PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed August 24, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	17-O-04071
	)	
ZULU ABDULLAH ALI,	)	OPINION
	)	
State Bar No. 252998	)	
	)	

A hearing judge found Zulu Abdullah Ali culpable of two counts of violating court orders issued by the Ninth Circuit Court of Appeals (Ninth Circuit). The judge found aggravation for Ali's prior record of discipline and significant harm to the administration of justice, and mitigation for cooperation, good character, and community service. Despite finding that his mitigating circumstances outweighed those in aggravation, the judge determined that they were not sufficient to depart from the applicable discipline standard, which recommends, at a minimum, an actual suspension. The judge therefore recommended a 30-day actual suspension. Ali appeals, arguing he is not culpable of misconduct and should receive no discipline. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the judge's recommendation.

Based on our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, but we do not find aggravation for significant harm to the administration of justice. We therefore conclude that his three mitigating circumstances sufficiently outweigh his one aggravating circumstance, warranting a downward departure from the applicable standard. We recommend that Ali receive a period of probation with no actual suspension, which will protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On December 26, 2018, OCTC filed a Notice of Disciplinary Charges (NDC) charging Ali with two counts of failure to obey a court order, in violation of Business and Professions Code section 6103.[1] OCTC filed a First Amended NDC (ANDC) on April 23, 2019.[2] On April 24, the parties filed a partial Stipulation as to Facts and Admission of Documents (Stipulation). A one-day trial was held on April 26, and the hearing judge issued her decision on July 25, 2019.

II. FACTUAL BACKGROUND[3]

A. The Sarat-Agustin Matter

On November 14, 2005, Silvestre Sarat-Agustin was ordered deported *in absentia* by an immigration judge in El Paso, Texas. On October 15, 2014, Sarat-Agustin filed a motion to reopen the removal proceedings while he was in the custody of Immigration and Customs Enforcement (ICE) in Los Angeles, California. The motion to reopen was denied on November 6 by an immigration judge in El Paso, Texas. Ali, on behalf of Sarat-Agustin, appealed that denial to the Board of Immigration Appeals (BIA) in Falls Church, Virginia. The BIA denied Sarat-Agustin's appeal on January 21, 2015.

On January 27, 2015, Ali filed an Emergency Petition for Review and Emergency Request for Stay of Deportation in the Ninth Circuit on behalf of Sarat-Agustin.[4]

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[1] Further references to sections are to this source unless otherwise noted. Section 6103 provides that an attorney's willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, constitutes a cause for disbarment or suspension.

[2] The ANDC included allegations that Ali knew that the court orders he violated were final and binding.

[3] We base the factual background on the Stipulation, trial testimony, documentary evidence, and factual and credibility findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A) [factual findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [credibility findings].)

[4] *Silvestre Sarat-Agustin v. Eric Holder, Jr.*, no. 15-70278.

Paragraph three of the emergency petition stated that, "Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2); IIRIRA[5] § 309(c)(4)(D) because the ICE completed proceedings in Los Angeles, CA, within the jurisdiction of this judicial circuit." On January 30, the Ninth Circuit issued an order on the emergency petition (January 30 order), which stated,

> Within 21 days after the date of this order, petitioner (Sarat-Agustin) shall move for voluntary dismissal of the petition for review or show cause why it should not be transferred to the United States Court of Appeals for the Fifth Circuit. If petitioner elects to show cause, respondent may respond within 10 days after service of petitioner's memorandum.
>
> Failure to comply with this order will result in the automatic dismissal of this petition for review by the Clerk for failure to prosecute and the expiration of the temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c).

Ali received the January 30 order and discussed it with his client. Ali did not respond to the order within 21 days or file a motion for clarification or reconsideration. On March 6, the Ninth Circuit issued an order (March 6 order) dismissing Sarat-Agustin's emergency petition due to Ali's failure to respond to the January 30 order. That same day, Ali filed a motion for reconsideration, indicating he "was mistaken in his interpretation" of the January 30 order, because he and his client agreed that a transfer to the Fifth Circuit should occur and believed that the Ninth Circuit would, on its own, transfer the matter as it had in a previous case[6] where Ali was the attorney of record.

By an order filed March 25, 2015, the Ninth Circuit granted Ali's motion to reconsider its March 6 order dismissing the emergency petition, vacated the order of dismissal, and transferred Sarat-Agustin's emergency petition to the Fifth Circuit, which was the proper venue pursuant to title 8 U.S.C. section 1252(b)(2). In the order, the Ninth Circuit stated that Ali had improperly filed the petition in the Ninth Circuit and directed him to refrain from filing in the wrong circuit:

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[5] IIRIRA is the Illegal Immigration Reform and Immigration Responsibility Act of 1996.

[6] *Boris Leonel Cortez-Lucero v. Eric Holder, Jr.*, no. 14-71055.

> This is not the first time petitioner's counsel has filed a petition for review in the wrong circuit and failed to respond to this court's orders. Counsel is directed to refrain from engaging in this conduct again. Petitioner's counsel must file petitions for review in the correct circuit and cite to the appropriate venue provisions in the petitions for review that he files. In addition, petitioner's counsel may face sanctions if this conduct continues.

Ali received this order but did not file a motion for clarification or reconsideration of the order.

B. The Amaya-Briones Matter

On August 26, 2004, Karen Amaya-Briones was ordered deported *in absentia* by an immigration judge in San Antonio, Texas. On February 20, 2014, while in ICE custody in Los Angeles, California, Amaya-Briones filed a motion to rescind the removal order and reopen the case. The motion was denied on July 31. On March 25, 2015, she filed a motion to reopen, which was denied on May 6 by a San Antonio immigration judge. Amaya-Briones appealed the denial to the BIA, which denied it on July 20, 2016. Ali received this order.

On August 19, 2016, Ali filed an Emergency Petition for Review and Emergency Request for Stay of Deportation in the Ninth Circuit on behalf of Amaya-Briones.[7] Like the petition filed in the *Sarat-Agustin* matter, paragraph three of the emergency petition provided, "Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2); IIRIRA § 309(c)(4)(D) because the ICE completed proceedings in Los Angeles, CA, within the jurisdiction of this judicial circuit."

On August 30, 2016, the Ninth Circuit issued an order regarding the emergency petition Ali filed for Amaya-Briones. Ali received the order, which stated,

> A review of the record suggests that this petition for review may have been improperly filed in this venue. Although the petition states that immigration proceedings were "completed . . . in Los Angeles, CA," the July 20, 2016 order of the Board of Immigration Appeals filed with this petition indicates that the Immigration Judge completed petitioner's removal proceedings in San Antonio, Texas. *See* 8 U.S.C. section 1252(b)(2); *Trejo-Mejia v. Holder*, 593 F.3d 913 (9th Cir. 2010) (order) *see also* 28 U.S.C. section 1631.

[7] *Karen Amaya-Briones v. Loretta E. Lynch*, no. 16-72768.

> Within 14 days after the date of this order, petitioner shall: (1) move for voluntary dismissal of this petition; (2) move for transfer of this petition to the United States Court of Appeals for the Fifth Circuit; or (3) show cause why it should not be transferred to the United States Court of Appeals for the Fifth Circuit.

On September 14, 2016, Ali filed a response to the August 30 order, stating that Amaya-Briones agreed that her case should be transferred to the United States Court of Appeals for the Fifth Circuit and that she did not want to voluntarily dismiss her emergency petition. On September 23, the Ninth Circuit issued an order transferring Amaya-Briones's case to the Fifth Circuit. The order provided, "Because the Immigration Judge completed petitioner's removal proceedings in San Antonio, Texas, this petition was improperly filed in this venue." The September 23 order further noted that Ali had improperly filed petitions for review multiple times in other matters, including the *Sarat-Agustin* matter. The Ninth Circuit ordered that Ali show cause (OSC) in writing why he should not be sanctioned for improperly filing a petition for review in the Ninth Circuit and misrepresenting the location where the immigration proceedings were completed.

On October 26, 2016, Ali filed a response to the OSC arguing that he reached the legal conclusion that Amaya-Briones's emergency petition could be filed in the Ninth Circuit based on a decision in another Ninth Circuit case, which was issued the same day the emergency petition was filed.[8] Additionally, he stated that he had not misrepresented where the proceedings had been completed because the petition stated that ICE, not the immigration judge, concluded proceedings in Los Angeles, California.

[8] The Ninth Circuit rendered an opinion in a case entitled *Ignacio Bibiano v. Loretta E. Lynch* (9th Cir., Aug. 19, 2016, No. 12-71745) (*Bibiano*). The slip opinion for the case was filed as an exhibit but can now be found at 834 F.3d 966. In this case, the court found that, while it had subject matter jurisdiction under 8 U.S.C. § 1252(b)(2), it was not the proper court for venue under the statute. Nonetheless, it concluded that the "unique circumstances" in the case, which notably included the government's concession that Bibiano's case should be remanded back to the BIA for further consideration, required the case to not be transferred to another circuit "in the interests of justice." (*Id.* at p. 974.)

On June 28, 2017, the Ninth Circuit issued an order sanctioning Ali $1,000, finding that he willfully ignored the court's previous warnings and improperly relied on an incorrect and unreasonable construction of *Bibiano.* The order found Ali's argument that he relied on *Bibiano* neither credible nor persuasive. The court found that since he filed the petition for review the same day the *Bibiano* decision issued, Ali could not have digested the implications of the decision in time to rely on it. Further, the court found that if he filed the petition in reliance on *Bibiano,* he would have mentioned it in his petition, which he did not. Finally, the court found Ali did not seem to understand the decision—that *Bibiano*'s analysis was tied to the specific facts of that case—and nothing in that analysis applied to Amaya-Briones's case. Ali paid the monetary sanctions by cashier's check the following day and timely reported the sanctions to the State Bar.

III. CULPABILITY

A. Count One—Failure to Obey Court Order (§ 6103) January 30, 2015 Ninth Circuit Order

OCTC alleged, and the hearing judge found, that Ali violated section 6103 when he failed to timely respond to the Ninth Circuit's January 30, 2015 order. We agree. An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) Ali received the January 30 order and discussed it with his client. However, he chose not to respond despite the fact that the order clearly directed that he either (1) move for voluntary dismissal, or (2) show cause why the matter should not be transferred to the Fifth Circuit. The order further provided that failure to comply with the order would result in automatic dismissal of the emergency petition, and expiration of the temporary stay of removal.

Ali insists that he should not be found culpable because he acted in good faith and that OCTC bears the burden of showing his failure to respond was done in bad faith. His good faith

argument rests on his testimony that the Ninth Circuit *sua sponte* transferred one of his previous cases filed in the wrong venue to the Fifth Circuit and so he believed this would happen again. We do not find this argument persuasive because the language of the order was clear: Ali "shall move for voluntary dismissal . . . or show cause why [the matter] should not be transferred to . . . the Fifth Circuit." It also clearly stated that failure to comply would result in automatic dismissal of the emergency petition. Ali's failure to take any action at all after such a direct order 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].) Further, bad faith is not an element that OCTC needs to prove for a violation of section 6103's requirement that an attorney must obey court orders.[9] (*Ibid*.)

Ali also argues that the order was vague and he successfully challenged it. However, the March 25, 2015 Ninth Circuit ruling on his motion to reconsider did not find that the order was vague. It also explicitly found that Ali repeatedly filed petitions in the wrong circuit and ordered him to cease doing so. We note that his motion to reconsider discussed only that he was mistaken in his interpretation of the order, with no mention of it being vague. We consider Ali's argument on this point as a collateral attack on the January 30 order in this disciplinary proceeding and reject it. (See *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 559 [court orders are final for disciplinary purposes once review is waived or exhausted].)

Finally, Ali's assertion that he did not violate the January 30 order because he discussed it with his client, who agreed that he should not respond, is without merit. Attorneys have

[9] Ali supports his premise that, under section 6103, OCTC must prove bad faith by citing *Call v. State Bar* (1955) 45 Cal. 2d 104, 109–111. While *Call* discusses section 6103, that case focuses on the statute's requirement that "any violation of the [attorney's] oath . . . or of his duties as [an] attorney" is grounds for discipline. This case is inapplicable here because Ali violated a different part of section 6103, the requirement that an attorney follow court orders.

distinct ethical obligations to the courts, and a client cannot authorize an attorney to violate these duties. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 ["Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system. As officers of the court, attorneys have duties to the judicial system which may override those owed to their clients"].)

B. Count Two—Failure to Obey Court Order (§ 6103)
March 25, 2015 Ninth Circuit Order

Count two alleged, and the hearing judge found, that Ali violated section 6103 when he filed Amaya-Briones's emergency petition in the wrong circuit court with an improper assertion of venue, in violation of the Ninth Circuit's March 25, 2015 order in the *Sarat-Agustin* matter. We agree that Ali violated the order when he failed to file the petition in the correct circuit as he was directed to do and asserted that venue in the Ninth Circuit was appropriate when it was not. Thus, we agree with the judge that Ali violated section 6103.

Similar to his argument under count one, Ali insists he is not culpable because he acted in good faith in reliance on *Bibiano*. However, Ali's good faith defense is neither credible nor persuasive. We agree with the Ninth Circuit's analysis: it is not plausible that Ali could have understood the implications of the case in time to make an informed decision to rely on it the same day. If indeed Ali had intended to rely on *Bibiano*, he would have included a citation to it. Further, as the Ninth Circuit concluded, even if he had been aware of *Bibiano*, Ali's reliance on it was not reasonable. The particular factors in *Bibiano* on which the Ninth Circuit relied in deciding to keep that case in the interests of justice, despite the improper venue, were not present in the *Amaya-Briones* matter. Because we again reject his good faith defense, we conclude that Ali willfully disregarded the March 25, 2015 order and thereby violated section 6103. (See *In the Matter of Lantz* (Review Dept. 2000), 4 Cal. State Bar Ct. Rptr. 126, 134 [disregard of judge's order violates § 6103].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5[10] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Ali has the same burden to prove mitigation. (Std. 1.6.)

A. Aggravation

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

Ali has one prior record of discipline. In a stipulation filed on December 22, 2014, he admitted culpability for misconduct in proceedings in the Ninth Circuit and received a public reproval. Specifically, Ali violated rules 46(b)(1)(B) and 46(c) of the Federal Rules of Appellate Procedure, and Ninth Circuit rule 46-2, by routinely filing petitions for review in cases without a reviewable BIA order and citing incorrect regulations not relevant to his client's petitions. Ali's misconduct was aggravated by multiple acts, and he received mitigation for remorse, good character, and cooperation by entering into a prefiling stipulation.

The hearing judge found that Ali's prior record of misconduct was an aggravating factor but did not assign weight. We assign moderate weight, despite OCTC's request for significant weight in its responsive brief. While we note some similarity in his prior and current misconduct, in that he has filed petitions improperly, his previous discipline did not include violation of court orders as charged and found here. (Cf. *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].)

2. Significant Harm to the Administration of Justice (Std. 1.5(j))

The hearing judge assigned substantial weight in aggravation for significant harm to the administration of justice because she found that Ali's misconduct resulted in an abuse of court process and a waste of judicial resources. Ali argues that no evidence was produced that his

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

conduct harmed the administration of justice, and that the Ninth Circuit opinions did not so find. OCTC argues that his misconduct did substantially harm the administration of justice due to the burden placed on the Ninth Circuit to issue orders addressing Ali's errors. We find that Ali's misconduct did create additional work for the Ninth Circuit, but it did not significantly harm the administration of justice because it was not considerable. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79–80 [harm to administration of justice where attorney "wasted considerable time" due to attorney's failure to conduct affairs properly and as directed].) OCTC cites *In the Matter of Maloney and Virsik*, *supra*, 4 Cal. State Bar Ct. Rptr. 774 to support a finding in aggravation for significant harm. But in that case, the court found evidence that the opposing party "was required to perform substantial additional work" because of multiple filings and misrepresentations made by the attorneys, which we do not find here. (*Id.* at p. 792.) Accordingly, we do not find aggravation for significant harm.

B. Mitigation

1. Candor/Cooperation (Std. 1.6(e))

The hearing judge assigned substantial weight in mitigation for Ali's cooperation in stipulating to facts and admission of documents because the Stipulation was extensive and conserved OCTC's resources by establishing Ali's culpability. OCTC does not dispute the judge's finding in mitigation. We agree that Ali should receive significant mitigation for cooperation. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into stipulation as to facts and culpability].)

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

The hearing judge assigned substantial mitigation for Ali's evidence of good character. OCTC does not dispute the finding and we agree. Ali presented impressive evidence of good character from nine individuals, including an appellate court justice, two attorneys, two non-profit

executive directors, and four former clients. These character witnesses have all known Ali for a lengthy period of time, between 10 and 20 years, and each maintained that he had the highest moral character. The appellate justice stated that he was a thoughtful, respectful, vigorous, and honest advocate. The non-profit directors and attorneys declared that Ali is honest, has integrity, and has outstanding personal character. We give great weight to the character witness testimony of attorneys and judges because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) One non-profit director described his own rough upbringing, gang membership, and 24 years in prison, and emphasized how much Ali had done to mentor him. Ali's former clients also spoke highly of him and characterized him as a competent, hardworking, and compassionate attorney. This testimony entitles Ali to substantial weight in mitigation for good character. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses, two attorneys, and fire chief, who had long-standing familiarity with attorney and broad knowledge of good character, work habits, and professional skills].)

3. Community Service

Pro bono and community service are mitigating factors. (*Calvert v. State* Bar (1991) 54 Cal.3d 765, 785.) We agree with the hearing judge that Ali is entitled to substantial mitigation for his community service, which OCTC did not dispute. Ali presented evidence that he participated in numerous community service activities, including serving as director of the Veterans Legal Clinic, which provides free legal services to veterans; serving on the board of directors of Motivateum, an organization that mentors at-risk youth; and establishing an organization called Stop and Frisk, which counsels young people regarding police officer encounters and related issues. Ali's many professional and inspiring achievements have been

acknowledged by bar associations and legal journals, including the American Academy of Trial Attorneys and the American Institute of Legal Counsel. (Cf. *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

V. PROBATION WITH NO ACTUAL SUSPENSION IS APPROPRIATE PROGRESSIVE 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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

For both counts, the hearing judge properly relied on standard 2.12(a), which calls for disbarment or actual suspension for violation of a court order related to the practice of law. This standard echoes the language of section 6103, which also provides for disbarment or suspension for willfully violating a court order. We also consider standard 1.8(a), which states when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions not applicable here. In Ali's prior discipline matter, he received a public reproval.

Beyond the standards, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal Cal.3d 1302, 1310–1311.) The hearing judge cited two cases for her recommendation of a 30-day actual suspension: *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. Both cases involved attorneys found culpable of violating section 6103 for failing to follow a court order. Each received a private reproval, the lowest degree of discipline and far lower than the discipline called for in standard 2.12(a) or

section 6103. The reasoning for a private reproval in each of those cases rested on the particular circumstances of each case.[11]

"The well-settled rule is that the degree of professional discipline is not derived from a fixed formula but from a balanced consideration of all factors. [Citation.] Although a [willful] violation of section 6103 is stated by statute to be a ground of disbarment or suspension [citing also standard 2.12(a)], discipline within that range is not mandated." (*In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. at p. 605.) In coming to her discipline recommendation, the hearing judge noted that Ali's mitigating circumstances outweighed the aggravating circumstances, but were not significant enough to depart from the presumed sanction as outlined in standard 2.12(a). OCTC argues that we should accept her reasoning.[12]

In our view, we find clear reasons here to depart from standard 2.12(a) and to recommend discipline less than actual suspension. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons to deviate from standards].) To begin, we find less aggravation than the hearing judge found because we did not find significant harm. We also take note that Ali's immigration practice is a stressful one, as the Ninth Circuit has described his clients as facing imminent removal from the United States, and Ali's character witnesses, including a justice,

[11] *In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 605, that attorney was found culpable under section 6103 for violating the confidentiality provision of a court order enforcing a settlement agreement and the attorney was subsequently convicted of criminal and civil contempt. The attorney had no aggravating circumstances, and mitigation was given for his 18-year practice without prior discipline, the "great pressure" from his client and cocounsel who had disagreed with his approach to settlement, and his "sincere beliefs" that his misconduct was in furtherance of public policy. In *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 865, 869, that attorney was found culpable under section 6103 for violating a court order to pay $1,000 sanctions and under section 6068, subdivision (o)(3), for failing to report it to the State Bar. The attorney had no aggravating circumstances and mitigation was given for no prior discipline and the "narrow violations" that were found.

[12] OCTC also argues that we should consider *In the Matter of Collins*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 557 in supporting the hearing judge's disciplinary recommendation. Given that the attorney there violated five separate monetary sanction orders, and that he failed to pay any of them, we decline to find that this case recommending 30 days' actual suspension provides guidance here.

attorneys, and clients acknowledged that he is honest and hardworking. In our review of the record, we see a zealous advocate with no dishonest motive on his part, but also a person who does not carefully consider his actions involving the federal court. Regarding the particulars of Ali's case, we further note that when sanctioned, he promptly reported it to the State Bar and paid it (which the attorney in *In the Matter of Respondent Y* did not do) and that his three mitigating circumstances clearly outweigh the aggravating one. In fact, our reading of *In the Matter of Respondent X* and *In the Matter of Respondent Y*, where each attorney received a private reproval, does not preclude us from a downward departure from standard 2.12(a) to probation with no actual suspension.[13] Such a recommendation is still progressive discipline under standard 1.8(a) and, under Ali's circumstances as described, we see no benefit to the courts, the legal profession, or the public by recommending a greater discipline.

VI. RECOMMENDATION

We hereby recommend that Zulu Abdullah Ali, State Bar No. 252998, be suspended from the practice of law in California 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. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Ali 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 Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.

[13] We note that the language of section 6103 does not require an actual suspension. Additionally, standard 1.7(c) provides, "If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future."

2. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Ali must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

3. **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, Ali 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. Ali 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.

4. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Ali 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, Ali must promptly meet with representatives of the Office of Probation as requested and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries and provide any other information requested by it.

5. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During his probation period, the State Bar Court retains jurisdiction over Ali 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 State Bar record address, as provided above. Subject to the assertion of applicable privileges, Ali must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

6. **Quarterly and Final Reports**

   a. Deadlines for Reports. Ali 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, Ali 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. Ali 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. Ali 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.

7. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Ali 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 he will not receive MCLE credit for attending this session. 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, Ali will nonetheless receive credit for such evidence toward his duty to comply with this condition.

8. **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 Ali has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Ali 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 he 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.

VIII. 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. 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.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.