PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed August 10, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. SBC-20-O-30279
	)	
CHRISTOPHER RONALD ERWIN,	)	OPINION
	)	
State Bar No. 220022.	)	
	)	

In his first disciplinary case, Christopher Ronald Erwin is charged with five counts of misconduct stemming from his role as sole stockholder of a life settlement brokerage company. At the time of the misconduct, Erwin was a licensed attorney and also licensed to perform work in the life insurance industry. A hearing judge found him culpable on all five counts: seeking to mislead a judge, moral turpitude (misrepresentation), entering into an improper business transaction with a client, threatening criminal and administrative charges to obtain an advantage in a civil dispute, and acquiring an interest adverse to his client. The judge's recommended discipline included a one-year actual suspension.

Erwin appeals, although he does not challenge culpability regarding three of the five counts. He seeks less aggravation and more mitigation and argues that a one-year actual suspension is punitive. Ultimately Erwin requests no more than 60 days actual suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks that we affirm the hearing judge's culpability findings and discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, along with some of the aggravation and mitigation findings. After reviewing the record, the relevant standards, and comparable law, we conclude that a one-year actual suspension is the appropriate level of discipline.

I. PROCEDURAL HISTORY

OCTC filed an initial Notice of Disciplinary Charges (NDC) on May 7, 2020. The NDC was amended three times on May 13, August 27, and November 17, 2020. The third amended NDC alleged that Erwin violated: (1) section 6068, subdivision (d) of the Business and Professions Code[1] (seeking to mislead a judge); (2) section 6106 (moral turpitude—misrepresentation); (3) former rule 3-300 of the rules of Professional Conduct[2] (entering into a business transaction with a client); (4) former rule 5-100(A) (threatening criminal and administrative charges to obtain an advantage in a civil dispute); and (5) former rule 3-300 (acquiring an interest adverse to his client). On March 1, 2021, the parties filed a Stipulation as to Facts (Stipulation), and a five-day trial took place on March 2, 3, 5, and April 7, and 14, 2021. On May 4, the parties filed a revised stipulation to correct certain facts in the original Stipulation. Posttrial briefing followed and the hearing judge issued her decision on August 2. On August 18, Erwin filed a motion for reconsideration based on a factual error in the hearing judge's decision. Erwin's motion was granted in part and the judge issued an amended decision on September 3, 2021.

[1] Further references to sections are to the Business and Professions Code unless otherwise noted.

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

II. FACTUAL BACKGROUND[3]

A. Erwin's Attorney-Client Relationship with Gabrin and their Subsequent Life Insurance Referral Agreement

Erwin was admitted to practice law in California on June 5, 2002 and has no prior record of discipline. On July 9, 2014, Edward Gabrin entered into an engagement agreement with Erwin and his law firm, Erwin Legal. Gabrin was a licensed insurance agent, and he owned the company Insurance Masters. Erwin represented Gabrin in a chargeback dispute that Gabrin had with Lincoln Financial Group. During their attorney-client relationship, Erwin also provided legal services to Gabrin regarding two additional contract dispute matters. Erwin stopped providing legal services to Gabrin in mid-May 2016.

From 2012 to September 2016, Erwin held an individual life insurance license. In addition to practicing law, Erwin owned a life settlement brokerage company called PO Insurance Services Inc., a California corporation doing business as PolicyOptions Insurance Services (POIS).[4] POIS assisted clients in selling their existing, in-force life insurance policies to third-party buyers. Lisette Andrejack was an employee and agent of POIS, but she was not licensed as an insurance agent.

In 2014, Gabrin and Andrejack were introduced telephonically by Andrejack's friend, Christine Brown. Gabrin performed insurance policy conversions for clients by converting qualified term policies to permanent life insurance policies. To perform these conversions, a life insurance agent must hold a "life only" license and may not allow others to use the license.

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[3] The facts included in this opinion are based on the Stipulation, the revised 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).)

[4] On September 27, 2016, Erwin sold 100% of his interest in POIS to AAH Hawaii, Inc., a Hawaii corporation owned by an individual named Albert Holt.

Gabrin held a "life only" license. Erwin, Gabrin, Andrejack and Brown had lunch together at some point in February 2016, which was the first time Andrejack and Gabrin met in person.

In December 2015, Erwin and Gabrin formed an oral agreement (Referral Agreement), where certain POIS clients would be referred to Gabrin in exchange for Gabrin paying Erwin a percentage of the life insurance commissions he generated. Andrejack or Erwin would refer a POIS client to Gabrin who would then prepare one or more examples of the policy premium and coverage for POIS to accept, request further customization, or reject. Although Andrejack handled most of the initial and follow-up tasks with Gabrin involving the policy conversions, Erwin also communicated with Gabrin about policy conversions.

The Referral Agreement was never memorialized in writing and Erwin did not inform Gabrin that he could seek the advice of an independent lawyer. The parties began to perform according to its terms in December 2015, when William Rassman was referred to Gabrin for the conversion of an insurance policy in exchange for a referral fee. On January 27, 2016, Odes Thompson was referred to Gabrin for the conversion of an insurance policy in exchange for a referral fee. Erwin referred Peter Esposito to Gabrin for the conversion of an insurance policy in exchange for a referral fee on February 1, 2016.

Gabrin paid POIS a percentage of the commissions he received for the following converted insurance policies:

- On February 12, 2016, Gabrin gave POIS a check in the amount of $20,490.44, representing the share of the commissions generated on the conversion of the Rassman life insurance policy owed for Rassman's referral.

- On March 30, 2016, Gabrin gave POIS a check in the amount of $28,400, representing the share of commission generated on the conversion of the Thompson life insurance policy owed for Thompson's referral.

- On April 14, 2016, Gabrin gave POIS a check in the amount of $15,742.40, representing a share of commissions generated on the conversion of the Esposito life insurance policy owed for Esposito's referral.

- On August 16, 2016, Gabrin gave POIS a second check in the amount of $15,742.40 to POIS, representing a share of commissions generated on the conversion of the Esposito life insurance policy owed for Esposito's referral.

- On January 11, 2017, Gabrin gave Erwin a check in the amount of $10,058.33, representing the share of additional commissions generated on the Rassman, Esposito, and Thompson life insurance policy conversions owed for the client referrals.

In total, Gabrin paid POIS approximately $90,433.57 in fees for referral of life insurance policy conversion clients.

In 2017, Erwin became frustrated with his business arrangement with Gabrin because Erwin believed Gabrin was withholding some of the commissions owed to him and POIS. On April 14, 2017, Erwin sent Gabrin the following text message:

> Ed – I will be filing a lawsuit for fraud and conversion, reporting your theft to the Anaheim police department and the California Department of Insurance and sending a copy of the same to your landlord on Monday morning. Further I will set up a website where all of these documents will be available for public viewing. Once I do this there is no taking it back. Your [sic] a thief and have stole [sic] over $130,000 from me and my family. It will now be my mission to ensure you are held accountable.

Three days later, on April 17, 2017, Erwin contacted the Anaheim Police Department. Erwin told the dispatcher that he wanted to report a crime involving conversion and fraud perpetuated against him by Gabrin. He stated, "I entered into a contractual agreement with an insurance agent and the insurance agent collected, uh, a hundred and thirty thousand dollars and then failed to remit it to me."

B. Erwin Files a Civil Lawsuit Against Gabrin

On June 8, 2017, Erwin filed a civil action entitled *Christopher Erwin* v. *Ed Gabrin, et al* (Gabrin Action) against Gabrin and Insurance Masters, Inc. (Defendants) for breach of contract, conversion, and fraud in the Orange County Superior Court (Case No. 30-2017-00925053). Erwin was the only named plaintiff in the lawsuit. Andrejack was not a party to the lawsuit nor was she mentioned in the original complaint. The caption page of the original complaint

identified Erwin as representing himself *in pro per* and listed Mai Nguyen as co-counsel. Nguyen worked as a contract attorney for Erwin Legal and reported to Erwin. Erwin testified that he reviewed the allegations in the original complaint before it was filed.

The original complaint alleged, in pertinent part, that: (1) on January 27, 2016, Erwin and Defendants entered into an oral contract whereby Erwin agreed to services including the conversion of the Thompson policy; (2) on February 1, 2016, Erwin and Defendants entered into an oral contract whereby Erwin agreed to services including the conversion of the Esposito policy; (3) pursuant to the oral contract, Erwin would be entitled to 85% of all commissions received on the Thompson and Esposito policy conversions.

Defendants' counsel, Nicholas Buscemi, sent a meet and confer letter to Erwin and Nguyen, dated July 24, 2017, which stated that the oral contract alleged in the original complaint appeared to violate former rule 3-300.[5] Buscemi requested that Erwin provide a copy of any writing signed by his client Gabrin that Erwin contended complied with former rule 3-300.

On September 12, 2017, Erwin filed a First Amended Complaint (FAC) in the Gabrin Action. As with the original complaint, the caption page of the FAC listed Erwin and Nguyen in the attorney heading. The factual difference between the original complaint and the FAC was that the FAC alleged it was Andrejack, not Erwin, who entered into oral contracts with Defendants for the Thompson and Esposito insurance policy conversions. The FAC stated that Erwin was a third-party beneficiary. Erwin did not include an explanation regarding the differing factual allegations between the original complaint and FAC.

[5] Former rule 3-300 states, in relevant part, that an attorney is prohibited from entering into a business transaction with a client unless (1) the transaction and its terms are fully disclosed in writing to the client, (2) the client is advised in writing that the client may seek advice from an independent lawyer, and (3) the client consents in writing to the terms of the transaction.

On October 12, 2017, Gabrin filed a demurrer to the FAC. On March 5, 2018, the superior court sustained the demurrer and, in its order, stated, "Under the sham pleading doctrine, a pleader cannot circumvent prior admissions by the easy device of amending a pleading *without explanation."* (Italics in original.) The court further stated, "In the original complaint, Plaintiff Erwin sued his client, Ed Gabrin. Plaintiff was a party to the two oral contracts. In the First Amended Complaint, Plaintiff alleged that he was a third-party beneficiary instead. Plaintiff failed to explain the reason for this substantial change." The court also referenced former rule 3-300.

On March 16, 2018, a Second Amended Complaint (SAC) was filed in the Gabrin Action. The SAC identified an attorney from Beitchman & Zekian, P.C. as representing Erwin. As with the FAC, the SAC alleged, without further explanation, that it was Andrejack who entered into the oral contracts with the Defendants. On April 28, the Defendants filed a demurrer to the SAC. Erwin filed a request to dismiss the Gabrin Action without prejudice on June 18, 2018, which the court granted.

C. The State Bar's Investigation

The State Bar initiated its investigation in this matter after receiving a complaint from Gabrin regarding their business transactions and Erwin's subsequent threats to him. On December 28, 2017, the State Bar sent Erwin a letter regarding the Gabrin matter. On January 25, 2018, Erwin submitted a written reply to the letter and stated, "I have never referred any business to Gabrin and dispute any claim that he has made regarding the same… In relation to this [policy conversion] business, an employee made an agreement with Gabrin that he has subsequently violated and is the cause of the lawsuit that I filed against Gabrin… I did not threaten to destroy Mr. Gabrin's public image…"

On February 7, 2018, the State Bar sent Erwin a follow-up letter. Erwin replied to the second letter on February 13. In his response Erwin included the same statements that he made in the FAC, alleging that Andrejack and Gabrin entered into an oral argument regarding the Thompson and Esposito life insurance policy conversions. The State Bar sent Erwin a third and final investigative letter on April 5. Erwin replied by letter on April 12 and stated that, "Ms. Andrejack referred several cases to Mr. Gabrin while she was employed [with POIS], at her sole discretion."

III. CULPABILITY

A. Count One: Seeking to Mislead Judge (Bus. & Prof. Code, § 6068, subd. (d))[6]

In count one, OCTC alleges that on September 12, 2017, and March 16, 2018, respectively, Erwin filed a FAC and SAC in the Gabrin Action, that contained several false statements which sought to mislead the judge, in violation of section 6068, subdivision (d). The original complaint, FAC, and SAC differed as follows:

(1) **FAC (filed September 12, 2017)** – Erwin, proceeding *in pro per*, was identified as the plaintiff and the FAC also stated causes of action for breach of contract, conversion and fraud. It alleged Erwin was a third-party beneficiary to the Thompson and Esposito contracts and that Andrejack entered into the oral contracts with Gabrin on January 27, 2016 (for the Thompson conversion) and on February 1, 2016 (for the Esposito conversion).

(2) **SAC (filed March 16, 2018)** – Erwin, now represented by counsel, was identified as the plaintiff and the SAC stated causes of action for breach of contract, conversion and fraud. The SAC contained the same factual allegations as the FAC but also alleged that Erwin and Gabrin did not engage in any discussion concerning the Thompson and Esposito contracts.

The hearing judge found Erwin culpable of count one as charged. She determined that Erwin had truthfully alleged in his original complaint that he entered into oral contracts with Gabrin

[6] Section 6068, subdivision (d), provides that an attorney has a duty "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

regarding the Thompson and Esposito conversions. The judge reasoned that Erwin's story only changed—alleging in the FAC and SAC that it was Andrejack who contracted with Gabrin—after receiving a letter from Gabrin's attorney informing him that the oral contracts alleged in the original complaint appeared to violate former rule 3-300.

On review, Erwin argues that he is not culpable under count one by claiming that he did not "author or file" the pleadings at issue. We find no merit to his argument and agree with the hearing judge's reasoning and conclusion. Erwin was listed as plaintiff and counsel on the original complaint and FAC, and the evidence reveals that he was the source of the statements alleged in the complaints. He testified that he had reviewed the original complaint and FAC before it was filed and signed by Nguyen. He also testified that he had an opportunity to correct any facts before filing. The hearing judge rejected Erwin's self-serving testimony that his name was inadvertently included on both the original complaint and FAC and there is nothing in the record to indicate that we should disturb that credibility determination. Further, under the sham pleading doctrine, admissions in a complaint that are "superseded by an amended pleading remain within the court's cognizance and the alteration of such statements by amendment designed to conceal fundamental vulnerabilities in a plaintiff's case will not be accepted." (*Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1061.)

We also disagree with Erwin's argument that the plain meaning of section 6068, subdivision (d), applies only to "attorneys maintaining an action on behalf of a client" and not to "allegations made in an action on behalf of a plaintiff who happens to be an attorney." As indicated by OCTC in its brief, section 6068, subdivision (d), is not limited to attorneys representing clients as Erwin contends. The Supreme Court held in *Davis v. State Bar* (1983) 33 Cal. 3d 231, 240 that there is "no validity [to the] contention that Business and Professions Code section 6068…

app[lies] only to lawyers who are acting in their role as advocates for others." Therefore, the fact that Erwin was a plaintiff to the lawsuit does not shield him from culpability under count one.

Knowingly presenting a false statement which tends to mislead the court establishes culpability under section 6068, subdivision (d). (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.) We agree with the hearing judge that Erwin's statements in the original complaint were true, and that Erwin filed the subsequent FAC and SAC, containing material misrepresentations, to mislead the court and to avoid potential disciplinary action by the State Bar due to his improper business transaction with Gabrin.[7] The documentary evidence also supports this conclusion. On April 17, 2017, two months prior to filing the original complaint, Erwin stated to the Anaheim Police Department that he entered into a contractual agreement with an insurance agent who failed to remit payment to him. Once Gabrin's counsel put Erwin on notice that the allegations in the original complaint potentially violated former rule 3-300, he filed the FAC containing the false statements. Erwin knew the statements in the FAC were false. He wanted to convey the impression that he did not enter an improper business transaction with Gabrin, who was his client at the time the agreement was established. We find no other reasonable inference to be drawn from Erwin's substantial change to the factual allegations in the FAC and SAC other than he intended to conceal the fact that he contracted with Gabrin, which would subject him to discipline by the State Bar.

The hearing judge found credible Gabrin's testimony, which supported the allegations in the original complaint. The judge did not find that Erwin and Andrejack testified credibly regarding their contentions that the statements in the FAC and SAC were true.[8] These findings are entitled

[7] Erwin's admission to culpability for entering into an improper business transaction with a client in violation of former rule 3-300 is discussed below in count three.

[8] Notably on review Erwin does not assert that the allegations contained in the FAC and SAC are true. In fact, he admits that he is culpable of committing moral turpitude in count two by making misrepresentations to the State Bar regarding these false statements.

to great weight. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to hearing judge's factual findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) We conclude that clear and convincing evidence exists[9] in the record to find that Erwin violated section 6068, subdivision (d), when he filed the FAC which contained false statements that materially differed from the original complaint without explanation.

B. Count Two: Moral Turpitude – Misrepresentation (Bus. & Prof. Code, § 6106)[10]

In count two, OCTC alleges that on January 25, February 13, and April 12, 2018, Erwin made various false statements in writing to the State Bar related to his business relationship with Gabrin including that: (1) Andrejack entered into the oral referral agreement with Gabrin; (2) Andrejack referred cases to Gabrin at her sole discretion; (3) Erwin never referred any business to Gabrin; and (4) Erwin never threatened to destroy Gabrin's public image. The hearing judge found that Gabrin testified credibly during the disciplinary trial, and concluded that it was Erwin, not Andrejack, who entered into the agreement with Gabrin to refer clients in exchange for a referral fee. Andrejack was Gabrin's point of contact who handled the day-to-day operations related to the Referral Agreement. The judge also determined the evidence revealed that Erwin sent a text message to Gabrin in April 2017 threatening to file a police report and lawsuit against him, send a copy of the police report to Gabrin's landlord, and create a "website

[9] 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.)

[10] 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, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

where all of these documents will be available for public viewing." Therefore, she found Erwin culpable of willfully committing moral turpitude by making misrepresentations to the State Bar in violation of section 6106.

Neither party seeks review under count two. Erwin accepts the judge's findings and concedes that he is culpable of committing moral turpitude based on his misrepresentations. Based on our review of the record, we find clear and convincing evidence to confirm Erwin's misconduct and affirm the hearing judge's culpability finding. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes affirmative misrepresentations].)

C. Count Three: Entering into An Improper Business Transaction with a Client (Former Rule 3-300)

In count three, OCTC alleges that Erwin violated former rule 3-300 by improperly entering into a business transaction with his then-client, Gabrin, when he established the oral referral agreement because he did not: (1) transmit the terms of the transaction in writing; (2) advise Gabrin in writing that he may seek the advice of an independent attorney; and (3) obtain Gabrin's written consent to the terms of the transaction. The hearing judge found Erwin culpable as charged and neither OCTC nor Erwin challenge this determination.

The record establishes and Erwin concedes that his oral contract with Gabrin did not satisfy the three requirements of former rule 3-300. Therefore, we affirm the hearing judge's culpability determination under this count. (See *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660, 670 [rule 3-300 violation where attorney did not provide terms of agreement in writing, failed to advise clients that they could seek advice of independent attorney, and failed to receive clients consent in writing to the terms of the agreement].)

D. Count Four: Threatening Criminal, Administrative or Disciplinary Charges to Obtain an Advantage in a Civil Dispute (Former Rule 5-100(A))

Former rule 5-100(A) provides that an attorney "shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." OCTC alleged that Erwin violated the former rule when he sent Gabrin the text message to obtain an advantage in a civil dispute. The hearing judge rejected Erwin's testimony, where he characterized the message as merely advising Gabrin about his intended actions and found him culpable as charged.

OCTC relies on *Crane v. State Bar* (1981) 30 Cal.3d 117 to establish that Erwin's communication to Gabrin violated former rule 5-100(A). In *Crane v. State Bar*, an attorney wrote a letter demanding that the recipients pay money the attorney believed to be owed and stated that if the money was not received within five days, the attorney would commence an action to recover the money. The letter also indicated that copies were sent to a state regulatory agency and the state attorney general to assist with resolving the issue. The Supreme Court determined that this language "could quite reasonably be construed as violative of [the rule]." (*Id*., at p. 123.) Likewise, this court in *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 637 found an attorney culpable of violating former rule 5-100(A) by sending a letter asserting that the recipients were engaging in criminal activity and threatened to make the recipients' conduct part of an ongoing investigation by the F.B.I and District Attorney. The attorney also indicated that copies of the letter were sent to the F.B.I, District Attorney, and other government agencies.

Erwin challenges culpability and asserts he was upset and frustrated when he sent the message and had no expectation, at the time, that Gabrin would be compelled to pay him. Considering the conduct of the attorneys in *Crane* and *In the matter of Malek-Yonan*, we perceive Erwin's text as more of a direct threat and in clear violation of former rule 5-100(A).

Erwin not only indicated his intent to file a lawsuit against Gabrin and report him to the police, but he also threatened to report him to the insurance regulating agency and send a copy of the documents to his landlord and make the copies available via the internet for "public viewing." Erwin further threatened Gabrin by stating that once he does these actions that "there is no taking it back." The use of such threatening language reveals that Erwin was motivated to change Gabrin's behavior. Viewing the language used in the message from Gabrin's perspective, one could reasonably infer that Erwin was seeking to obtain an advantage in the civil dispute since Erwin stated that Gabrin stole money from him and that it was now his "mission to ensure [Gabrin is] held accountable."

We agree with OCTC and affirm the hearing judge's culpability determination under count four.

E. Count Five: Acquiring an Interest Adverse to a Client (Former Rule 3-300)

In count five, the hearing judge found that Erwin violated former rule 3-300 by acquiring an interest adverse to that of his then-client Gabrin. Since Erwin's misconduct in count three also forms the basis of this violation, the judge concluded the counts were duplicative and did not assign any additional weight under count five. Erwin does not challenge these findings on review. We agree and conclude that the record supports culpability since Erwin did not receive Gabrin's informed written consent as to the terms of their agreement nor did he advise Gabrin that he may seek the advice of independent counsel. Accordingly, we affirm the judge's culpability determination but also do not assign additional weight in culpability. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge, but no additional weight in determining discipline].)

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[11] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Erwin to meet the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found that Erwin committed multiple acts of misconduct by (1) making false statements to the superior court in both the FAC and SAC, (2) making false statements to the State Bar on three separate occasions, (3) threatening Gabrin for the purpose of trying to obtain an advantage in a civil dispute, and (4) entering into a business transaction with Gabrin without satisfying the requirements of former rule 3-300. She assigned moderate weight in aggravation. Erwin contends that he is only culpable under counts two and four,[12] and therefore his misconduct does not warrant aggravation for multiple acts. Like the judge, we found Erwin culpable of all five counts alleged in the NDC, which includes at least eight improper acts. Therefore, we conclude that Erwin's misconduct involved multiple improper acts and affirm the judge's finding that moderate aggravation is appropriate. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

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

The hearing judge found that Erwin's misconduct harmed the administration of justice by his filing of two amended complaints in the Gabrin Action that contained false and misleading statements. The judge assigned substantial weight to this circumstance.

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[11] Further references to standards are to this source.

[12] In his brief Erwin concedes to culpability under count five as well but considers his misconduct under the count involving the same misconduct present in count three.

On review, Erwin challenges the hearing judge's significant harm finding. OCTC asks us to affirm the judge's determination and relies on *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 216 to support its contention that substantial weight in aggravation is warranted. The attorney in *Reiss* failed to appear at a case management conference and attempted to cover up his inaction by making four subsequent misrepresentations to the court—one via written declaration and three occurring during in-person court hearings. We find the misconduct in *Reiss* distinguishable from Erwin filing two amended pleadings containing misrepresentations.

We disagree with the hearing judge and find that significant harm to the administration of justice has not been established by clear and convincing evidence. While Erwin made multiple false and misleading statements in the FAC and SAC, the record does not reveal specific evidence that considerable court time or resources were expended because of his misconduct. (Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79–80 [harm to administration of justice where attorney committed multiple acts of misconduct resulting in considerable court resources wasted].) Since OCTC has failed to prove that Erwin's misconduct caused significant harm to the administration of justice, we decline to find aggravation under standard 1.5(j).

3. Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. An attorney who fails to accept responsibility for his actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) The hearing judge assigned substantial weight in aggravation for Erwin's failure to appreciate the wrongfulness of his misconduct. The judge concluded that Erwin insisted on maintaining that the allegations in his amended complaints and his false statements to the State Bar were truthful. The judge also

found that Erwin showed indifference during his disciplinary trial when faced with a copy of his April 14, 2017 text message by failing to acknowledge that his statements in the message were threats but instead mischaracterized them as "advice" to Gabrin on what he intended to do.

While the law does not require false penitence, it does require that an attorney accept responsibility for acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) As we previously discussed, Erwin admits on review that he is culpable of moral turpitude by making misrepresentations to the State Bar. He also admits culpability under counts three and five based on his failure to satisfy the requirements of former rule 3-300. Although Erwin challenges culpability under count one for seeking to mislead a judge, he does not assert that the factual allegations contained in the FAC and SAC were truthful on review. Erwin has a right to present arguments to defend against culpability. (See *In re Morse* (1995) 11 Cal.4th 184, 209 [attorney has right to defend himself vigorously].) We agree that Erwin's testimony regarding the threatening text message he sent to Gabrin demonstrates a lack of insight but also acknowledge that Erwin has accepted some responsibility by admitting that he regrettably made a poor choice in sending the text message to Gabrin. On balance, we assign limited aggravating weight.

4. Lack of Candor (Std. 1.5(l))

Standard 1.5(l) allows aggravation for lack of candor and cooperation during disciplinary proceedings. The hearing judge found that Erwin's lack of candor during his testimony was an aggravating circumstance and assigned substantial weight. The judge concluded that Erwin's testimony was dishonest and directly contradicted his own admissions in the Stipulation and other documentary evidence proving that he formed an oral contract with Gabrin and not Andrejack. We give great weight to a hearing judge's findings on candor because it is that judge who hears and sees the witness testify and is best positioned to make this determination. (*In the*

Matter of Dahlz (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [hearing judge's findings on candor entitled to great weight].) There were clear and material inconsistences between Erwin's testimony and the factual allegations pleaded in the original complaint he filed in the Gabrin Action, the Stipulation, and the statements Erwin provided to the police. We affirm the hearing judge's finding and assign substantial weight in aggravation for Erwin's lack of candor.

B. Mitigation

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

Standard 1.6(a) provides mitigation for the "absence of any prior record of discipline over many years coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) The hearing judge assigned moderate weight given Erwin's 12 years of discipline-free conduct prior to when the misconduct began. The judge concluded that because Erwin seldom practiced law during those 12 years he was not entitled to full mitigating weight. (See *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177 [appropriate to depreciate years of practice by time spent not practicing law].)

Erwin challenges the judge's finding and contends that his period of discipline-free practice is entitled to substantial weight. OCTC asserts that Erwin is not entitled to any mitigation under standard 1.6(a) because Erwin did not demonstrate that his misconduct was aberrational. We decline to eliminate Erwin's mitigation under standard 1.6(a) as he showed some understanding of his misconduct by admitting that he regrets sending the April 2017 text to Gabrin. Erwin does not contest the hearing judge's culpability determinations on three of the five charged counts. Also, Erwin has maintained his law license for 12 years while he was simultaneously subject to the California Department of Insurance rules and regulations and based on the record there have been no complaints or accusations brought against him pertaining to his

insurance career. However, Erwin's lack of candor during the disciplinary trial does not support a finding that his misconduct was aberrational. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [a prior record of discipline-free practice is most relevant for mitigation where the misconduct is aberrational].) Under these circumstances, we assign moderate mitigation for Erwin's nearly 13-year period of practice without discipline. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [diminished mitigating weight for 12-year record of discipline-free practice where respondent showed lack of insight by offering ill-founded explanations for misconduct].)

2. Cooperation (Std. 1.6(e))

The hearing judge afforded some mitigating weight to Erwin for entering into the Stipulation because the Stipulation contained easily provable facts. OCTC argues that Erwin is only entitled to limited mitigation because of his lack of candor at trial. We disagree, and find that Erwin's pretrial stipulation to facts is entitled to more mitigation than does OCTC. In addition, Erwin accepted the hearing judge's culpability findings on review for three counts which conserved time and resources for the court and OCTC. Accordingly, we find that Erwin is entitled to moderate mitigation. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr.416, 443 [factual stipulation merits some mitigation]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for those who admit culpability].)

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

Erwin may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge assigned moderate weight for Erwin's showing of good character. Erwin seeks substantial mitigating weight, and OCTC argues that he is only

entitled to limited mitigation. Five declarants submitted character letters attesting to Erwin's good character. They included a retiree and four entrepreneurs that had personal and business relationships with Erwin. Each of his character references has known him for a significant amount of time—12 years or more. The declarants were fully aware of Erwin's misconduct and spoke positively regarding his character and professionalism. However, as OCTC correctly points out, the witnesses do not constitute a wide range of references in the legal and general communities as required under the standard. Erwin did not meet the standard to qualify for full mitigation because none of his witnesses came from the legal community. Accordingly, we assign moderate mitigating weight under standard 1.6(f). (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].)

4. Community Service

An attorney's pro bono work and community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Erwin presented evidence that in 2012 he engaged in over 50 hours of pro bono work. He also testified that he is dedicated to community service and currently volunteers with the Public Law Center, an organization in Orange County that provides legal services to low-income individuals. The hearing judge assigned moderate weight in mitigation due to Erwin's lack of evidence detailing the hours he has dedicated to community service in recent years.

Erwin argues that he is entitled to substantial weight under this circumstance. We disagree. Although Erwin has established mitigation for some of his community service, he did not prove a prolonged dedication to pro bono work to afford full mitigating weight. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].) Therefore, we assign moderate weight in mitigation.

V. ONE YEAR ACTUAL SUSPENSION IS THE APPROPRIATE 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.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. When an attorney commits two or more acts of misconduct, the most severe sanction must be imposed. (Std. 1.7(a).) The most severe sanctions applicable here, which call for disbarment or actual suspension, are found under standard 2.11 for acts of the moral turpitude and standard 2.12 by seeking to mislead a judge.[13]

The hearing judge recommended discipline that included a one-year actual suspension. In reaching this recommendation, the judge relied on two cases: *In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483 and *Lee v. State Bar* (1970) 2 Cal. 3d 927. In *Peavey*,

[13] Standard 2.11 provides, "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law." Because we found Erwin culpable for violating his duties as an attorney under section 6068, subdivisions (d), standard 2.12(a) applies and also provides that disbarment or actual suspension is the presumed sanction for those violations. Pursuant to standard 1.2(c)(1), actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until certain conditions are met.

the attorney received a two-year actual suspension for failing to report a civil judgment for fraud, failing to avoid an interest adverse to a client, violating his fiduciary duties, and committing acts of moral turpitude. The attorney's misconduct was aggravated by multiple acts, client harm, and indifference and he received mitigation for no prior discipline, community service and good character. In *Lee*, which is a pre-standards case, an attorney received a one-year actual suspension for moral turpitude for making misrepresentations to deceive the court, acquiring adverse interests, and making false allegations in sworn testimony, among other misconduct. There is no discussion of mitigating and aggravating circumstances in *Lee*.

OCTC requests that we affirm the hearing judge's discipline recommendation. In Erwin's briefs on review, he urges us to impose no greater than a 60-day actual suspension. He relies on three cases that include less misconduct than we found here, so we do not consider them helpful.

We reviewed the following cases with certain facts similar to Erwin's misconduct to assist with our discipline determination. In *In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387, an attorney was actually suspended for six months after being found culpable of committing three counts of moral turpitude, violating former rule 3-300 based on his business transaction with a client, and revealing client confidences. He received mitigation for practicing law for 26 years without prior discipline and aggravation for significant harm and multiple acts. Gillis's misconduct is comparable to Erwin's. However, Erwin's conduct involves more aggravation based on his lack of candor, multiple acts, and indifference although he did not engage in as much moral turpitude. Most significantly, Gillis's misconduct was mitigated by 26 years of discipline-free practice in comparison to Erwin's 12 years, which guides us to recommend an actual suspension of greater than six months. In *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar. Ct. Rptr. 166, this court recommended a six-month actual suspension for an

attorney found culpable under section 6068(d) and section 6106 for making misrepresentations to two judges in a single matter. Aggravating weight was assigned for lack of candor because the attorney made an untruthful statement during the disciplinary trial and had one prior record of discipline which resulted in a 15-day actual suspension. He received mitigation for pro bono activities and extraordinary good character. Like in *Chesnut*, Erwin's misconduct involved dishonesty to the court and was aggravated by his lack of candor during State Bar proceedings, but Erwin's additional acts of misconduct—including entering into an improper business transaction with his client, threatening criminal and administrative charges to obtain an advantage in a civil dispute and acquiring an interest adverse to his client—supports discipline greater than what Chesnut received.

We also find guidance from *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456. In *Hertz*, the attorney stipulated to violating section 6106, section 6068, subdivision (d), section 6068, subdivision (a), and former rules 8-101(A) and 7-105(1) based on deceiving a superior court judge related to trust account violations. He received a two-year actual suspension. In aggravation, the attorney's misconduct included multiple acts, bad faith, dishonesty, significant harm to his client and the administration of justice, and a prolonged history of lack of candor. He was afforded mitigation for establishing good character evidence and substantial pro bono and community service.

Like the attorney in *Hertz*, Erwin was found culpable of violating section 6106 and section 6068, subdivision (d), in addition to Erwin's other more minor rule violations. The cases are comparable because both attorneys were dishonest and committed moral turpitude. Like Hertz, we are mindful this is Erwin's first disciplinary proceeding, and both attorneys established mitigation for good character, and community service but we found that Erwin's lack of candor during the disciplinary trial is a concern warranting substantial aggravation. Yet, the aggravation

found in *Hertz* was more serious than Erwin's limited aggravation for indifference and moderate aggravation for engaging in multiple acts of misconduct. Hertz engaged in a prolonged practice of deceit and concealment that affected his client, opposing counsel, and the superior court—in addition to the lack of candor he displayed during the State Bar proceedings. Therefore, we conclude that an actual suspension of less than two years is appropriate in Erwin's case.

On balance, we find that Erwin's misconduct and aggravation warrants more than the six months discipline imposed in *In the Matter of Chesnut* and *In the Matter of Gillis* but less discipline than the two-year actual suspension in *In the Matter of Hertz*. Thus, we recommend discipline that includes a one-year actual suspension and two years' probation.

VI. RECOMMENDATIONS

It is recommended that Christopher Ronald Erwin, State Bar Number 220022, 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.** Erwin must be suspended from the practice of law for the first one year of the period of his probation.

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Erwin 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 Erwin's first quarterly report.

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

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Erwin 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. Erwin must report,

in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Erwin 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, Erwin 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 Erwin's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

   a. Deadlines for Reports. Erwin 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, Erwin must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

   b. Contents of Reports. Erwin 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. Erwin is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Erwin must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Erwin will not receive MCLE credit for attending these sessions. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Erwin 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 Erwin 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.** Erwin is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Erwin sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Christopher Ronald Erwin 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 Erwin provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of

the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

IX. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Erwin 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.[14] Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

X. MONETARY SANCTIONS

It is further recommended that Christopher Ronald Erwin be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of

[14] 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, Erwin is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Procedure of the State Bar. The guidelines suggest monetary sanctions of up to $2,500 for an actual suspension. However, the hearing judge made an upward deviation and ordered Erwin to pay $3,500 in monetary sanctions based on his dishonesty during the disciplinary proceeding. We note that at oral argument Erwin conceded his misconduct was aggravated by his lack of candor. After considering the facts and circumstances of the case, we determine that a $2,500 sanction is appropriate. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

HONN, J.

WE CONCUR:

McGILL, Acting P. J.
STOVITZ, J.*

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