PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 27, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 09-J-16022
	)	
BENJAMIN TYLER BRANDT,	)	OPINION
	)	
A Member of the State Bar, No. 201506.	)	
	)	

This proceeding is based on the final determination of a three-judge panel of the United States Bankruptcy Court for the Central District of California that Benjamin Tyler Brandt committed misconduct in the bankruptcy court. The panel found that he filed bankruptcy petitions in "about 100" cases while not admitted to practice before the United States District Court for the Central District of California, in violation of a local bankruptcy rule. These actions constituted the unauthorized practice of law (UPL). The panel suspended Brandt from practicing before the bankruptcy court for one year and ordered him to complete 10 hours of continuing legal education before he could be reinstated to practice.

A State Bar Court hearing judge found that Brandt's conduct in the bankruptcy court violated section 6125 of the Business and Professions Code[1] (UPL in California) and that his bankruptcy court disciplinary proceedings "afforded [Brandt] all the due process to which he was entitled." The judge found aggravation for the multiple acts committed and mitigation for lack of substantial client harm, good character, and cooperation with the State Bar. The judge recommended discipline including a 60-day period of actual suspension.

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[1] All further references to sections are to the Business and Professions Code.

Both Brandt and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. Brandt maintains that he "did absolutely nothing wrong." He argues that the bankruptcy court disciplinary proceedings lacked fundamental constitutional protection and the hearing judge in this proceeding made numerous errors. OCTC requests that we affirm the judge's findings of fact and culpability. It also asks that we find that Brandt violated rule 1-300(B) of the Rules of Professional Conduct[2] (practicing law in another jurisdiction in violation of its regulations), and find additional aggravating circumstances and less mitigation. OCTC seeks a one-year period of actual suspension.

After independently reviewing the record under rule 9.12 of the California Rules of Court, we find that Brandt's misconduct in the bankruptcy court warrants reciprocal discipline in California because it establishes a violation of rule 1-300(B). We also find that the bankruptcy court disciplinary proceedings afforded Brandt fundamental constitutional protection. We affirm the recommended 60-day actual suspension as appropriate discipline.

I. SUMMARY OF STATE BAR PROCEEDING

OCTC brought this proceeding, based on Brandt's professional misconduct found in another jurisdiction, pursuant to section 6049.1. Under the statute and our rules of procedure, this proceeding is an expedited proceeding of limited scope. (§ 6049.1; Rules Proc. of State Bar, rule 5.350 et seq.) Indeed, "a certified copy of a final order made by any court of record . . . determining that a member of the State Bar committed professional misconduct [in another jurisdiction] shall be conclusive evidence that the member is culpable of professional misconduct" in California with two exceptions. (§ 6049.1, subd. (a).) The exceptions, which the member must establish, are whether: (1) as a matter of law, the member's professional misconduct in the other jurisdiction would not warrant the imposition of discipline in California

[2] All further references to rules are to this source unless otherwise noted.

under the laws or rules binding on members of the State Bar; and (2) the proceedings of the other jurisdiction "lacked fundamental constitutional protection." (§ 6049.1, subd. (b).) The only other issue in an expedited proceeding is degree of discipline. (*Ibid.*)

As detailed below, this proceeding has a lengthy procedural history beginning in the bankruptcy court in late 2008. Ultimately, on March 15, 2016, OCTC filed the operative charging document, First Amended Notice of Disciplinary Charges (NDC), based on the bankruptcy panel's decision and charged Brandt with a violation of rule 1-300(B).

Trial took place on June 1 and 8, 2016. On June 8, 2016, the parties filed a Stipulation as to Facts and Admission of Documents. Brandt was the sole testifying witness. The hearing judge filed his decision on October 21, 2016. As discussed below, we find the judge made certain errors of law. However, these errors were not prejudicial and are remedied by our de novo conclusions of law in this opinion, which supersedes the decision. (Cal. Rules of Court, rule 9.12; see *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 436.)

II. FACTUAL AND PROCEDURAL HISTORY

Brandt became licensed to practice law in California on June 8, 1999.[3] This is his first State Bar disciplinary proceeding.

A. Brandt's Member Address

At all times relevant to this proceeding, Brandt's State Bar membership records address was 4403 Morse Avenue, Studio City, California 91604 (member address).

Brandt testified that this property was foreclosed on and he and his wife were divorced on February 7, 2009. He stated that he was "completely indigent" as a result and not living at his member address from February 2009 through November 2009. He placed a note in the

[3] Effective January 28, 2013, Brandt changed his name in the official membership records from Benjamin Brandt Wasson to Benjamin Tyler Brandt. All federal court documents and various State Bar Court pleadings and orders discussed in this opinion refer to Brandt by his former name.

property's mailbox stating that the property was foreclosed on, and he could not receive mail there. He is not sure what effect, if any, the note had, and does not recall if he asked the post office to hold his mail. Brandt did not arrange to have his mail forwarded or for friends or family to receive it for him, and he did not have a stable address until 2011. He acknowledged at trial that he knew he had a statutory obligation to maintain a current address with membership records at all times.[4]

B. Bankruptcy Court Disciplinary Proceedings

On December 10, 2008, the United States Trustee for the Bankruptcy Court for the Central District of California filed an application for issuance of an order for Brandt to personally appear and to show cause why he should not be sanctioned and his matter referred to the bankruptcy court disciplinary panel (application). The Trustee averred that, pursuant to Local Bankruptcy Rule 2090-1(a), an attorney must be admitted to practice before the District Court for the Central District of California, and attached evidence that Brandt had submitted almost 100 bankruptcy filings for third parties though he was not admitted to practice. The Trustee requested that Brandt be given the opportunity to explain, inter alia, why he appeared when not admitted. The Trustee sought monetary sanctions and a referral to the bankruptcy court disciplinary panel because the "[r]epeated unauthorized practice of law by attorneys affects the integrity of the entire bankruptcy court in this district." The application was served on Brandt at his member address.

1. Judge Ahart's Findings and Sanctions Order

On December 17, 2008, Honorable Alan M. Ahart, United States Bankruptcy Judge, issued an order to show cause (OSC), which was served on Brandt at his member address. On January 14, 2009, Brandt appeared at the OSC hearing, and filed a verified response, wherein he

[4] Section 6002.1 requires an attorney to maintain a current member address with the State Bar and to notify it of any change in address within 30 days.

declared that "[s]ince passing the bar and graduating law school in 1999, I have also filed approximately 100 bankruptcy petitions throughout the bankruptcy courts in Riverside, Los Angeles, and Ventura County." He did not address the UPL allegation.

In January 2009, Judge Ahart entered his findings of fact and conclusions of law. Relevant to this proceeding, the judge found that Brandt: (1) was not admitted to practice before the district court; (2) engaged in UPL; and (3) filed approximately 100 third-party bankruptcy petitions.[5] The judge also concluded that referring Brandt to the bankruptcy court disciplinary panel was "appropriate, given his repeated and substantial activity representing clients . . . while he was not admitted to practice" before the bankruptcy court. In a separate order, Judge Ahart sanctioned Brandt $1,000. The findings and order were served on Brandt at his member address on January 22, 2009. Brandt testified he does not recall receiving the written findings but recalls the findings from the hearing.

On January 22, 2009, Brandt was admitted to the district court. On his application for admission, he provided his member address. He testified that he believed his stepfather paid the $1,000 sanction in 2009, but became aware during this proceeding that it had not been paid. Brandt paid the sanction on June 7, 2016.

2. Brandt Files Notice of Appeal

On January 26, 2009, Brandt filed a notice of appeal and a verified opposition to Judge Ahart's findings. He listed his member address on both documents.

The matter was transferred to the district court on the Trustee's motion. Brandt testified that "he was not able to" follow up with the appeal. On May 19, 2009, the district court issued an OSC as to whether to dismiss the appeal for failure to prosecute, and Brandt filed a designation of record on May 27, 2009. The district court ordered the parties to file a status

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[5] Brandt committed these acts from April 2001 to May 2002 and in October 2006 and October 2008.

report by January 10, 2010. The Trustee filed a report, but Brandt abandoned his appeal, and the district court dismissed it on January 28, 2010.

3. Bankruptcy Court Disciplinary Panel's Hearing and Decision

On February 13, 2009, Judge Ahart issued a statement of cause and formally referred Brandt's matter to the bankruptcy court disciplinary panel, recommending a one-year suspension from practicing before the bankruptcy court "for repeatedly practicing before this Court while not being admitted to practice." The statement was served on Brandt at his member address.

On May 21, 2009, a notice of disciplinary hearing was issued, setting the hearing before a three-judge panel on June 19, 2009. The notice advised Brandt that he could appear at the hearing with counsel and could present evidence to refute statements contained in the statement of cause, evidence in mitigation, and evidence bearing on the type and extent of disciplinary sanction. The Trustee subsequently filed a notice of intent to appear at the disciplinary hearing. Both notices were served on Brandt at his member address.

The hearing took place as scheduled with an attorney appearing for the Trustee. Brandt did not appear or file a written statement or declaration.

On September 18, 2009, the bankruptcy court disciplinary panel issued its memorandum of decision. It found that Brandt filed "about 100" third-party bankruptcy petitions while not being admitted to practice in the district court, in violation of Local Bankruptcy Rule 2090-1(a). The panel noted that the rule provided for exceptions for attorneys for the United States and for pro hac vice appearances but "these exceptions are not applicable to [Brandt] as private counsel resident in California." The panel relied on Brandt's verified response and the Trustee's evidence in support of its findings.

On the same day, the panel entered an order suspending Brandt from practicing before the bankruptcy court for one year, effective immediately, and ordering him to complete 10 hours

of continuing legal education in the subject of legal ethics before applying for reinstatement (September 18, 2009 order). The decision and order were served on Brandt at his member address.

Brandt did not appeal. The September 18, 2009, order became final 10 days after entry, and the case was closed on October 19, 2009. Brandt testified he did not receive the decision or order until the State Bar investigation began in 2011: "The first time I found out I was suspended by the Bankruptcy Court was through the State Bar. I was absolutely shocked." No evidence establishes that Brandt ever notified the Trustee, Judge Ahart, the bankruptcy court, or the district court that he could not receive mail at his member address. Similarly, no evidence shows that he contacted the Trustee or the courts regarding his financial difficulties or that he followed up on the disciplinary referral.

4. State Bar Court Proceedings and Untimely Appeal to Federal Courts

On October 18, 2011, OCTC filed a notice of disciplinary charges based on the bankruptcy court panel's decision. Brandt filed a verified answer on November 14, 2011. He denied that he committed UPL in bankruptcy court and stated that "only twenty seven (27) petitions were filed" in 2001 and 2002 and that no petitions were filed from the end of 2002 to 2008, although his name was attached to a 2006 petition. He also admitted to filing a bankruptcy petition on October 16, 2008. Brandt attached "limited scope of appearance" forms that he had submitted with the petitions. He averred that these established compliance with Local Bankruptcy Rule 2090-1. Brandt admits he did not present this evidence or argument about the limited scope appearance forms during his bankruptcy court disciplinary proceedings.

On December 14, 2011, Brandt filed a notice of appeal of the September 18, 2009, order in the United States Bankruptcy Appellate Panel of the Ninth Circuit (the BAP). On March 27, 2012, the BAP dismissed the appeal for lack of jurisdiction as untimely since it was filed more

than two years after entry of the order.[6] Brandt appealed to the Ninth Circuit Court of Appeals. The court affirmed the dismissal on December 9, 2013, which became final on March 10, 2014. The record has no evidence that Brandt explained his 2009 financial difficulties to the BAP or the Ninth Circuit or argued that he had lacked notice of his bankruptcy court disciplinary proceedings.

In the meantime, pursuant to State Bar Court order, Brandt's answer in this proceeding was rescinded, and he filed an amended answer on January 27, 2012, again denying culpability. OCTC concluded that the federal appeals temporarily prevented it from proceeding with the case and successfully moved to dismiss without prejudice in March 2013; the operative NDC was not filed until March 2016.

III. DISCIPLINE IS WARRANTED

Brandt has failed to prove that, as a matter of law, his professional misconduct in the bankruptcy court does not warrant the imposition of discipline in California or that the bankruptcy court disciplinary proceedings lacked fundamental constitutional protection. (§ 6049.1, subd. (a).)

A. Brandt's Misconduct Warrants Discipline in California

Rule 1-300(B) provides that "[a] member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." The bankruptcy court's determination that Brandt practiced law before it without authorization establishes that Brandt violated rule 1-300(B). (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 257 [foreign jurisdiction's authority determines whether California attorney has violated professional regulations in foreign jurisdiction]; *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 [practicing trademark law before United States Patents

[6] The BAP stated that, pursuant to rule, a notice of appeal had to be filed within 10 days of entry of the order.

and Trademark Office in violation of its regulations amounts to violation of rule 1-300(B)].) As a matter of law, misconduct that constitutes a violation of a rule warrants imposition of discipline in California. (§ 6077 [rules are binding on State Bar members and for "a willful breach of any of these rules, the board has power to discipline members of the State Bar by reproval, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years"].)

Brandt's arguments to the contrary are unavailing. He argues that rule 1-300(B) "requires a completely different examination than the expedited section 6049.1." He cites to *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896 for the proposition that we cannot find a violation of rule 1-300(B) without a "full evidentiary analysis of the evidence proving a violation in the other jurisdiction."[7] *Wells*, however, was brought and tried as an original disciplinary proceeding because there was no final determination of attorney misconduct by a court of record of another jurisdiction. So long as there is such a determination, as in this case, OCTC may prosecute allegations of rule or section violations as an expedited proceeding.

Brandt also contends that the limited scope of appearance forms establish that he was in compliance with the local bankruptcy rule. He argues, "Unfortunately, I did not present Judge Ahart the evidence of my compliance with Local Bankruptcy Rule 2090-1(a)(3) at that time, and left him to assume I did not comply with the District Court registration rule." Further, he maintains that absent this evidence, "there was absolutely no possible way in a default hearing that the Bankruptcy Panel could possibly know all of my filings were perfectly in compliance" with the local bankruptcy rule.

The hearing judge rejected this argument on its merits, but we conclude Brandt's issue is beyond those prescribed under section 6049.1. The present disciplinary proceeding does not

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[7] Brandt cites to a number of unpublished Review Department opinions; these, however, are not citable as precedent. (Rules Proc. of State Bar, rule 5.159.)

allow Brandt to relitigate the bankruptcy panel's determination that he committed UPL. Unless he demonstrates that the bankruptcy proceeding was constitutionally infirm (which he did not do, as discussed below), or that, as a matter of law, his bankruptcy court actions would not subject him to discipline in California (which they do, also discussed below), he may not present evidence and arguments here in the first instance. Further, the bankruptcy panel found that no exceptions were applicable to Brandt, and the State Bar Court is not a court of appeal sitting in review to correct the bankruptcy panel's factual and legal conclusions. Finally, Brandt could have mounted a timely appeal to the BAP and the Ninth Circuit, but he did not do so. Thus, for the purpose of this proceeding, the bankruptcy panel's now-final determination that Brandt committed UPL in that jurisdiction is conclusive evidence that he did so. (*In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 162 ["record of discipline imposed in Michigan conclusively established respondent's culpability here"].)

At the same time, Brandt fairly challenges the hearing judge's determination that he violated section 6125, which provides that "[n]o person shall practice law in California unless the person is an active member of the State Bar." The NDC alleges a violation of rule 1-300(B), not section 6125. Based on unstated reasoning, the hearing judge incorrectly concluded that OCTC "inaptly" charged Brandt with a violation of the rule when it should have charged a violation of section 6125. There is no dispute, however, that Brandt was entitled to practice law in California at all times relevant to this proceeding and thus cannot be found culpable of violating section 6125. This error, however, is not prejudicial because OCTC properly alleged the rule 1-300(B) violation in the NDC, proved it at trial, and requested such a finding on appeal. Thus, Brandt had notice and opportunity to defend against the rule 1-300(B) charge.

B. Bankruptcy Proceedings Did Not Lack Fundamental Constitutional Protection

Attorneys charged with misconduct must be afforded due process of law, including adequate notice of the matters charged and a reasonable opportunity to be heard on the charges. (*Conway v. State* Bar (1989) 47 Cal.3d 1107, 1113; *Baker v. State Bar* (1989) 49 Cal.3d 804, 816; see also § 6085.) Brandt has failed to demonstrate that the bankruptcy court disciplinary proceedings lacked this fundamental constitutional protection. (§ 6049.1, subd. (b).)

Brandt argues that because he was "indigent" at the critical time of the bankruptcy court disciplinary proceedings (February 2009 through November 2009), he did not receive notice of the 2009 bankruptcy panel hearing and was denied a fair proceeding. He maintains that he could have presented the exonerating evidence of his limited scope appearances had he received such notice. He characterizes the bankruptcy panel hearing as a "default" hearing.

But Brandt clearly received adequate notice and the opportunity to be heard on the charges. To begin, the OSC application and the OSC put him on notice that he was facing allegations that he had practiced in the bankruptcy court without authorization and that he was facing referral to the bankruptcy panel for that reason. Brandt responded to the OSC with a verified response and appeared in person at the OSC hearing. He chose not to address or rebut the UPL charge and did not argue that he was exempt from the local bankruptcy rule admission requirement. Moreover, Judge Ahart's findings, which Brandt testified he heard at the OSC hearing, included the finding that he committed UPL and would be referred to the bankruptcy court disciplinary panel for possible practice limitations. Brandt then filed a notice of appeal of, and a verified opposition to, Judge Ahart's findings—though, again, he did not use this opportunity to argue he had an exemption. Instead, Brandt abandoned his appeal, and the district court dismissed it. His claim that he was in no position to follow up is unpersuasive given that

he has not shown that he informed the district court about his difficulties or sought an extension of time.

At the same time, Brandt failed in his affirmative responsibility to keep his member address up to date. To the contrary, when his member address ceased to be his mailing address in February 2009, he did not arrange for his mail to be forwarded. He took no action to ensure that he received his mail, even though his character evidence, discussed below, reveals he had a social network he could have relied on for this purpose. And, although Brandt knew from his appearance at the OSC hearing that he faced discipline, he *never* contacted the bankruptcy court for information. Finally, his assertion that he did not receive a fair proceeding fails because he has not shown he ever raised this claim to the bankruptcy court, the BAP, or the Ninth Circuit.

C. Brandt's Remaining Contentions Lack Merit

In his briefs on review, Brandt makes numerous personal attacks on the hearing judge and trial counsel that are wholly without merit as unsupported by the record. Brandt also challenges the hearing judge's decision to reopen the record for the limited purpose of allowing OCTC to introduce versions of the relevant local bankruptcy rule. We find that the judge acted within his discretion in reopening the record for this purpose. In any event, Brandt cannot show prejudice because he was on notice from 2011 that this proceeding was based on an allegation that he violated the local bankruptcy rule.

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence.[8] Standard 1.6 requires Brandt to do the same to prove mitigation.

[8] Subsequent references to standards are to this source.

A. Aggravation

1. Substantial Aggravation for Multiple Acts of Misconduct but No Pattern

We affirm the hearing judge's finding that the "very large number of acts of misconduct" in this case constitute an aggravating circumstance. (Std. 1.5(b).) His many acts of wrongdoing substantially aggravate this case. (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235.)

Also, like the hearing judge, we reject OCTC's request to find that Brandt's misconduct constitutes a pattern. (Std. 1.5(c).) The judge found no pattern because the misconduct did not span a lengthy period of time. We disagree because it extended from April 2001 to May 2002 and recurred in October 2006 and October 2008.

However, we acknowledge that the bankruptcy panel did not find that Brandt knowingly committed UPL. And Brandt has consistently maintained in this proceeding that he did not commit UPL, that his actions were at most a "purely and obviously innocent failure to register and pay a one-time nominal $185 registration fee," and thus he would have no reason to commit UPL. We discern no motive for the UPL.

In its rebuttal brief, OCTC argues for the first time that Brandt's UPL involves moral turpitude because he either knew he was not admitted or was recklessly or grossly negligent in failing to discover he was not admitted. This argument is untimely and unsupported because OCTC failed to elicit testimony or submit documentary evidence that proves this claim.[9] Although Brandt may have acted unreasonably, the evidence does not establish that he acted knowingly or with gross negligence.

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[9] OCTC states it is not seeking additional culpability or aggravation on grounds of moral turpitude. We emphasize that this is a limited scope proceeding, and the bankruptcy panel did *not* find that Brandt acted knowingly. OCTC had the option to prosecute this case as an original disciplinary proceeding, which would have granted it latitude to go beyond the findings of the bankruptcy panel to establish greater culpability, but it did not exercise this option.

We find no decisional law that determines a pattern of misconduct based on these facts. (Cf. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [only most serious instances of repeated misconduct over prolonged period of time constitute pattern].) At oral argument, OCTC referred to *In the Matter of Lenard*, *supra*, 5 Cal. State Bar Ct. Rptr. 250 in support of its pattern argument. *Lenard* is distinguishable because it involved the commission of UPL in nine states rather than in a single court, as occurred here. In addition, respondent's UPL in *Lenard* was aggravated by his use of deceptive and misleading legal service agreements whereas no evidence shows that Brandt deceived his clients.

2. Additional Aggravation for Bad Faith

OCTC argues that we should find additional aggravation for intentional misconduct, bad faith, or dishonesty based on a discrepancy between Brandt's 2009 verified response to Judge Ahart's OSC and his November 14, 2011, verified answer to the first NDC. (Std. 1.5(d).) In the former, Brandt swore he had filed 100 bankruptcy petitions and in the latter, he swore he had "found only twenty seven (27) petitions were filed." When questioned at trial, he explained that his 2009 response "was actually a sheer guess that ended up being accurate" and that he made it to "seem like an experienced attorney." OCTC has not established this was "blatant dishonesty." But, given that both statements were asserted as verified fact when they clearly were not, we find that Brandt acted in bad faith, warranting moderate aggravating weight.

3. Additional Aggravation for Indifference

The hearing judge did not find indifference as an aggravating factor. However, we do, and we assign it moderate weight. (Std. 1.6(k) [indifference toward rectification or atonement for consequences of misconduct].) Brandt waited over six years to pay the $1,000 sanctions and seemingly refuses to accept the findings of the bankruptcy court, even though they are final and binding. (See *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958 [disingenuous defenses show

lack of insight as to wrongfulness of one's actions].) "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his [or her] acts and come to grips with his [or her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) That Brandt still does not understand he was not authorized to practice in the bankruptcy court is particularly troubling because it suggests that he may practice without authorization again. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

B. Mitigation

1. No Mitigation for Lack of Prior Record of Discipline

Brandt argues that the hearing judge erred in failing to consider that he has "been an attorney licensed and practicing in California uninterrupted and without blemish for 17 years from June 1999 to August 15, 2016, when I placed myself on inactive status." In any case, Brandt is not entitled to mitigation because his misconduct began approximately two years after his admission, and he did not show that it is not likely to recur. (Std. 1.6(a) [mitigation for absence of prior record of discipline over many years of practice coupled with present misconduct that is not likely to recur]; *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [no mitigation where attorney had practiced for only four years prior to misconduct].)

2. No Mitigation for Lack of Harm

The hearing judge assigned mitigation because Brandt's misconduct did not result in "any significant client harm." This is not a basis for mitigation. Instead, Brandt must establish that his bankruptcy court actions did not cause any harm to clients, the public, or the administration of justice. (Std. 1.6(c).) It appears that the judge assumed no clients were harmed, but we find no evidence affirmatively showing a lack of client harm or, for that matter, a lack of harm to the public or the administration of justice. Thus, Brandt is not entitled to mitigation on this ground.

3. Some Mitigation for Good Character and Pro Bono Work

Brandt is entitled to mitigation if he establishes extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of his misconduct. (Std. 1.6(f); *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

Before we consider the issue on the merits, we examine whether the judge properly admitted the good character evidence. While under oath, Brandt proffered 16 signed reference letters, and represented that each letter was authored by the person who signed it. The references did not testify. The hearing judge admitted 15 letters—13 over OCTC's objection. On appeal, OCTC renews its objections: (1) the letters were not disclosed before trial; (2) it did not have the opportunity to verify the authenticity or accuracy of the statements made therein; (3) the letters are not declarations made under penalty of perjury; and (4) the nature of the statements indicate a lack of authenticity by the purported author.

The judge analyzed each letter and acted within his discretion and consistent with our rules of procedure in admitting them. They are relevant to Brandt's character, Brandt stated under oath that they were authentic, and they provide sufficient detail to make them of value to this disciplinary proceeding. (Rules Proc. of State Bar, rule 5.104(C) [disciplinary trial not conducted according to technical evidence rules and "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 [law] which might make improper the admission of the evidence over objection in civil actions"].)

As for whether this evidence establishes extraordinary good character, we affirm the judge's determination that Brandt "is entitled to some mitigation for his good character." The letters are from a wide range of references in the legal and general communities and attest to

Brandt's good character. Eleven friends and acquaintances, who have known Brandt for as long as 16 years, confirmed his dedication and service to vulnerable populations. One friend wrote that he and Brandt fed the homeless in downtown Los Angeles and that Brandt provided him with "outstanding legal counsel" when he was unemployed. Another friend stated that Brandt has "not only been a pillar of strength for those who needed his help, the underprivileged and those who needed representation, he has also been an extraordinary example of morality and is extremely ethical in his practice." And one social worker explained that Brandt became a Court-Appointed Special Advocate to represent foster children. In addition, Brandt's brother and former wife wrote highly of his dedication to his family and his community. Two letters from attorneys who employed Brandt briefly at the start of his career, however, are of minimal probative value because they are generic statements made more than 15 years ago.

We find that this evidence is not entitled to full mitigating weight because the letters do not disclose that the authors are fully aware of the extent of Brandt's misconduct. Each letter contains a similar statement on the issue, which was not subject to cross-examination and does not reflect an understanding that repeated UPL undermines the courts, the public, and the profession. This shortcoming might have been remedied had Brandt called his references to testify, but he chose not to do so.

The letters and Brandt's testimony also establish that he is entitled to some mitigation credit for his pro bono work and community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Most notably, he spends approximately eight hours per week working as a Court-Appointed Special Advocate. He has also volunteered for the homeless and the Alliance Defending Freedom, and has provided pro bono legal services to friends and acquaintances.

4. Limited Mitigation for Candor and Cooperation

We affirm the hearing judge's finding that Brandt is entitled to limited mitigation for entering into a stipulation of easily provable facts during trial. (Std. 1.6(e) [mitigation for spontaneous candor and cooperation to victims or State Bar]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability and facts].)

V. A 60-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE[10]

As in an original disciplinary proceeding, we begin our discipline analysis in this expedited proceeding with the standards that the Supreme Court instructs us to follow "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11; *In the Matter of Jenkins*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 162 [discipline in expedited proceeding is "completely open for litigation"].) Although not binding, we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

Standard 2.19 establishes a suspension not to exceed three years or reproval as the presumed sanction for a rule violation.[11] We may adjust up or down within that range depending on the balance of mitigating and aggravating circumstances. (Std. 1.7(b), (c); stds., Part B.) We also consider comparable case law for further guidance. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [decisional law appropriate as guidance when standards provide range of discipline].)

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[10] 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.)

[11] The hearing judge analyzed discipline under the incorrect standard, having found culpability under section 6125 rather than rule 1-300(B). Standard 2.10 applies to UPL committed by an attorney while on a disciplinary suspension or involuntary inactive enrollment or is inactive for nondisciplinary reasons, and is not applicable here.

OCTC argues that a one-year actual suspension is appropriate: "What is most telling here is [Brandt's] repeated acts of unauthorized practice of law over a seven year span combined with his failure to appreciate the wrongfulness of his misconduct, demonstrating that he is unwilling or unable to conform to the professional responsibilities expected" of California attorneys.[12] Brandt requests that this proceeding be dismissed because he is not culpable.

Starting with the decisional law, the hearing judge found *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229 to be instructive. However, Trousil committed UPL while on a disciplinary suspension and had three prior records of discipline—key circumstances not present here. In its briefs, OCTC cited *In the Matter of Wittenberg*, *supra*, 5 Cal. State Bar Ct. Rptr. 418 as support for a one-year actual suspension. *Wittenberg* involved the same rule violation but provides no guidance because Wittenberg had previously received a three-year actual suspension for extremely serious misconduct, and disbarment was appropriate pursuant to the progressive discipline standard. (Std. 1.8(a).) Our independent research finds no cases on point—a fact OCTC conceded during oral argument.

Looking at the unique facts and circumstances of this case, we acknowledge that this is Brandt's first disciplinary proceeding, he was not found to have knowingly committed UPL, and he established mitigation for good character and community service. Yet Brandt committed 100 acts of UPL over a lengthy period, showing an unreasonable lack of attention to the bankruptcy court's admission requirements. That he continues to maintain he did nothing wrong despite the bankruptcy panel's contrary determination causes concern. This apprehension is magnified because Brandt acted in bad faith when he submitted inaccurate verified statements to Judge Ahart and this court. Further, the bankruptcy panel suspended him for one year (although a

[12] In its rebuttal brief, OCTC requests for the first time that Brandt be ordered to comply with standard 1.2(c)(1) (attorney must demonstrate rehabilitation and fitness to practice before returning to active status).

suspension from a single court is far less consequential discipline than a general suspension from the practice of law in California).

On balance, we conclude a public reproval is not sufficient discipline but a lengthy period of actual suspension is too severe. For Brandt to be actually suspended from the practice of law in California for 60 days is significant, appropriate discipline in this case for a practitioner facing his first discipline but whose misconduct is serious and aggravated by a number of circumstances.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Benjamin Tyler Brandt be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for the first 60 days of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due

no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Brandt has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Brandt 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 Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

STOVITZ, J.*

McELROY, 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.

** Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.