneling money to other businesses, and what I knew about that.” This explanation is implausible given the undisputed circumstances in which his statements were made. Jimenez was being questioned by the police about him disrupting Allied’s network without permission; notably, nothing in the record suggests that Jimenez was being implicated in a crime with Foley or that Foley was subject to criminal investigation.

We find further support for the hearing judge’s moral turpitude conclusion by examining the Interest of Justice Statement that Jimenez submitted to the superior court under penalty of perjury. In that statement he elaborated on his narrative that he had Foley’s authorization to act and claimed, inter alia, that Casey “need[ed] to validate his excuse of destruction of computer files by prosecuting me as a scape goat [*sic*].” The judge found his statement to be a “false narrative,” along with the letter he wrote to BCIA as “outlandish” and a lie when he claimed he was “falsely accused.” Jimenez’s multiple statements as discussed are inconsistent with the established facts, which amount to deceit and half-truths. (*Cutler v. State Bar* (1969) 71 Cal.2d 241, 252-253 [“An attorney’s practice of deceit involves moral turpitude”].) Accordingly, we adopt the judge’s conclusion that Jimenez is culpable of moral turpitude.

## **V. AGGRAVATION AND MITIGATION**

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>13</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Jimenez has the same evidentiary burden to establish mitigation circumstances under standard 1.6.

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<sup>13</sup> All further references to standards are to this source.

## A. Aggravation

### 1. Prior Record (Std. 1.5(a))

Jimenez has one prior record of discipline. On June 28, 2012, the Supreme Court ordered him on probation for one year and actually suspended from the practice of law for 30 days. Jimenez stipulated he was culpable of violating Business and Professions Code section 6068, subdivision (c), by filing false and inaccurate documents in bankruptcy court in bad faith, thus failing to maintain just actions. His misconduct in the prior matter began in 2009. In aggravation, Jimenez committed multiple acts of misconduct, which involved approximately 70 instances of false and inaccurate filings in the bankruptcy court. In mitigation, he experienced emotional difficulties following the passing of a close family member. He also cooperated with OCTC by entering into a prefiling stipulation.

The hearing judge found no aggravation under standard 1.5(a), concluding that Jimenez's misconduct in the current matter occurred in August 2008, which was before the period of the time that he engaged in misconduct in the prior matter. Jimenez requests that we affirm the judge's finding. On review, OCTC argues that the judge failed to assign aggravation to Jimenez's prior discipline and argues that his present misconduct is similar to his prior because both cases involve dishonesty, which OCTC argues supports significant aggravation. OCTC also asserts that the judge incorrectly applied the analysis of *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 to this case.

Prior discipline is a proper factor in aggravation when discipline is imposed. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 618). This court in *Sklar* concluded that the aggravating weight of prior discipline is generally reduced if the prior misconduct occurred during the same time period as the current misconduct. (*Id.* at p. 619.) In *Sklar*, we emphasized that "the rationale for considering prior discipline as having an aggravating impact is that it is

indicative of a recidivist attorney’s inability to conform his or her conduct to ethical norms [citation].” (*Ibid.*) Here, Jimenez’s prior misconduct began in 2009, which was subsequent to his misconduct in this disciplinary proceeding that started in August 2008, and we must consider this chronology of Jimenez’s record of discipline in order to properly recommend discipline for him. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 131, 136.) We find that because the discipline in Jimenez’s prior matter was stipulated in December 2011, but his misconduct in this matter started in 2008, Jimenez did not have a full opportunity to heed the importance of his earlier discipline. (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 269.)

As OCTC points out, similarities exist between Jimenez’s prior discipline and this matter, as both involve his issues with truthfulness and candor, which is most concerning. However, even in circumstances where an attorney’s prior misconduct was similar, the aggravating weight of the prior disciplinary record is “somewhat diluted because the misconduct in the present case occurred before [the attorney was put on notice of discipline in the prior case].” (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646.) After considering the totality of Jimenez’s misconduct, we assign limited aggravation for Jimenez’s prior record of discipline instead of none as the hearing judge found.

## **2. Significant Harm to the Victim (Std. 1.5(j))**

To be an aggravating factor, harm must be “significant” to a client, a court, or the administration of justice. (Std. 1.5(j).) The hearing judge found Jimenez’s misconduct caused significant harm to Casey and Foley because he “caused Allied’s computer system to be offline for several days, resulting in administrative delays and frustration to [them],” in addition to Casey having to incur \$1,500 in expenses to hire another consultant to reconfigure and secure the system. The judge assigned substantial weight in aggravation to this circumstance. On review,

Jimenez admits that he caused harm to Allied by forcing it to incur fees to pay for Crouch to restore access to its system. However, Jimenez contends that since access was regained within one day and he fully reimbursed Casey for the costs, only moderate weight in aggravation is warranted. OCTC requests that we affirm the judge's finding.

We find that the record does not support a finding of significant harm. Jimenez unlawfully accessed Allied's system and caused an interruption which affected its business operations for no more than one day, which OCTC apparently does not dispute. Jimenez's refusal to restore the password caused Casey to hire a technical expert that resulted in \$1,500 in expenses to restore access to the network. On these particular facts, OCTC has not established this aggravating circumstance. (Cf. *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm to client occurred when client paid "significant amount" to hire another attorney and suffered "three years of misery" in unsuccessful attempt to fix attorney's misconduct].)

### **3. Lack of Candor (Std. 1.5(l))**

Standard 1.5(l) allows aggravation for lack of candor "during disciplinary investigations or proceedings." The hearing judge assigned substantial weight to Jimenez's lack of candor by finding he made misrepresentations during the trial in order to diminish his misconduct and portray himself as a victim. The judge not only found Jimenez's claim during trial, that he acted with Foley's permission, lacked credibility, but she also determined that his testimony lacked candor. (See *In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].)

On review, Jimenez argues no aggravation should be assigned to lack of candor because his testimony was "unrebutted" and consistent with statements made to the LAPD, BCIA, and

the superior court. Jimenez's argument lacks merit when the whole record is considered. As we discussed in making our credibility determination *ante*, there were instances of inconsistencies and contradictions between Jimenez's testimony and that of Detective Louie and other evidence in the record.

Like the hearing judge, we do not find that Jimenez testified credibly, and his self-serving claim that he acted with Foley's permission was not supported by any evidence other than Jimenez's own testimony. Jimenez's admission to Detective Louie in 2009 contradicts his subsequent false narrative. The evidence of Jimenez's guilty plea in 2012 also contradicts his claim at trial that he acted with Foley's permission. In Jimenez's Answer to the Notice of Hearing on Conviction in this matter, he stated that he only pleaded guilty for financial reasons and regrets not going to trial. However, if Jimenez truly acted under Foley's permission, he clearly could have used this claim as a defense to the Penal Code section 502, subdivision (c)(5), charge. (See Pen. Code, § 502, subd. (h)(1) [acts committed by person within scope of lawful employment are not punishable]; *Mahru v. Superior Court* (1987) 191 Cal.App.3d 545, 548-549 [statutory predecessor to Pen. Code, § 502, subd. (c) did not apply where defendant altered computer system "at the behest of his employer"]; see also *People v. Childs* (2013) 220 Cal. App. 4th 1079, 1105, fn. 33 [noting that Pen. Code, § 502 specifically provides that acts taken at employer's request are *not criminal*].) Again, Jimenez's explanations are unbelievable, uncorroborated, and implausible.

No other reasonable inference can be drawn from Jimenez's testimony other than a finding that he was dishonest when claiming that he acted with Foley's permission. We find that Jimenez deliberately presented false testimony in the State Bar Court and affirm the hearing

judge’s finding of substantial weight in aggravation to this circumstance.<sup>14</sup> (See *Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 [Supreme Court made clear deception to State Bar “may constitute an even more serious offense than the conduct being investigated”].)

#### **4. Indifference (Std. 1.5(k))**

The hearing judge found Jimenez’s lack of insight into his own misconduct warranted substantial weight in aggravation for indifference. (Std. 1.5(k) [aggravation for indifference toward rectification or atonement for consequences of misconduct].) On review, Jimenez challenges the judge’s indifference finding by arguing that he expressed remorse for his actions. Contrary to Jimenez’s claim, the record supports a finding that he lacks insight into the wrongfulness of his misconduct and has refused to accept full responsibility. Jimenez continues to perceive he is the victim and denies full responsibility for his criminal conduct by maintaining that he acted under Foley’s authority when he disrupted Allied’s system, even though he initially admitted to the police that he acted intentionally, and he pleaded guilty and was convicted of knowingly disrupting the computer network without permission.

Though the law does not require false penitence, it does mandate that an attorney accept responsibility for his or her misconduct and come to grips with his or her culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Jimenez’s unwillingness to come to grips with his conviction—demonstrated by his lack of candor to the courts, while maintaining that his guilty plea was due to financial reasons—remains a real concern. His failure to accept responsibility for his misconduct leads us to conclude that he does not truly understand the wrongfulness of misconduct and suggests a risk for future misconduct. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of

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<sup>14</sup> We emphasize that the aggravation assigned under this circumstance is based on Jimenez’s dishonesty during the disciplinary trial, rather than the misconduct and dishonesty surrounding his conviction that was used in our finding of moral turpitude, *ante*.

insight into misconduct causes concern attorney will repeat misdeeds and is substantial factor in discipline recommendation].) Accordingly, we assign substantial weight to this aggravating circumstance.

## **B. Mitigation**

### **1. Cooperation (Std. 1.6(e))**

Mitigation may be assigned under standard 1.6(e) for cooperation with the State Bar. The hearing judge afforded moderate mitigation for this circumstance, which neither Jimenez nor OCTC challenge. Before trial, Jimenez stipulated to facts that were easy to prove, along with the admission of documents. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [“more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts”].) Accordingly, we agree with the judge that Jimenez is entitled to moderate weight for his cooperation.

### **2. Extraordinary Good Character (Std. 1.6(f))**

Jimenez 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 the misconduct.” (Std. 1.6(f).) The hearing judge found that Jimenez established good character and assigned moderate mitigating weight. On review, Jimenez requests substantial mitigation for his good character. OCTC argues no mitigating weight should be assigned because Jimenez failed to meet his burden under standard 1.6(f) because his witnesses were not aware of the nature of his misconduct, and many adopted a narrative that identified him as a victim.

Ten character references—including attorneys, former clients, an employee, his wife, and friends—presented letters attesting to Jimenez’s character.<sup>15</sup> Also, four of the witnesses testified on his behalf. These references, representing a broad spectrum of the community, described him as trustworthy, supportive, genuine, and hardworking. The attorney witnesses affirmed Jimenez’s professionalism and integrity. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys’ testimony due to their “strong interest in maintaining the honest administration of justice”].) However, we note that most of the character references did not demonstrate full awareness of the extent of Jimenez’s misconduct as the standard requires. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].) For instance, one witness—Jimenez’s close friend— declared, “The facts just don’t add up as to how these police decided to raid his home,” and stated that he has no “doubt that [Jimenez’s] reasons for accepting a plea bargain were strictly for financial and personal reasons, not because he committed a crime.” Like the hearing judge, we find that the mitigating weight afforded to Jimenez’s good character evidence is somewhat diminished. We also assign moderate weight to this factor.

### **3. 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 moderate weight to this factor. On review, Jimenez argues that he should receive substantial mitigation for his commitment to pro

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<sup>15</sup> We disagree with the hearing judge’s conclusion to assign limited weight to the witnesses who have a financial or familial relationship with Jimenez as such a conclusion is not supported by case law solely on that basis. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 592 [testimony of acquaintances, neighbors, friends, associates, employers, and family members, who had broad knowledge of attorney’s good character, work habits, and professional skills, entitled to great weight].)



bono work and community service. OCTC contends that Jimenez is only entitled to nominal mitigation for pro bono work but did not specify the reasoning for this position.

In our independent review of the record, we find evidence of Jimenez's pro bono and volunteer work. Julio Jaramillo, an attorney and character witness, declared that Jimenez undertakes many pro bono cases for the Hispanic community. Jimenez confirmed Jaramillo's testimony, and it was corroborated by letters from two additional character witnesses. Jaramillo also declared Jimenez has volunteered at the Domestic Violence Project of the Los Angeles Superior Court and the Self-Help Center for bankruptcy court. A declaration from Jimenez's wife contains a summary of numerous community service activities, in which Jimenez has engaged over the years, including volunteering in various capacities at his children's schools (2003-2018), sponsoring an annual scholarship for University of Southern California students (2017-2022), working with the Marine Corps's "Toys for Tots" (1995-2005), dedicating time during the holiday season to serve food to the homeless, and providing pro bono assistance to friends and neighbors. The quantity and quality of these services are commendable and clearly support a finding of substantial weight. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

#### **4. Remoteness in Time of the Misconduct and Subsequent Rehabilitation (Std. 1.6(h))**

Jimenez seeks mitigation for the nine years he practiced law without misconduct since his February 16, 2012 conviction underlying this disciplinary matter. The standard requires a showing of subsequent rehabilitation in addition to remoteness in time. (Std. 1.6(h) [remoteness in time of misconduct and subsequent rehabilitation can be mitigating].) The hearing judge declined to afford any mitigation to this circumstance, concluding that Jimenez's lack of candor and remorse in this disciplinary proceeding undermines his claim of rehabilitation. We agree.

Jimenez argues his rehabilitation is proven by him completing the terms of his probation. We do not consider the completion of his probation in the criminal matter determinative for this mitigation circumstance. Instead, we look at his recent actions to conclude that Jimenez has not demonstrated rehabilitation. During these disciplinary proceedings Jimenez has shown indifference, a lack of truthfulness and candor, and an unwillingness to accept full responsibility for his criminal act. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 [“It is not enough that petitioner kept out of trouble while being watched on [criminal] probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation”].) Accordingly, Jimenez has not established clear and convincing evidence of rehabilitation.

## VI. DISCIPLINE

We begin our disciplinary analysis by acknowledging that our role is not to punish Jimenez for his criminal conduct, but to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [aim of attorney discipline is not punishment or retribution; it is imposed to protect the public, to promote confidence in legal system, and to maintain high professional standards]; std. 1.1.) We do so by following the standards whenever possible and balancing all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis, to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266, 267, fn. 11.)

Standard 2.15(b) applies to Jimenez’s misconduct. It provides that disbarment or actual suspension is appropriate for a misdemeanor conviction involving moral turpitude.<sup>16</sup>

Standard 1.8(a) is also relevant, which states that when an attorney has a single prior record of discipline, the sanction must be greater than the previously imposed sanction, subject to certain

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<sup>16</sup> Pursuant to standard 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, three years, or until certain conditions are met.

exceptions not applicable here. Jimenez submits, without discussing standard 1.8(a), that no more than a one-year stayed suspension should be imposed; however, we note his prior discipline included a 30-day actual suspension. Jimenez cites to *In re Brown, supra*, 12 Cal.4th 205, to support his argument, but we do not consider *In re Brown* in our analysis because that case did not involve moral turpitude. OCTC requests that the hearing judge's discipline recommendation of a six-month actual suspension be upheld.

In addition to the standards, we look to case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Although there is no case law involving similar facts with the same conviction as presented here, we find guidance from the two pre-standard California Supreme Court decisions relied upon by the hearing judge. In recommending six months' actual suspension, the hearing judge considered *Bluestein v. State Bar* (1974) 13 Cal.3d 162 and *Lindenbaum v. State Bar* (1945) 26 Cal.2d 565, two cases where an actual suspension of six months was ordered in each.

In *Bluestein*, the Supreme Court found that an attorney acted with moral turpitude by agreeing not to prosecute assault and battery charges against his client's husband—filed after Bluestein and the client's husband engaged in a fist fight—if the husband agreed to pay the client's \$1,000 attorney's fees in a divorce action. Bluestein was also found culpable of aiding and abetting an unlicensed person to practice law in California. In aggravation, he had a prior record of discipline that resulted in a public reproof for falsely misrepresenting to his client that services had been performed when they had not.

*Lindenbaum v. State Bar, supra*, 26 Cal.2d 565, involved an attorney who committed acts of moral turpitude and violated his attorney's oath by threatening to and actually reporting allegations of adultery concerning his client's wife to immigration officials in an effort to coerce payment from his client. In the two letters that Lindenbaum sent to immigration officials, he

made several accusations to initiate an investigation of the client's wife, when he had no reason to believe that his allegations were true. Lindenbaum established mitigation for 13 years of discipline-free practice and good character.

As the hearing judge found, we also find similarities between Jimenez's misconduct involving moral turpitude and the conduct of the attorneys in *Bluestein* and *Lindenbaum*. Bluestein attempted to leverage potential criminal prosecution for financial gain while Jimenez used his technical knowledge and fiduciary position to improperly disrupt Allied's business operations for financial reasons (i.e., obtaining payment for his billed services). Also, Bluestein and Jimenez both had prior records of discipline that called their honesty into question. Although Lindenbaum's misconduct was more serious than Jimenez's, considering his goal of affecting his client's wife's immigration status for financial gain, it was Lindenbaum's first disciplinary case in 13 years of practice, whereas Jimenez started engaging in misconduct just one year after he was admitted to practice law in California.

While Jimenez's conviction occurred in 2010, his lack of candor and dishonesty extended into at least 2021 during these disciplinary proceedings. Notably, the Supreme Court has said that lack of candor may be considered more serious than the misconduct itself. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282, citing *Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 (dis. opn. of Lucas, J.)) In a case more recent than *Bluestein* and *Lindenbaum* involving moral turpitude with aggravation based on an attorney's lack of candor, six months' actual discipline was imposed. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166.) In *Chesnut*, the attorney received six months' actual suspension when he was found culpable under Business and Professions Code sections 6068, subdivision (d), and 6106 for making misrepresentations to two judges. Like Jimenez, the attorney in *Chesnut* had equal weight between mitigation and aggravation, which included

aggravation for lack of candor because that attorney made “untruthful” and “knowingly false” statements during his disciplinary trial.

Applying standard 1.8(a), and also considering that Jimenez’s aggravation is equal to his mitigation, the discipline that we recommend in this case should be in the mid-range of standard 2.15(b) and exceed the 30-day actual discipline imposed in his prior matter. We therefore agree with the hearing judge’s recommendation of six months’ actual suspension. Our lack of candor finding, which includes misconduct occurring during these disciplinary proceedings, is also of great concern. Honesty is paramount to the legal profession and the Supreme Court has emphasized that “dishonest conduct is inimical to both the high ethical standards of honesty and integrity required of members of the legal profession and to promoting confidence in the trustworthiness of members of the profession. [Citations.]” (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 567.)

Although we diminished the weight of Jimenez’s prior discipline because that misconduct occurred after the misconduct prosecuted here, it involved nearly 70 instances of false pleadings filed in the bankruptcy court.<sup>17</sup> Thus, we have concerns that his prior discipline combined with his lack of insight and his failure to accept responsibility for his dishonesty in this matter show possibilities of recidivism in the future. Based on the totality of the facts of this case and comparing it to *Bluestein*, *Lindenbaum*, and *Chesnut*, we find that a six-month actual suspension is the minimum discipline necessary to protect the public, the courts, and the legal profession.

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<sup>17</sup> We also conclude that a recommendation of six months’ actual suspension would be appropriate if both his prior misconduct and his current misconduct were considered together. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 [proper to consider totality of findings in prior misconduct and current misconduct had all misconduct been brought as one case].)

## VII. RECOMMENDATIONS

We recommend that Eric Adrian Jimenez, State Bar Number 249468, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

- 1. Actual Suspension.** Jimenez must be suspended from the practice of law for the first six months of the period of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Jimenez 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 his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Jimenez's first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Jimenez must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 4. 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, Jimenez must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Jimenez 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.
- 5. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Jimenez must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his 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, he may meet with the probation case specialist in person or by telephone. During the probation period, Jimenez 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.
- 6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Jimenez's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

## 7. Quarterly and Final Reports

**a. Deadlines for Reports.** Jimenez 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, Jimenez 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.** Jimenez must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he 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.** Jimenez is directed to maintain proof of his 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 his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- 8. State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Jimenez 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 the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Jimenez will not receive MCLE credit for attending these sessions. If he 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, Jimenez will nonetheless receive credit for such evidence toward his duty to comply with this condition.
- 9. 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 Jimenez has complied with all conditions of probation, the period of stayed suspension will be satisfied, and that suspension will be terminated.

**10. Proof of Compliance with Rule 9.20 Obligation.** Jimenez is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he 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 Jimenez 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 him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

### **VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Eric Adrian Jimenez 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 Jimenez 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, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

### **IX. CALIFORNIA RULES OF COURT, RULE 9.20**

We further recommend that Jimenez be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court



order imposing discipline in this matter.<sup>18</sup> Failure to do so may result in disbarment or suspension.

## **X. 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 as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

## **XI. MONETARY SANCTIONS**

We further recommend that Eric Adrian Jimenez be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$3,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to \$2,500 for an actual suspension. However, the hearing judge made an upward deviation and ordered Jimenez to pay \$3,000 in monetary sanctions. After considering the facts and circumstances of the case, we determine that a \$3,000 sanction is appropriate because Jimenez's misconduct was aggravated by his lack of candor. 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

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<sup>18</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Jimenez is required to file a rule 9.20(c) affidavit even if he 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).)

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.

McGILL, J.

WE CONCUR:

STOVITZ, J.\*

WANG, J.\*\*

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\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.

\*\* Judge of the Hearing Department of the State Bar Court, designated to serve in this matter as a Review Department Judge Pro Tem, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.

**No. SBC-21-C-30086**

*In the Matter of*  
**ERIC ADRIAN JIMENEZ**

*Hearing Judge*  
**Hon. Yvette D. Roland**

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