PUBLIC MATTER—NOT FOR PUBLICATION

Filed June 5, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	17-O-05586 (17-O-05959; 17-O-06579;
	)	17-O-07139; 17-O-07410; 18-O-10167;
GIL LEE ARBEL,	)	18-O-10397; 18-O-10700)
	)	
State Bar No. 300303.	)	OPINION
	)	

In his first disciplinary trial, Gil Lee Arbel was charged with nine counts of misconduct related to the improper handling of his client trust account (CTA). These included one count of commingling, six counts of moral turpitude for issuing checks that were returned for non-sufficient funds (NSF), and two counts of moral turpitude for making misrepresentations to the State Bar. The hearing judge found Arbel culpable on eight counts[1] and recommended discipline including an actual suspension of six months.

Arbel appeals, and, while admitting he made mistakes, maintains that he is not culpable as charged. He argues that a six-month actual suspension is "grossly disproportionate." He also asserts that the hearing judge failed to adhere to procedural rules, abused her discretion by denying admission of most of his evidence, failed to take judicial notice of documents, and improperly shifted the burden of proof to him. OCTC does not appeal the judge's findings, and requests that we uphold her discipline recommendation.

Upon our independent review of the record pursuant to California Rules of Court, rule 9.12, we find that Arbel is culpable of violating former rule 4-100(A) of the Rules of

[1] In its closing brief at the end of the disciplinary trial, the Office of Chief Trial Counsel of the State Bar (OCTC) moved to dismiss count nine, which the hearing judge granted.

Professional Conduct[2] (count one—commingling) and Business and Professions Code section 6106[3] (counts two, five, six, and eight—issuance of NSF checks). We dismiss counts three and four (misrepresentation) for lack of evidence and also find merit to Arbel's judicial notice procedural challenge. Because his culpability does not include misrepresentations, his mitigation outweighs his aggravation, and comparable case law guides us to a lesser discipline, we recommend discipline that includes 90 days of actual suspension.

I. RELEVANT PROCEDURAL BACKGROUND

On October 26, 2018, OCTC filed a Notice of Disciplinary Charges (NDC) alleging 11 counts of misconduct against Arbel. On February 13, 2019, OCTC filed a First Amended NDC (ANDC) alleging nine counts of misconduct.[4] The parties filed a pretrial Stipulation as to Facts and Admission of Documents (Stipulation) on February 25, and trial took place on February 26 and 27.

On April 9, 2019, Arbel filed a motion to augment the record and a request for judicial notice, which were denied. On May 28, the hearing judge issued her decision. Arbel filed a motion for reconsideration and a new trial on June 17, which the hearing judge also denied. On August 12, Arbel filed his request for review.

II. RELEVANT FACTUAL BACKGROUND[5]

Arbel was admitted to practice law in California on December 1, 2014. Sometime in 2016, Arbel responded to an advertisement for an associate attorney position with a law office

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

[3] All further references to sections are to the Business and Professions Code unless otherwise noted.

[4] With the exception of dropping two counts, the ANDC is essentially the same as the NDC.

[5] The facts included in this opinion are based on the 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).)

named Everything Legal LLC (Everything Legal). The advertisement was placed by Pedram Sharohki, aka Peter Shah, who was not an attorney. By October 2016, Arbel began supervising a small number of personal injury cases for Everything Legal. At that time, he believed that Shah was an office manager and that Everything Legal was owned and supervised by qualified attorneys, based on Shah's representations to him.

During the summer of 2017, Arbel learned that Shah was being investigated by the State Bar for the unauthorized practice of law. On August 1, 2017, he voluntarily attended a meeting between OCTC and Shah regarding the investigation. After the meeting, Arbel incorporated a new law firm under the name So Cal Legal Alliance, Inc. (SCLA) and assumed control over some of Everything Legal's active cases.

On September 1, 2017, Arbel opened a CTA for SCLA, along with a business checking account, with JP Morgan Chase Bank (Chase Bank) . Between September 15 and December 29, Arbel issued a number of checks that were written and paid from his CTA or were returned due to insufficient funds. On November 21 and 27, Arbel provided written responses to State Bar questions in its investigation of the NSF checks.

III. CULPABILITY

A. Count One: Former Rule 4-100(A) (Commingling—Payment of Personal and Business Expenses from CTA)[6]

In count one of the ANDC, OCTC alleged that Arbel issued 21 checks for personal and business expenses from his CTA, in violation of former rule 4-100(A).[7] The hearing judge determined that Arbel willfully violated the rule by issuing checks from the CTA for payment of

[6] Under former rule 4-100(A), "All funds received or held for the benefit of clients . . . shall be deposited [into the CTA] . . . . No funds belonging to the member or the law firm shall be deposited [into the CTA] or otherwise commingled therewith . . . ."

[7] On the second day of trial, without objection, the hearing judge granted OCTC's oral motion to amend count one of the ANDC, changing the phrase "for the payment of personal expenses[,]" to read "for business expenses, personal expenses of clients, and for holding personal funds of Peter Shah and the clients of Everything Legal in his [CTA]."

personal and business expenses, as well as depositing and holding funds provided by Shah in the CTA.[8] Upon our independent review of the record, we find that 19 checks alleged as paid from the CTA were written in violation of the rule.[9]

At trial, Arbel admitted to issuing three of the 19 checks from his CTA to Time Warner, K-Bell Signs, and Spectrum Business for the payment of business expenses. While testifying, he did not dispute that his actions regarding these three checks were intentional and that it was a mistake to issue such payments from his CTA. We find that Arbel is culpable as charged because the level of willfulness required for acts of professional misconduct is established by showing that the attorney "knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." (*King v. State Bar* (1990) 52 Cal.3d 307, 313.)

As for the other 16 checks, Arbel argues that they were properly issued from the CTA because they were either paid with funds provided by Everything Legal or issued on behalf of Everything Legal's clients. He claims that no personal funds were in the CTA and maintains that the at-issue funds were properly placed in the CTA. We find that his arguments are not supported under case law.

Former rule 4-100 "is violated where the attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured." (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [referring to previous version of rule].) Upon examining

[8] We do not consider the depositing of funds in our analysis of misconduct because it was not alleged in the ANDC. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171 [purpose of NDC is to give attorney notice of specific misconduct that OCTC intends to prove at trial].)

[9] In this count, we do not consider check number 1075, listed twice by OCTC, as a payment for personal expenses as that check was returned twice for insufficient funds. We consider any misconduct for that check pursuant to OCTC's pleading of it under one of the NSF charges, count eight.

the record, we find that 11 checks were unmistakably issued for business expenses,[10] which is a clear violation of the rule. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 625 [payment of business non-trust expenses from CTA is misuse of trust account and is clear violation of [former rule 4-100(A)]].) As for the remaining five checks,[11] while we do not find him culpable for the payments that they represent, we do find him culpable for holding the funds that underlie the checks, as pleaded in the ANDC, since these funds never belonged to SCLA clients but were, instead, funds of Everything Legal clients. (See *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 424–425 [attorney receiving funds on behalf of third party who is not client must consider such funds to be impressed with trust; nevertheless, no authority exists to allow CTA to be used to "funnel" non-client funds through it].)

B. Counts Two, Five, Six, Seven, and Eight: Section 6106 (Moral Turpitude—Issuance of NSF Checks) [12]

The parties stipulated that between September and December 2017, seven checks were drawn from Arbel's CTA account and returned due to insufficient funds. Those seven checks form the basis of OCTC's allegations in counts two, five, six, seven, and eight of the ANDC that

[10] As established by Arbel's testimony, these 11 checks were paid from funds deposited into the CTA from Everything Legal: two checks paid to Wells Fargo for a car leased by Everything Legal; an electronic check noted on Arbel's bank statement as "Insurance Pymt;" three checks to the Casey Family Trust for office rent; advances to three clients, Andrew Rocha, Abdo Yaghi, and Abraham Meza on their respective personal injury cases; a referral fee paid to Chris Alexan; and a Department of Motor Vehicles fee for Peter Shah.

[11] These five checks were paid on behalf of Steve Bayat, Jim Moriarty, Parvin Akbari, and two unidentified clients of Everything Legal (payments made to Metro Express and Tornado's).

[12] Section 6106 provides, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, . . . constitutes a cause for disbarment or suspension."

Arbel's issuance of the NSF checks constituted moral turpitude.[13] The hearing judge found that Arbel was, at a minimum, grossly negligent in not knowing the funds in his CTA were insufficient and determined that he was culpable as charged. The judge assigned the same weight in culpability as if the allegations were charged as a single count.

On review, Arbel asserts that the checks were drawn from the CTA by mistake. He claims that several inadvertent accounting errors occurred with SCLA's CTA during the process of winding down Everything Legal. He further claims that the NSF checks were confined to this three-month period because of the extenuating circumstances during that time, which included Shah unknowingly diverting deposits into another account controlled by him. Arbel also argues that he immediately rectified each check upon learning that it was not honored. We find that his excuses for the insufficient funds in his account have no merit regarding his culpability and his actions reflect recklessness amounting to gross negligence. An attorney's grossly negligent handling of a trust account that results in the issuance of NSF checks establishes culpability for moral turpitude. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169 [gross negligence in handling entrusted funds, which results in issuance of NSF checks due to insufficient funds, supports moral turpitude conclusion].) Therefore, Arbel is culpable as charged under counts two, five, six, and eight, and, like the hearing judge, we assign the same weight in culpability as if these allegations were charged in a single count.

[13] As established by the Stipulation, seven checks issued from the SCLA CTA were returned as NSF: two checks to Christian Kim (Arbel's testimony established the two checks were for appearance fees); one check to the Casey Family Trust for office rent; one check to pay the Van Nuys Courthouse for Edip Zeytunlu; one check to reimburse Teresa Lugo Sanchez; one check to pay the City of Beverly Hills for Mahnaz Rahmnapour; and one check to pay the Secretary of State for Ali Jafari Haji Moshen Dammahani, LLC. Regarding the check issued to the City of Beverly Hills, it was presented twice for payment, and was alleged in both counts seven and eight as a violation of section 6106. Since Arbel only issued this check once, we dismiss count seven with prejudice as duplicative of the allegation made in count eight.

C. Count Three: Section 6106 (Moral Turpitude—Misrepresentation)

Count three of the ANDC alleged that on November 21, 2017, Arbel made a misrepresentation in a letter to an OCTC investigator that was false and misleading, constituting a violation of section 6106. Specifically, OCTC alleged that, by Arbel's stating that "'Everything Legal' has been officially dissolved" and was no longer operating,[14] he made a misrepresentation because Everything Legal still had a bank account with at least $5,000 in it at the time. The hearing judge found that Arbel was grossly negligent in making the statement and was therefore culpable of violating section 6106.

Section 6106 applies to misrepresentations and concealment of material facts. (*In the Matter of Crane and Depew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154–155.) "No distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315; *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.) OCTC contends that the judge's moral turpitude finding is supported by the facts and it argues that Arbel's statement reasonably implied that Everything Legal had ceased doing business entirely. OCTC asserts that Arbel had a duty to disclose the fact that Everything Legal had an open bank account at the time and his failure to do so was a misrepresentation.

We reject OCTC's argument and find that Arbel did not make a misrepresentation. His November 21, 2017 written response to State Bar questions in its investigation of the NSF checks was 24 pages long. It consisted of a written declaration providing a chronological history of events since the beginning of Arbel's admission to practice law in California, along with his answers to multiple questions from the State Bar. In particular, the State Bar asked: "What steps have you taken to ensure that Mr. Shah is not engaging in the unauthorized practice of law since

[14] We note that the record does not establish any evidence to support OCTC's allegation that Arbel stated Everything Legal "was no longer operating" but only that he stated "'Everything Legal' has been officially dissolved[.]"

becoming manager/supervising attorney?" Arbel replied: "For a partial description of the proactive steps I have personally taken since becoming manager/supervising attorney, please refer to my initial declaration above." On the sixth page, he stated, "[W]e have completed all the tasks requested on the State Bar: [. . .] 'Everything Legal' has been officially dissolved[.]"

Arbel's statement that Everything Legal was "officially dissolved" was contained in his lengthy response to OCTC's letter concerning its investigation of Shah. He described several actions he had taken to address the State Bar's concerns about Shah's unauthorized practice of law. Contrary to OCTC's contention, Arbel's response was complete and adequately answered the question posed; we do not see how describing Everything Legal as "officially dissolved" implies that it had ceased doing business entirely. Further, Arbel's position that his statement comports with Corporations Code section 2010[15] carries some weight—particularly since filing dissolution documents with the Secretary of State was one of several tasks he did in his effort to take over Everything Legal's active cases.[16] In our view, an entity having only a bank account with funds in it, as the NDC alleges, does not mean that the entity is operating, and OCTC offers no authority to the contrary.[17] In light of these facts, we find that OCTC did not prove by clear and convincing

[15] Corporations Code section 2010 provides "[a] corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets . . . [a]ny assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly." (Corp. Code, § 2010, subds. (a), (c).)

[16] The hearing judge denied judicial notice of the Secretary of State's Certificate of Dissolution for Everything Legal, LLC (Certificate); however, we take judicial notice of the Certificate, as discussed *infra*.

[17] OCTC also argues that the hearing judge was correct in concluding that Arbel's answer was a misrepresentation to the State Bar by also relying on the fact that, as late as December 2017, funds had been drawn from Arbel's CTA on behalf of at least one Everything Legal client. First, this was never alleged in count three of the ANDC as an act that supported a finding of moral turpitude. Second, we fail to see the relevance of activities that occurred in Arbel's CTA to a question regarding Everything Legal's operations.

evidence[18] that Arbel violated section 6106, and we dismiss this count with prejudice. (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 839 [dismissal of charges for want of proof after trial on merits is with prejudice].)

D. Count Four: Section 6106 (Moral Turpitude—Misrepresentation)

In count four, OCTC charged Arbel with misrepresenting to a State Bar investigator that no checks or debits remained outstanding against his CTA account as of November 27, 2017, in violation of section 6106. In his November 27 response, Arbel copied a question posed by the State Bar: "Are there any checks or other debits [from your CTA] still outstanding/ pending?" His response was, "No, [the CTA] belonging to [SCLA] . . . currently does not have any checks or other debits still outstanding or pending."

The hearing judge found, at a minimum, that Arbel's statement was grossly negligent. She determined he made no effort to consult his CTA records, and that multiple outstanding CTA checks existed on November 27, 2017, including two NSF checks dated November 17 and returned on November 27, and two other checks (check nos. 1072 and 1079) written before November 27 that cleared a few days later. Arbel asserts that the record does not support gross negligence. We agree with Arbel and find that OCTC failed to establish culpability by clear and convincing evidence.

The hearing judge's findings about the specifics of the NSF checks are not supported by the record. Chase Bank issued a NSF notice to Arbel dated November 17, 2017, pertaining to check nos. 1068 and 1056. Since both checks were deemed NSF several days prior to Arbel's statement to investigators, the payments were no longer outstanding and he had no duty to disclose them.

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

Chase Bank then issued a NSF notice on November 27, 2017, for check no. 1059. Arbel testified that he does not recall if he had this notice before or after he sent his response on November 27, and OCTC did not provide any evidence that his statement was not credible. Therefore, it is just as plausible that he knew check no. 1059 was not outstanding when he responded on November 27, as it would be that he did not know it was returned as NSF and thus was outstanding. In State Bar disciplinary matters, all reasonable doubts will be resolved in favor of the attorney and, where equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793–794; *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240.) Thus, we conclude that OCTC did not prove that Arbel knew that these NSF checks were outstanding at the time he made his statement on November 27.

We also determine that check nos. 1072 and 1079, which remained outstanding until they cleared Arbel's CTA after November 27, 2017, do not support a finding of moral turpitude. During oral argument, Arbel asserted that the record showed, and we agree, that his failure to disclose the outstanding checks was the result of an inadvertent error during a hectic time and that the checks were later disclosed to State Bar investigators. Further, at the time Arbel made the November 27 statement, he was heavily involved with answering numerous inquiries from the State Bar about Shah's bad acts. He had voluntarily communicated with State Bar investigators on over 30 occasions and was actively working to take over many of Everything Legal's active cases. Based on the evidence, we find he made, at most, a negligent error regarding the status of his CTA on November 27, which, in itself, does not amount to moral turpitude. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 353 [mere negligence in making representation does not constitute violation of § 6106].)

Accordingly, we do not find Arbel culpable of violating section 6106 and dismiss this count with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 839.)

IV. ALL BUT ONE OF ARBEL'S PROCEDURAL ARGUMENTS FAIL

Arbel raises several procedural and evidentiary errors to the hearing judge's culpability findings. Having considered each of his arguments,[19] we find merit only to the challenge regarding the hearing judge's denial of Arbel's request for judicial notice of the Certificate.

Arbel argues that the hearing judge improperly denied his request to take judicial notice of the Certificate, in violation of rule 5.101.1(F) of the Rules of Procedure of the State Bar, which provides that requests for judicial notice are governed by California Evidence Code sections 450 et seq. A court may take judicial notice of "official acts of the legislative, executive, and judicial departments" of the federal or any state government. (Evid. Code, § 452, subd. (c).) The standard of review we generally apply to procedural rulings is abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695; *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"].) In this case, Arbel attempted to proffer a copy of the Certificate to prove he was not culpable under count three for misrepresenting that Everything Legal is "officially dissolved." When reviewing the record, we can discern no reason for the judge to deny Arbel's request to judicially notice an official document that is directly relevant to the misrepresentation allegation under count three. We therefore hold that the hearing judge abused her discretion and we take judicial notice of the Certificate.

Next, Arbel asserts that the hearing judge's exclusion, without any justification, of relevant evidence and witness testimony that he proffered was a clear abuse of discretion. A

[19] Having independently reviewed all arguments Arbel raised, those not specifically addressed herein have been considered and are rejected as lacking merit.

hearing judge "has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time." (Rules Proc. of State Bar, rule 5.104(F); *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499 [hearing judge has broad discretion to admit or exclude evidence].) While Arbel argues the judge improperly sustained OCTC's relevancy objections, he fails to specifically show how the excluded evidence was probative in light of the evidence presented at the disciplinary trial or any actual prejudice he suffered. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469 [attorney must show specific prejudicial effect]; *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 98–99 [trial judge did not prejudicially err in exercising discretion to excuse witness where attorney failed to either request witness be recalled or make offer of proof as to testimony expected to elicit from witness].) Accordingly, we find that the judge did not abuse her discretion by excluding certain evidence.

Third, Arbel claims for the first time on review that OCTC violated rule 5.101.2 of the Rules of Procedure of the State Bar by not timely notifying him of its objections to evidence until the start of trial. Since he did not raise this argument at trial, he has waived it. (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422–423 [points not raised in trial court not considered on appeal].) In addition, rule 5.101.2 provides that "promptly after the receipt of exhibits from the opposing party and prior to commencement of the trial, any party objecting . . . shall advise the opposing party of all such objections." We do not find in this case that there is a violation of this rule where the record fails to establish that Arbel suffered any cognizable harm by OCTC stating its objections at the start of trial.

Fourth, Arbel claims a violation of rule 5.44(B) of the Rules of Procedure of the State Bar. Under rule 5.44(B), the court may permit further amendments to the initial pleading before trial begins and the amending "party must serve the amended pleading on the opposing party,

who must have a reasonable time to file a response and prepare a defense." Arbel asserts that his trial preparation was significantly impaired when OCTC dropped two counts—relating to Shah—less than two weeks before trial and after the parties had filed pretrial statements. We find his argument unavailing because Arbel has not shown actual prejudice resulting from OCTC's amended pleading that dropped two charges against him before trial.

Fifth, we reject Arbel's contention that the hearing judge improperly denied his admission of two victim impact statements, in violation of rule 5.107 of the Rules of Procedure of the State Bar. Rule 5.107 provides that any person harmed by an attorney's misconduct "may submit a written statement setting forth the nature and extent of that harm[;]" however, Arbel was attempting to proffer victim impact statements to mitigate his misconduct, which is not permissible under the language of the rule. To the extent that Arbel wanted to establish a lack of harm, he could have offered the statements as evidence in mitigation.

Sixth, we reject Arbel's claims that the hearing judge's denial of his motion to reconsider and motion for a new trial was improper and violated rules 5.114 and 5.115 of the Rules of Procedure of the State Bar. He states that the order denying the motions did not refute the legal arguments or authenticity of the newly discovered evidence. We find no error of law or abuse of discretion in the judge's ruling, and also find insufficient grounds to justify a new trial or evidence warranting reconsideration by the judge. The judge provided Arbel with a fair hearing, as required. (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) We reject his allegations as conclusory and devoid of factual basis.

Finally, we reject Arbel's claim that the hearing judge shifted the burden of proof from OCTC to him during trial in violation of rule 5.103 of the Rules of Procedure of the State Bar. He argues that the judge explicitly shifted this burden from OCTC when she stated, "I do think the burden is on both of the parties." Arbel takes this particular statement out of context. Directly

after making the statement, the judge also said, "I don't think [OCTC's] line of questioning is necessarily helping me understand how this goes to the counts in culpability . . . ." Combined with an earlier comment to Arbel that she was "completely lost" regarding his answers, we conclude that the judge's statement regarding "the burden" was simply a reminder to both parties that it is their joint obligation to be clear and relevant in their questions and answers as they relate to the counts in the ANDC. The judge did not shift the burden from OCTC and thus we find neither abuse of discretion nor prejudice. Accordingly, we reject Arbel's claim.

V. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[20] Arbel has the same burden to prove mitigation under standard 1.6.

A. Aggravation for Multiple Acts (Std. 1.5(b))

The hearing judge correctly found that Arbel's multiple acts of misconduct constituted an aggravating factor, but did not assign any weight. We assign moderate weight because, while Arbel was found culpable of 26 acts of misconduct, they occurred over a limited period of three months. (Cf. *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [attorney found culpable of only one count of moral turpitude with 65 improper CTA withdrawals over three years warranted significant aggravating weight].)

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

Standard 1.6(a) provides that "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur" is a mitigating circumstance. The hearing judge did not assign any mitigation for Arbel's less than three years

[20] All further references to standards are to this source.

of discipline-free practice prior to the misconduct beginning in 2017. We agree. (*In the Matter of Hertz, supra*, 1 Cal. State Bar Ct. Rptr. at p. 473 [no mitigation where attorney had practiced only four years prior to misconduct].)

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

We agree with the hearing judge that Arbel is entitled to moderate mitigation credit for his cooperation with the State Bar. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar is mitigating].) He entered into an extensive factual stipulation, along with admission of documents, which preserved court time and resources. Although the Stipulation was comprehensive, Arbel did not admit culpability, and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

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

Standard 1.6(f) provides that "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" is a mitigating circumstance. The hearing judge afforded nominal mitigation credit for three character witnesses: Arbel's wife, a chiropractor, and a special agent with the National Insurance Crime Bureau. We agree. While the three witnesses testified to having a positive opinion of him, their testimony was not fully informed, was of a limited nature and quality, and the witnesses did not constitute a wide range of references from the legal and general communities. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation]; *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476–477 [character evidence entitled to limited weight where it was not from wide range of references].)

C. Arbel's Request for Additional Mitigation

1. Remorse and Recognition of Wrongdoing (Std. 1.6(g))

Arbel requests mitigation for remorse shown in acknowledging his misconduct. Standard 1.6(g) provides mitigation credit where an attorney takes "prompt objective steps, demonstrating spontaneous remorse and recognition of wrongdoing and timely atonement." During his testimony, Arbel exhibited sincere regret by acknowledging his wrongful conduct, admitting he made mistakes, and accepting responsibility for his actions, which he did several times during his trial and in his briefs on review. Not only did Arbel express remorse, he worked quickly to rectify his errors by issuing prompt repayment each time be became aware of a NSF check. We conclude that the record supports substantial mitigation for this circumstance because his actions of remorse were promptly taken, prior to any threat of State Bar disciplinary action, and repayment was issued in full plus, for at least some of the checks, additional money to compensate for the inconvenience. (Cf. *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 399–400 [moderate weight assigned for remorse where attorney, at time of hearing, apologized and disgorged wrongfully obtained fees, though pursuant to court-imposed sanctions order]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [greatly reduced mitigating weight attached to respondent's confession of misdeeds to client one year later, as it was not "an objective step 'promptly taken' spontaneously demonstrating remorse and recognition of the wrongdoing"].)

2. No Mitigation for Restitution, Lack of Harm, and Good Faith

Arbel seeks additional mitigation for restitution (std. 1.6(j)), lack of harm (std. 1.6(c)), and his purported good faith (std. 1.6(b)). We have considered his prompt payment of NSF checks as evidence of remorse, so we do not consider it again for restitution. As it is Arbel's burden to establish mitigating circumstances, we disagree with him that, because OCTC did not

establish harm as an aggravating circumstance, he is entitled to a finding of lack of harm as a mitigating circumstance. Finally, Arbel offered no argument or evidence that would support a finding that he acted in good faith. Therefore, he has failed to meet his evidentiary burden to prove this additional mitigation by clear and convincing evidence.

VI. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) While not strictly bound by the standards, we recommend sanctions falling within the range they provide unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline. (Stds. 1.7(b) and 1.7(c).) Finally, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, both standards 2.2(a) and 2.11[21] apply. We find standard 2.2(a) the most severe, because it provides that a 90-day actual suspension is the presumed sanction for commingling.

The hearing judge recommended a six-month actual suspension, relying on *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, and after finding culpability for eight counts of misconduct, including two counts of misrepresentation, which we did not find.

[21] Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude or intentional or grossly negligent misrepresentation

OCTC asks that we affirm the hearing judge's discipline recommendation. Arbel argues that a six-month suspension would be grossly disproportionate discipline for his misconduct.

Doran involved an attorney who commingled and engaged in acts of moral turpitude by gross negligence when he issued 17 NSF checks. However, he also was found culpable for acting incompetently when he abandoned a client in one matter and took a position against a client in another uncharged matter, and we found that, for these latter acts, six months of actual suspension was the appropriate discipline to recommend.[22] (*In the Matter of Doran*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 880-881.) Thus, we do not find that *Doran* provides much guidance with respect to the record established here.

In addition to *Doran*, OCTC urges us to look to *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, another case imposing a six-month suspension. We find even less guidance in *Heiser*. While Heiser was found culpable for commingling and for writing NSF checks from his personal account and his CTA, the circumstances were far more egregious. Unlike Arbel, who quickly paid his NSF checks, Heiser did not pay two of his NSF checks, and the other two were not paid until legal proceedings were commenced, thus causing those two people added expense to obtain their funds. The total amount of NSF checks was more than $5,000 in *Heiser*, while Arbel's NSF checks totaled less than $2,100 (one NSF check was for $3). Finally, the attorney in *Heiser* did not cooperate with the State Bar investigators and also did not appear for his disciplinary trial. Here, Arbel cooperated, participated, and has shown substantial remorse for his actions.

Considering Arbel's commingling, we find that his misconduct warrants, at a minimum, a three-month (90-day) actual suspension. As for his other misconduct, we are aided by case law

[22] In fact, we stated that, "Were the trust account violations the only matters before us we would concur in [the 90 days of actual suspension recommended by the hearing judge]." (*In the Matter of Doran*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 880.)

that offers better guidance. In *In the Matter of McKiernan*, *supra*, 3 Cal. State Bar Ct. Rptr. 420, we recommended a 90-day actual suspension for an attorney culpable of commingling and moral turpitude by gross negligence for issuing two NSF checks to a business that totaled over $17,000. The attorney took over three years to finally pay the business the amount it was owed, and only after it had filed a complaint with the State Bar. The attorney's misconduct was aggravated by indifference for failing to repay at least part of the money but partially mitigated by several years of discipline-free practice. We find that, on balance, the misconduct in the two cases, along with their respective aggravation and mitigation evidence, are comparable enough to recommend the same discipline for Arbel as imposed on the attorney in *McKiernan*.

We are mindful of Arbel's good intentions and cooperation by voluntarily agreeing to meet with State Bar investigators and to assist with the dissolution of Everything Legal, which saved the State Bar resources. He also displayed candor and honesty during the investigation of his misconduct and paid his NSF checks quickly. Nevertheless, his misuse of his CTA was serious and resulted in multiple NSF checks being issued. Given the nature of the misconduct, and even though his mitigation outweighs his aggravation, we find no compelling reason to depart from the three months' minimum suspension called for by standard 2.2(a). We conclude that a 90-day actual suspension is the appropriate discipline to protect the public, the courts, and the legal profession. Because his misconduct involves his CTA, we further recommend that Arbel be ordered to attend and complete Client Trust Accounting School.

VII. RECOMMENDATION

We recommend that Gil Lee Arbel, State Bar Number 300303, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. **Actual Suspension.** Arbel must be suspended from the practice of law for the first 90 days 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, Arbel 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 his first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Arbel must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his 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, Arbel 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. Arbel must report, in writing, any change in the above information to ARCR, within ten (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, Arbel 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, Arbel 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 Arbel's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Arbel 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 State Bar record address, as provided above. Subject to the assertion of applicable privileges, Arbel 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**. Arbel 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, Arbel must submit a final report no earlier than ten

(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. Arbel 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. Arbel 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 and Client Trust Accounting Schools.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Arbel must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and the State Bar Client Trust Accounting Schools and passage of the tests given at the end of these sessions. 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 and Client Trust Account School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Arbel 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 Arbel 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.** Arbel 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). Such proof must include: the names and addresses of all individuals and entities to whom he 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 Arbel 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 Arbel 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, Arbel 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 Arbel 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.[23] 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, and are enforceable both as provided in

[23] 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, Arbel is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed 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).)

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.