PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

Filed July 16, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 08-O-13631 (11-O-12300; 11-O-16147)
	)	
JAMES PATRICK CHANDLER,	)	
	)	OPINION
A Member of the State Bar, No. 215886.	)	
	)	

Respondent James Patrick Chandler had been licensed for six years when his association with another attorney, Sean Gjerde, led to multiple complaints to the State Bar Office of the Chief Trial Counsel (State Bar). First, the two attorneys were separately terminated by a group legal services plan for submitting false bills for services they did not perform. Later, the two were subjected to contempt and fee disgorgement orders for their conduct in the United States Bankruptcy Court.

In this disciplinary proceeding against Chandler, the hearing judge found him culpable of seven counts of misconduct, including acts of moral turpitude based on his fraudulent billing, failing to perform competently and to return fees, seeking to mislead a judge, and disobeying a court order in two bankruptcy matters. Finding two factors in aggravation and three in mitigation, the hearing judge recommended discipline that included a one-year actual suspension.

Both the State Bar and Chandler seek review. The State Bar supports the culpability findings, but urges us to find additional aggravating factors. Although the State Bar requested a

one- to two-year suspension both before and after trial,[1] it now asserts on review that Chandler's misconduct warrants disbarment. Conversely, Chandler argues that the hearing judge improperly found culpability on all counts and that there is no aggravation. While he does not propose an alternative discipline recommendation, he asserts that "harsher discipline" is not warranted.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), considering the specific factual findings raised by the parties. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) We find less culpability than the hearing judge because the evidence does not establish that Chandler willfully disobeyed a court order or misled a judge in one of the cases. But we also find more aggravation and give less weight to the mitigation than the hearing judge did. On balance, the aggravation outweighs the mitigation. In light of his serious misconduct, Chandler should be suspended for a minimum of two years and until he pays restitution and proves his rehabilitation, fitness to practice and learning and ability in the law. This lengthy period of suspension and the reinstatement requirement will provide the necessary protection to the public, the courts, and the legal profession.

I. FINDINGS OF FACT AND CULPABILITY

The hearing judge found that Chandler was not credible on many issues because his testimony was contradicted by documentary evidence or other witnesses. We give great deference to these credibility findings. (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280 [hearing judge's credibility findings entitled to great weight].) Although all of the hearing judge's findings of fact are entitled to great weight as well (Rules

[1] After the hearing judge recommended a one-year suspension, the State Bar moved for reconsideration and for the first time asked for disbarment, citing a June 21, 2012 Supreme Court order that remanded 24 other disciplinary cases to the State Bar Court for further consideration. According to the State Bar, the Supreme Court's order in the unrelated matters "indicates that the State Bar and the Court erred in their discipline recommendation in this matter."

Proc. of State Bar, rule 5.155(A)), we find no clear and convincing evidence[2] to support some of her findings and two conclusions of law in the bankruptcy matters. Accordingly, in those limited areas, as discussed below, we deviate from the findings.

A. Background

Chandler was admitted to practice law in December 2001 and has no prior record of discipline. Much of the misconduct stems from Chandler's professional association with Gjerde, who was Chandler's law school roommate and business partner. All of the charges arise out of client matters handled by the law office in Elk Grove that Chandler shared with Gjerde. Chandler maintained his primary office in Sonoma, and was in the Elk Grove office infrequently from 2008 to 2011, when the conduct at issue in the Notice of Disciplinary Charges (NDC) took place.

B. ARAG Insurance Matters (Case No. 08-O-13631)

ARAG Insurance Company (ARAG) provides group legal insurance plans to employers, who then offer them to employees as a benefit (ARAG plan). ARAG maintains a roster of network attorneys who contract to provide free consultations and discounted legal services to ARAG plan members. When an ARAG plan member needs a covered legal service, he or she can choose from a list of network attorneys. After a network attorney is chosen and performs services under the plan, he or she submits a claim form directly to ARAG for reimbursement. ARAG only pays network attorneys for services after they have been completed. ARAG also prohibits network attorneys from splitting fees with other attorneys.

Gjerde was an ARAG network attorney, but was terminated in 2007 over concerns that he was billing for services he never completed. After he was fired, Gjerde approached Chandler

[2] 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.)

about working for ARAG. Chandler submitted an application and was accepted as an ARAG network attorney in March 2008. Following his acceptance, Chandler allowed Gjerde to work on his ARAG client matters and paid Gjerde as a subcontractor, splitting the fee he received from ARAG.

After Chandler's first three months as a network attorney, ARAG general counsel Ann Cosimano contacted him about the unusually high amount he had billed. Chandler also had charged for some services that would not be typical in the first few months of representation. In addition, Cosimano noticed he was representing some of Gjerde's former clients. ARAG was not aware that Gjerde was working on these cases and would not have reimbursed Chandler for services Gjerde provided.

In June 2008, Cosimano sent Chandler a spreadsheet detailing all of the services he had billed and asked him to execute an affidavit verifying he completed all of the services. Chandler said he did not want to sign the affidavit because he noted one client whose services he had not yet completed. Cosimano told him to cross out that client matter, but Chandler still failed to return the affidavit. After Chandler refused to execute the affidavit, ARAG conducted an investigation and concluded that Chandler was involved in the same pattern of false billings that led to Gjerde's termination. ARAG terminated Chandler as a network attorney in July 2008.

ARAG paid Chandler a total of $9,205 based on false claims he filed in seven different client matters from March to June 2008. Most of the seven clients had contact with Gjerde only, many never met Chandler, and one never spoke to him. Many items listed on the claim forms required Chandler to specify the hours he spent completing the services, and he was unable to verify or document much of his work despite billing 82 hours. Chandler also submitted a "Wills and Estates" claim form for each of the seven clients, representing that he had prepared four

documents: a complex will, living will, healthcare appointment, and durable power of attorney. However, he performed none of these services for any of the seven clients.

Count One: Moral Turpitude (Bus. & Prof. Code, § 6106)[3]

The State Bar alleged that Chandler committed acts involving moral turpitude, dishonesty, or corruption, in violation of section 6106 by falsely billing ARAG. The hearing judge found that Chandler engaged in a scheme to defraud by submitting fraudulent claims to ARAG in these seven client matters. We agree that his false bills to ARAG clearly constitute acts of moral turpitude. (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 731 [false and misleading billing constitutes dishonesty in violation of § 6106].)

On review, Chandler continues to assert an explanation the hearing judge did not find credible and concluded "defies common sense" – that he was allowed to bill ARAG before he completed the services. Chandler's position is clearly contradicted by the language of the ARAG claim forms, the attorney agreement, and other documentation. In fact, Chandler could not have expected to perform and be paid for all of the services he claimed, as some of the work was never requested or needed by the clients. (*Hulland v. State Bar* (1972) 8 Cal.3d 440, 449 [taking money for services not performed or not to be performed is close to crime of obtaining money by false pretenses and warranted attorney's public reproval].)

Although much of the billing is from cases Gjerde worked on in the Elk Grove office, Chandler was the only network attorney in the office authorized to do the work. Moreover, he signed and submitted the bills, representing that *he* performed the work. Accordingly, the record fully supports the conclusion that Chandler acted dishonestly in violation of section 6106 when he submitted $9,205 in false bills to ARAG.[4]

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

[4] In 2011, the State Bar stipulated to a 60-day period of actual suspension for Gjerde's misconduct, including his fraudulent billing to ARAG in four client matters. (State Bar case

C. Federal Bankruptcy Matters (Case Nos. 11-O-12300 and 11-O-16147)

In January 2009, Chandler and Gjerde agreed to form a corporation, the Northern California Law Center (NCLC). They were the only two directors, and the office address was the same Elk Grove location listed on Chandler's ARAG application. He normally tried to visit the Elk Grove office every week or two. However, from August 2010 until September 2011, Chandler suffered physical injuries that limited his appearances to once every three to five weeks. Several serious problems with NCLC's bankruptcy practice arose during this time.

1. The Bankruptcy Court Pre-Filing Order and Electronic Filing Requirements

Gjerde represented bankruptcy petitioners in a matter filed in October 2009, *In re Michelsen* (U.S. Bankruptcy Court, Eastern District of California). On October 5, 2010, the bankruptcy court granted the Michelsens' motion to disgorge attorney fees based on Gjerde's incompetent handling of their matter, and ordered Gjerde to return $2,000 in fees. When Gjerde failed to pay the Michelsens or to appear at a related hearing, the court issued a contempt order against him on January 11, 2011. This order also revoked all filing privileges of Gjerde, *and any attorney associated with NCLC*, which prohibited the filing of any case without prior permission from the chief judge (the pre-filing order).

It is undisputed that Chandler was not served with a copy of the pre-filing order until March 16, 2011. However, around the same time, an Assistant U. S. Trustee had started investigating both Gjerde and Chandler as a result of complaints from other trustees. In February 2011, the Assistant U. S. Trustee emailed Chandler regarding a petition that had previously been filed by NCLC. The trustee's email warned Chandler that the January 11, 2011 pre-filing order "prohibits you from filing any new cases as you are associated with the Northern California Law

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No. 08-O-11776 (194987).) Gjerde is currently suspended for a number of reasons, including his felony convictions for conspiracy to commit mail fraud and making false statements on loan applications. (State Bar case No. 10-C-06102.) We take judicial notice of Gjerde's disciplinary records. (Evid. Code, § 452, subd. (d) [judicial notice of court records].)

Center." Although he denies receiving this email, Chandler clearly received notice of the pre-filing order on March 3, 2011, when another trustee handed him a copy at a creditors' meeting in a different case.

In March 2011, bankruptcy petitions were filed on behalf of two NCLC clients without prior permission from the chief judge of the bankruptcy court in violation of the pre-filing order: (1) on March 12, 2011, in *In re Nieto and Ortiz;* and (2) on March 14, 2011, in *In re Peters*. Both petitions were filed using electronic signatures for Chandler and the petitioners, with an "/s/" followed by the typed names. Despite the local bankruptcy court rules,[5] neither party had actually signed the petition before it was electronically filed.

Chandler testified that the petitions were filed without his permission. In *In re Peters,* Jennifer and Michael Peters testified that their attorney was Gjerde. In fact, they had never met Chandler and did not know him. In *In re Nieto and Ortiz*, Marcus Nieto testified that he had been working with Chandler's office assistant, whom he understood at the time was responsible for filing his petition without first obtaining signatures.[6]

Following the filing of these two bankruptcy petitions, the trustee in each case filed a motion to disgorge fees and sought civil contempt sanctions against Chandler and Gjerde for violating the pre-filing order. On October 25, 2011, the bankruptcy court ordered Chandler and Gjerde, jointly and severally, to pay: (1) $3,000 to Nieto and Ortiz; (2) $19,500 to the Chapter 13 trustee for civil contempt in *In re Nieto and Ortiz*; (3) $2,274 to the Peterses; and (4) $16,020 to

[5] The local rule provides that if an attorney electronically files a document with a "/s/" signature instead of a scanned copy of the client's actual signature, the attorney must have obtained the actual signature on the document before filing. Also, the attorney must retain the signed document for no less than three years. (U.S. Bankr. Ct., Eastern District Cal., rule 9004-1.)

[6] Nieto also said that Chandler "had represented us fairly and competently, and that there was no need for him to give us money back, because he had done his job . . . we were really happy with what he did, and we would recommend him to anybody else."

the Chapter 13 trustee for civil contempt in *In re Peters.* The amounts to the clients were ordered as unearned fees, and the amounts to the Chapter 13 trustee for "the additional professional services occasioned by [Chandler and Gjerde's] intentional civil contempt."

Count Two: Failing to Obey a Court Order (§ 6103)

Section 6103 provides that an attorney's "wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension." The State Bar alleged that Chandler violated this section by disobeying the pre-filing order when he filed the bankruptcy petitions without prior permission from the chief judge. In finding culpability, the hearing judge rejected Chandler's claim that an office assistant filed the petitions without his authorization. She concluded that Chandler "had a non-delegable duty to supervise [his office staff] and is responsible for the conduct of his staff." While we agree that Chandler is responsible for his staff and subject to ethical violations for its lapses, the evidence does not support a finding that he "willfully" violated the pre-filing order as charged.

To prove a failure to obey a court order under section 6103, "[a]t a minimum, it must be established that an attorney " ' "*knew* what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." [Citations.]' " (*In the Matter of Maloney and Virsik* (Review Dept.) 4 Cal. State Bar Ct. Rptr. 774, 787, quoting *King v. State Bar* (1990) 52 Cal.3d 307, 314.) A "somewhat more specific level of wilfulness" must be shown. (*Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) Although it is clear that Chandler had knowledge of the pre-filing order by March 3, the evidence does not establish that he knew of or authorized the filing of either of the two bankruptcy petitions, i.e., whether he intended to disobey the pre-filing order. Both were filed out of the Elk Grove office during the

period when Chandler was rarely there. Both petitions were filed quickly at the clients' requests to avoid foreclosure proceedings against their homes. And while Chandler's name and electronic signature were used, the Peterses testified that their attorney was Gjerde, and they did not know Chandler. Likewise, Nieto's testimony supports Chandler's assertion that the petition was filed by his office assistant without Chandler's permission.

The hearing judge did not believe Chandler's claim that the petitions were filed without his permission. However, that finding does not create affirmative evidence that he authorized the filings. (*Edmonson v. State Bar* (1981) 29 Cal.3d 339, 343 [rejection of evidence does not create affirmative contrary evidence].) The only affirmative evidence offered were the petitions themselves containing his electronic signatures. Ultimately, if equally reasonable inferences may be drawn from proven facts, the inference leading to a conclusion of innocence, rather than guilt, must be accepted. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.) Likewise, where the attorney's version of events is plausible and there is only circumstantial evidence to the contrary, misconduct has not been shown by clear and convincing evidence. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749.) Here, there is a plausible inference that Chandler did not authorize the filings. While we do not condone his neglect of the Elk Grove office or the improper delegation of legal duties, the evidence is insufficient to support the higher standard of "willfulness" for a section 6103 violation. Thus, we find Chandler not culpable and dismiss count two with prejudice.

Count Three: Seeking to Mislead a Judge (§ 6068, subd. (d))

Under section 6068, subdivision (d), an attorney must "never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." The hearing judge concluded that Chandler sought to mislead a judge by filing the Peterses' bankruptcy petition using the

electronic /s/ signatures when they had not first signed the petition. For reasons discussed under count two, namely that Chandler lacked the intent to mislead, we do not agree.

In order to violate section 6068, subdivision (d), the attorney must make a material misrepresentation to a tribunal "with the intent to mislead the tribunal." (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497; *Schaefer v. State Bar* (1945) 26 Cal.2d 739, 748 [attorney not culpable under § 6068, subd. (d), because "it does not appear that petitioner intentionally attempted to mislead the court"].) Without minimizing Chandler's carelessness in running the Elk Grove office, the evidence is insufficient to support a finding that he sought to mislead a judge. Accordingly, we dismiss count three with prejudice.

2. Chandler's Multiple Acts of Misconduct in a Third Bankruptcy Case

Kimberly and Mark Jorgensen hired Gjerde to represent them in a bankruptcy matter in March 2010. They paid him $3,500. Gjerde subsequently told his clients that Chandler would take over their case.

On September 1, 2010, a bankruptcy petition was filed on behalf of the Jorgensens, with Chandler listed as the attorney of record. The Jorgensens did not review or sign the petition before it was filed. Instead, as in the previous cases, it was filed with electronic signatures consisting of a typed "/s/" followed by the names. The Jorgensens never talked to Chandler before the petition was filed, but by the end of the month, he was working on the case and communicating with them about their concerns.

The petition had several errors, including an incorrect Social Security number and a Chapter 13 plan that was filed late and was not properly served on all creditors. Although the Chapter 13 trustee pointed out these errors to Gjerde at a creditors' meeting on October 6, 2010, neither Gjerde nor Chandler amended the petition or properly served the plan. The trustee moved to dismiss the petition. Again, neither Gjerde nor Chandler opposed the motion or

appeared at the hearing. The petition was dismissed in December 2010. The Jorgensens did not want their case to be dismissed as they needed bankruptcy protection from foreclosure on their home.

In January 2011, the Jorgensens contacted NCLC to terminate Gjerde and Chandler, and to demand their file and a refund of attorney fees. They soon received their file from NCLC, but no money. The Jorgensens discussed with the trustee their multiple problems with Gjerde's and Chandler's handling of their case. On March 29, 2011, the trustee filed a motion to reopen the case and for an order to disgorge attorney fees based on their incompetent representation. On April 27, 2011, the bankruptcy court ordered Chandler and Gjerde to return $3,000 to the Jorgensens and to file a declaration under penalty of perjury that they had done so by May 16, 2011. Chandler did not reimburse the Jorgensens, and has failed to file a declaration of compliance.

Count Four: Failure to Perform Legal Services with Competence (Rules Prof. Conduct, rule 3-110(A))[7]

Rule 3-110(A) provides that an attorney must not "intentionally, recklessly, or repeatedly fail to perform legal services with competence." We adopt the hearing judge's finding that Chandler did not perform with competence by: (1) failing to provide the bankruptcy documents to the Jorgensens for review before filing; (2) filing the petition with multiple errors; (3) failing to correct errors identified by the bankruptcy trustee; and (4) failing to oppose the motion to dismiss. Chandler's actions went beyond mere negligence and constitute a reckless disregard for the Jorgensens' case, in violation of rule 3-110(A). (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [delay of six months in filing bankruptcy petition, despite need for prompt action to protect clients from creditors, is reckless failure to perform].)

[7] All further references to rules are to the State Bar Rules of Professional Conduct unless otherwise noted.

Count Five: Failure to Refund Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D(2) requires an attorney, upon termination of employment, to promptly refund any part of an unearned, advanced fee. We adopt the hearing judge's finding that Chandler failed to refund fees paid by the Jorgensens. Chandler did not successfully file the bankruptcy petition that the Jorgensens hired NCLC to complete and he provided no services of value. His failure to repay the $3,000 after the Jorgensens demanded it, and the court ordered it, is a clear violation of this rule. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 323-324 [violation of rule 3-700(D)(2) where insufficient evidence of work performed and attorney did not obtain result for which he was retained].)

Count Six: Seeking to Mislead a Judge (§ 6068, subd. (d))

The hearing judge found that Chandler sought to mislead the judge by a false statement of fact, in willful violation of section 6068, subdivision (d), when he filed the Jorgensens' petition electronically without first obtaining the clients' actual signatures. Chandler again argues that their petition was filed without his authority. However, unlike the petition in *In re Peters* under count three, we find that the evidence supports Chandler's willful violation of this section.

Even if Chandler did not know that someone from NCLC had filed the petition without first obtaining the Jorgensens' signatures, he knew shortly after the petition was filed, but failed to correct it. The trustee made multiple attempts to contact Chandler about this specific issue. After Chandler failed to respond, the trustee filed a motion to dismiss the petition for numerous errors, including Chandler's and Gjerde's failure to obtain signatures from the Jorgensens. Chandler was clearly on notice of the problem with the signatures, but failed to provide any response to the trustee or to rectify it with the court. His failure to correct this false statement of fact constitutes a willful violation of section 6068, subdivision (d). (See *Grove v. State Bar*

(1965) 63 Cal.2d 312, 315, citing *Green v. State Bar* (1931) 213 Cal. 403, 405 [concealment of material fact "misleads the judge as effectively as a false statement . . . . No distinction can therefore be drawn among concealment, half-truth, and false statement of fact"].)

Count Seven: Failure to Obey a Court Order (§ 6103)

We agree with the hearing judge that Chandler violated the bankruptcy court's order to disgorge fees and to file a declaration of compliance. Chandler acknowledges his obligation to repay the Jorgensens, but claims he does not have the money. We find his claim to be meritless. More than two years have passed since he was ordered to return the fees yet Chandler has failed to make a good faith effort to repay any portion of it or to seek other appropriate relief from the bankruptcy court.

II. AGGRAVATION OUTWEIGHS MITIGATION

The appropriate discipline is determined in light of the relevant circumstances, including aggravating and mitigating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must establish aggravation by clear and convincing evidence (std. 1.2(b)),[8] while Chandler has the same burden to prove mitigating circumstances. (Std. 1.2(e).) We find three factors in aggravation and three in mitigation, with the aggravation outweighing the mitigation.

A. Three Factors in Aggravation

1. Multiple Acts of Misconduct (std. 1.2(b)(ii))

The hearing judge found that Chandler committed multiple acts of misconduct based on his seven violations in three different cases. Although we find less culpability, we agree with this factor in aggravation. In addition to his reckless behavior in the Jorgensens' case, Chandler's misconduct in ARAG involved seven clients and lasted approximately four months. (See *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627 [two

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

violations of failure to supervise resulting in trust fund violations, plus improper threat to bring criminal action constituted multiple acts of wrongdoing in aggravation].)

The State Bar contends that Chandler's misconduct demonstrates a pattern of repeated misrepresentations to ARAG and the bankruptcy court. We decline to find a pattern based on his billing practices at ARAG, which lasted four months, and the culpability findings in one bankruptcy matter. Only the most serious instances of behavior repeated over a prolonged period of time demonstrate a pattern of misconduct. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149-1150 [while dishonesty in two separate cases may not constitute pattern of wrongdoing, "at the very least they demonstrate repeated, similar acts of misconduct" in aggravation].)

2. Harm to Clients and the Administration of Justice (std. 1.2(b)(iv))

The hearing judge found Chandler's conduct harmed the Peterses and Jorgensens, whose matters were dismissed due to the incompetence of Chandler and NCLC. However, we focus only on the Jorgensens since we dismissed the allegation relating to the Peters case. We find that Chandler's misconduct significantly harmed the Jorgensens. His incompetence caused them stress and anxiety about potentially losing their home after their petition was dismissed. Chandler also failed to disgorge fees to these bankrupt clients, who were deprived of funds at a financially difficult time.

The State Bar further contends that Chandler harmed the administration of justice by failing to pay the two civil contempt judgments awarded to the U.S. Trustee in the *In re Nieto and Ortiz* and *In re Peters* cases. However, since we did not find culpability in these matters, we decline to consider additional aggravation.

3. Lack of Insight (std. 1.2(b)(v))

We agree with the State Bar that Chandler has demonstrated a lack of insight into his misconduct. He continues to blame ARAG's training for his false billing and his ARAG clients

for discontinuing his representation before he could actually perform the required services. He characterizes the ARAG matter as "nothing more than a heinous contract dispute between two parties who failed to communicate adequately." He believes he would have performed services, including those not requested by ARAG plan members, had the dissatisfied clients not gone elsewhere. He continues to challenge the validity of the bankruptcy court's pre-filing order after twice being held in contempt for violating it. While the law does not require Chandler to be falsely penitent, it "does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) We assign significant weight to Chandler's lack of insight because it suggests that his misconduct may recur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

4. No Bad Faith, Dishonesty, Concealment, or Overreaching (std. 1.2(b)(iii))

The State Bar also contends that Chandler's misconduct is aggravated by bad faith, dishonesty, concealment, or overreaching. We disagree because finding additional aggravation based on Chandler's ARAG billings would be redundant to the violation under section 6106.

Further, Chandler's letter to Cosimano demanding to be paid for services to ARAG clients after he was terminated does not prove bad faith. Although the letter was strongly worded in its threat to report ARAG to the State Bar, the record shows that Chandler did legitimately perform additional services for other ARAG members for which he was not paid. (See *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [insufficient evidence of bad faith or dishonesty even where respondent's testimony was not credible].)

B. Diminished Weight for Three Factors in Mitigation

1. No Prior Discipline (std. 1.2(e)(i))

Chandler has no prior record of discipline, but he was only licensed six years before the misconduct began. We agree with the hearing judge that he is entitled to "very little weight in

mitigation" for this factor. (*Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years of blemish-free practice "not a strong mitigating factor"]; *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years of blemish-free practice entitled to no mitigation weight].)

2. Cooperation (std. 1.2(e)(v))

The hearing judge afforded Chandler mitigation credit for entering into a partial stipulation of facts. We agree, but assign very limited weight in mitigation because these facts were easily provable and only related to one count of misconduct in the ARAG matter. (Compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable].)

3. Character Evidence (std. 1.2(e)(vi))

Chandler presented testimony from two witnesses and an additional seven declarations attesting to his work ethic and good character. Four of the declarations were from former clients, who affirmed his honesty, integrity, and professionalism. The declarants were satisfied with Chandler's legal work. Three additional declarants had known Chandler for several years, and had witnessed his honesty as well as volunteer work he had performed for his church and community. We diminish the weight of these character witnesses because not all of them knew about the charges, and former clients and long-time acquaintances do not constitute a wide range of references under the standard. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [four attorneys not wide range of character references]; see also *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403 [testimony of members of bar entitled to great consideration].)

III. 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. 1.3.) Our analysis begins with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) Having found Chandler culpable of several violations, the applicable standards call for a range of discipline from actual suspension to disbarment.[9] To determine the appropriate recommendation within a broad range of discipline, we also look to applicable case law for further guidance. (*Snyder v. State Bar* (1980) 49 Cal.3d 1302, 1310-1311.)

Much of Chandler's misconduct arose from his association with Gjerde and his lack of control over the Elk Grove office in which Gjerde primarily worked. Even so, Chandler is not exonerated from culpability. In fact, his unethical behavior is serious and pervasive. He submitted multiple false billings, as well as a misrepresentation to a court, failed to obey a court order, and in one instance, failed to perform competently and refund unearned fees. "In view of his repeated and serious misconduct in multiple matters, [Chandler] must be suspended for a significant period of time to protect the public." (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 292

[9] Standard 1.6(a) guides us to impose the most severe discipline where the standards prescribe different sanctions for two or more acts of misconduct. Standard 2.3 calls for actual suspension or disbarment depending on the extent of harm and magnitude of misconduct for section 6106 violations. Standard 2.6 calls for suspension to disbarment depending on the harm or gravity of the offense for violations of sections 6068 and 6103. Standard 2.4(b) provides that the failure to perform services or the failure to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client. Standard 2.10, which applies to rule 3-700(D)(2) violations, similarly provides for reproval or suspension according to the gravity of the offense or the harm.

[nine-month actual suspension for misconduct in four client matters including commingling, failing to refund unearned fees, failing to communicate with one client and breaching promise made to another, and moral turpitude in signing client's name to verified pleading; conduct aggravated by acts of moral turpitude and mitigated by 17 years of discipline-free practice and familial stress].)

In recommending a one-year suspension, the hearing judge considered the State Bar's request for a one- to two-year suspension and looked to *In the Matter of Berg, supra,* 3 Cal. State Bar Ct. Rptr. 725, for guidance. In that case, this court recommended disbarment upon finding that Berg fraudulently billed an insurance company over a 14-month period in 41 cases. He regularly billed for work before it was performed, and on multiple occasions, billed 100 hours of personal work in a single day. He defrauded the insurance company of about $250,000. In a separate matter, he also committed trust account violations and failed to promptly pay a claim. Berg received minimal mitigation for his pro bono work. In aggravation, he had a prior private reproval, lacked insight, and was found to have committed a pattern of misconduct. The hearing judge distinguished the present case from *Berg,* finding that Chandler's misconduct was not as egregious and did not involve a pattern of misconduct or a prior record of discipline. Also, Chandler proved more mitigation.

While we agree with the hearing judge that *Berg* is distinguishable from this case, we find a one-year suspension is insufficient to protect the public in light of the seriousness of Chandler's misconduct and his refusal to accept responsibility. The facts of this case call for a two-year suspension. More importantly, we find that Chandler's suspension should continue until he pays restitution and proves his rehabilitation, fitness to practice, and learning and ability in the law under standard 1.4(c)(ii). This recommendation is supported by case law involving

similar misconduct, including improper fees, violations of court orders, and moral turpitude in multiple client matters.[10]

In sum, Chandler will not be entitled to practice law in this state until he demonstrates sufficient "proof which we could with confidence lay before the world in justification of a judgment again installing him in the profession. [Citations]." (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Based on his unethical misconduct, this will not be an easy burden to satisfy. (See *Roth v. State Bar* (1953) 40 Cal.2d 307, 313 [evidence of present character must be considered in light of moral shortcomings].)

IV. RECOMMENDATION

For the foregoing reasons, we recommend that James Patrick Chandler 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 three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of the period of his probation and remain suspended until the following conditions are satisfied:

    a. He makes restitution to ARAG in the amount of $9,205 plus 10 percent interest per annum from July 1, 2008 (or reimburses the Client Security Fund to the extent of any payment from the Fund to ARAG, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.

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[10] *Rodgers v. State Bar* (1989) 48 Cal.3d 300 (two-year suspension for attorney with no prior discipline who obtained three loans totaling $34,600 from client on behalf of attorney's former business partner without disclosing relationship, misrepresented that funds were adequately secured and would not be used for attorney's own benefit, concealed wrongful conduct from probate court in violation of § 6106, disobeyed court order, and commingled funds); *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788 (one-year actual suspension for unconscionable fee plus acts of moral turpitude in misleading the court, commingling funds, misappropriation, failing to communicate a settlement offer, and failing to account; in aggravation were prior discipline, multiple acts of misconduct, and significant client harm; in mitigation attorney presented evidence of good character, displayed candor and cooperation in discipline proceedings, and repaid portion of disputed fees); *Barnum v. State Bar* (1990) 52 Cal.3d 104 (disbarment for unconscionable fee, acts of moral turpitude, disobedience to four court orders, and failure to cooperate with investigation but aggravated by prior record of discipline and no mitigation).

b. He makes restitution to Mark and Kimberly Jorgensen in the amount of $3,000 plus 10 percent interest per annum from May 1, 2011 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the Jorgensens, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.

c. He provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Std. 1.4(c)(ii).)

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 the Supreme Court order in this proceeding, he must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with his assigned probation deputy to discuss the terms and conditions f probation. Upon the direction of the Office of Probation, Chandler must meet with the probation deputy either in-person or by telephone. Thereafter, Chandler must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

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.)

8. 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 he has

complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Chandler be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension 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).)

VI. RULE 9.20

We further recommend that Chandler be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 in this proceeding. Failure to do so may result in disbarment or suspension.

VII. 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.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.